



# 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

The Commission respectfully acknowledges and celebrates the Traditional Owners of the lands throughout Victoria and pays its respects to their Elders, children and young people of past, current and future generations.

Cover: Photograph of a possum skin with artwork created by young people from Geelong, Wathaurong Country. An accompanying message is on page 438.

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COMMISSION FOR CHILDREN  
AND YOUNG PEOPLE

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Dear Mr Young and Ms Noonan

***Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system***

I hereby request that *Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* be tabled in accordance with section 50 of the *Commission for Children and Young People Act 2012* (the Act).

At law only the Principal Commissioner is empowered to give a copy of the report to the clerk of each House of the Parliament. I note that this inquiry has been led by the Commissioner for Aboriginal Children and Young People.

I would be grateful if you could arrange for the report to be tabled in the Legislative Council and the Legislative Assembly on 9 June 2021.

Yours sincerely

Liana Buchanan  
**Principal Commissioner**

25 May 2021

# Acknowledgments

The Commission would like to thank the many people who have assisted with the preparation of this report.

First and foremost, we thank the 93 children and young people who spoke to us – we hope we have done justice to the stories you shared, that your voices are listened to, and that decision-makers act in response to what you have told us.

Thank you also to the family members who shared their experiences, insights and ideas for improvement of the youth justice system.

We acknowledge the Traditional Owners across Victoria who welcomed the Commission and permitted us to conduct the Koori Youth Justice Taskforce and the inquiry on their lands.

We also extend our gratitude to all the people who work with children and young people in the youth justice system that we interviewed for this inquiry – Youth Justice workers, community services staff, Aboriginal organisations, Aboriginal community members and Elders. Your passion and commitment to improving outcomes for children and young people is to be commended. To those who participated in the Koori Youth Justice Taskforce, thank you for sharing your invaluable insights and experiences in relation to the youth justice system.

Thank you also to the Department of Justice and Community Safety for its partnership in the Koori Youth Justice Taskforce. This was an important process that we hope will lead to lasting change to support Aboriginal children and young people to thrive outside the youth justice system.

## Content note

Please be aware that the report contains stories and experiences from children and young people that could be distressing to some readers. Some quotations contain explicit language.

# Message from the Commissioners

At its best, the youth justice system has the potential to transform lives; to be responsive to the unique experiences, circumstances and strengths of each child and young person who comes into contact with it, and to provide the supports they need to thrive. For Aboriginal children and young people, this includes enabling them to be strong in their culture and connected to their families, communities and Country.

During this inquiry we heard that for many Aboriginal children and young people in Victoria, contact with the youth justice system seriously undermines their health and wellbeing. We saw first-hand how the negative impact of contact with the justice system can ripple out to communities and across generations.

Despite some recent gains, the over-representation of Aboriginal children and young people in the youth justice system persists. It is an old storyline. Numerous inquiries and reports have detailed the historical legacies of dispossession and colonisation that underpin it; the structural and institutional racism that perpetuates it; the chronic conditions that Aboriginal children and young people endure inside a system that is not fit for purpose; and the inadequate care and support that bring them back to it.

We know the very real harm we inflict when we choose to lock up children as young as 10 and then watch them cycle back into the system again and again. The evidence is in, and it is heartbreaking.

But it is not the whole story.

Between the pages of this report are accounts of extraordinary courage and progress.

During this inquiry we met with Youth Justice stakeholders on the ground about their experiences within the system and the everyday strain and struggles behind the statistics. It is their insights that have informed the findings in this report.



We travelled around the state meeting with Aboriginal leaders and organisations working hard to support their communities. It is their expertise that has shaped the recommendations in this report.

And most importantly, we listened to Aboriginal children and young people themselves, to their families and to their communities. Despite their challenges and circumstances, many of the children and young people we met during this inquiry simply craved the essential things in life that most of us take for granted – a safe bed to sleep in at night, to feel heard, to be loved and to have hope for the future. This report gives voice to them, to their pain, their hope and their vision for a new way of doing justice.

Culture is at the heart of this vision. We heard this at every regional forum and in every consultation across Victoria. Aboriginal children and young people need to be able to forge their identity and find their culture in everything they do – in their homes and communities, and through their journeys in and out of mainstream institutions. Culture is a source of strength and resilience and it is critical to securing better youth justice outcomes for Aboriginal children and young people.

## Message from the Commissioners

This report comes at the convergence of significant youth justice system reform in Victoria and a strengthened political imperative to recognise and ameliorate our state's ongoing legacy of racial injustice. Right now in Victoria there is a heightened political consciousness that demands a new approach to youth justice interventions for Aboriginal children and young people.

We are proud to be working with a government that is seriously examining inequalities in youth justice system interventions and outcomes, reckoning with the hard and shameful truths of this state's colonial foundations and implementing an agenda of Aboriginal self-determination to set it right.

There are many dedicated people in the youth justice system working hard to change the story. We see you and we acknowledge you. The youth justice system is improving because of your energy and commitment. For some of the Aboriginal children and young people we met during this inquiry, it took just one dedicated worker who believed in them and advocated for them to change their lives for the better.

Yet despite these advancements, the empirical reality for Aboriginal children and young people is that their rate of contact with the youth justice system remains unacceptably high. In most cases, this contact is harmful. What we found in this inquiry is that goodwill and dedication alone are insufficient to shift the weight of our history and the ongoing devastation it continues to produce for many Aboriginal children and young people.

We need to recast the foundations. Youth justice for Aboriginal children and young people cannot be cut from the same cloth of harmful interventions that has been passed down since the beginning of colonisation.

Transforming the youth justice system is key, but this alone will not be enough. All parts of government, including education, health and child protection, contribute to Aboriginal over-representation in the youth justice system, and all must play their part in addressing it.

This report, together with the stories of Aboriginal children and young people that are burned into the possum skin cloak accompanying it, offers hope for a better way of doing justice; a way that aligns with Aboriginal ways, as the Aboriginal community says – *Our youth, our way*.



**Justin Mohamed**

*Commissioner for Aboriginal  
Children and Young People*



**Liana Buchanan**

*Principal Commissioner*

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# List of abbreviations and acronyms

ABS	Australian Bureau of Statistics
ACCHO	Aboriginal community-controlled health organisation
ACCO	Aboriginal community-controlled organisation
ACF	Aboriginal Children's Forum
ACJP	Aboriginal Community Justice Panel
AFLDM	Aboriginal Family Led Decision Making
AHMAC	Australian Health Ministers' Advisory Council
AHRC	Australian Human Rights Commission
AHV	Aboriginal Housing Victoria
AIHW	Australian Institute of Health and Welfare
AJA	Aboriginal Justice Agreement. Phase 4 of the Aboriginal Justice Agreement is called <i>Burra Lotjpa Dunguludja</i> .
AJF	Aboriginal Justice Forum
ALO	Aboriginal Liaison Officer
ALRC	Australian Law Reform Commission
AOD	alcohol and other drug(s)
AYSS	Aboriginal Youth Support Service
BADAC	Ballarat and District Aboriginal Cooperative
Baroona	Baroona Youth Healing Place
Beijing Rules	United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985
Bunjilwarra	Bunjilwarra Koori Youth Alcohol and Drug Healing Service
BWAYS	Bert Williams Aboriginal Youth Services
CAG	Council of Attorneys-General
CAHABPS	Central After Hours Assessment and Bail Placement Service
CAIDS-Q	Child and Adolescent Intellectual Disability Screening Questionnaire
CBKYJP	Community-Based Koori Youth Justice Program
CEO	chief executive officer
Child FIRST	Child Family Information and Referral Support Team
Child Protection	Child Protection Service (DFFH)
CIMS	Client Incident Management System

## List of abbreviations and acronyms

Commission	Commission for Children and Young People
CP	see Child Protection
CRIS	Client Relationship Information System
CSA	Crime Statistics Agency
CSV	Court Services Victoria
CUST	Cultural Understanding and Safety Training
CVDL	Centre for Victorian Data Linkage
CYFA	<i>Children, Youth and Families Act 2005 (Vic)</i>
DET	Department of Education and Training
DFFH	Department of Families, Fairness and Housing
DHHS	Department of Health and Human Services (now the Department of Families, Fairness and Housing and the Department of Health)
DJCS	Department of Justice and Community Safety
DJR	Department of Justice and Regulation (now the Department of Justice and Community Safety)
DPC	Department of Premier and Cabinet
EFY Foyer	Education First Youth Foyer
EJI	Education Justice Initiative
FGC	family group conference
GEGAC	Gippsland & East Gippsland Aboriginal Co-operative
GGAC	Goolum Goolum Aboriginal Co-operative
Havana Rules	United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990
HRLC	Human Rights Law Centre
IBAC	Independent Broad-based Anti-corruption Commission
inquiry	The Commission for Children and Young People's systemic inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system, established on 15 May 2019.
IVP	Independent Visitor Program
JRNA	Justice Reinvestment Network Australia
JSS	Jesuit Social Services
KCISP	Koori Court Integrated Services Program
KEC	Koorie Education Coordinator (DET)
KECCLO	Koorie Education Children's Court Liaison Officer (DET)
KESO	Koorie Engagement Support Officer (DET)
KEW	Koorie Education Workforce (DET)
KEYS	Keep Embracing Your Success
KISP	Koori Intensive Support Program
KJU	Koori Justice Unit

KYJP	Koori Youth Justice Program
KYS	Kapiti Youth Support (New Zealand)
LAECG	Local Aboriginal Education Consultative Group
LGBTQI+	lesbian, gay, bisexual, trans and gender diverse, queer/questioning and intersex
LS/CMI	Level of Service/Case Management Inventory
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners, 2015
MARAM	Multi-Agency Risk Assessment and Management Framework
MAYSI-2	Massachusetts Youth Screening Instrument-Version 2
MDAS	Mallee District Aboriginal Services
MHARS	Mental Health Advice and Response Service, Children's Court
NDIS	National Disability Insurance Scheme
Northern Territory Royal Commission	Royal Commission into the Detention and Protection of Children in the Northern Territory, 2017
NPM	National Preventive Mechanism
OMM	Outcomes Measurement Model
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
RAJAC	Regional Aboriginal Justice Advisory Committee
RCVMHS	Royal Commission into Victoria's Mental Health System
Riyadh Guidelines	United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990
SERT	Security and Emergency Response Team (Youth Justice)
SESG	Security and Emergency Services Group (Corrections Victoria)
SIQ	Standard Indigenous Question
SNAICC	Secretariat of National Aboriginal and Islander Child Care
TAFE	Technical and Further Education
Taskforce	Koori Youth Justice Taskforce
TCP	targeted care package
UN	United Nations
UNYA	Urban Native Youth Association (Canada)
VACCA	Victorian Aboriginal Child Care Agency
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
VAEAI	Victorian Aboriginal Education Association Incorporated
VAHS	Victorian Aboriginal Health Service
VALS	Victorian Aboriginal Legal Service
VCAL	Victorian Certificate of Applied Learning
VCOSS	Victorian Council of Social Service
VEOHRC	Victorian Equal Opportunity and Human Rights Commission

## List of abbreviations and acronyms

VLA	Victoria Legal Aid
VSIIDR	Victorian Social Investment Integrated Data Resource
YACVic	Youth Affairs Council Victoria
YJ	see Youth Justice
YLS/CMI	Youth Level of Service/Case Management Inventory
Youth Justice	Youth Justice Community Services and Youth Justice Custodial Operations (DJCS)
Youth Justice Review	P Armytage and J Ogloff, <i>Youth justice review and strategy: meeting needs and reducing offending</i> , Victorian Government, 2017
YSAS	Youth Support + Advocacy Service
YSS	Youth Support Service

# Definitions

<b>Aboriginal</b>	We recognise the diversity of Aboriginal people living in Victoria. The term 'Aboriginal' in this report refers to Aboriginal and Torres Strait Islander peoples. 'Indigenous' is retained when it is part of the title of a program, report or quotation. The terms 'Koori' and 'Koorie', which refer to Aboriginal people from south-east Australia, are used in quotations or when part of the title of a report, program or role, for example in relation to the Department of Education and Training's Koorie Education Workforce. In general text or quotations in this report, the spelling of 'Koori(e)' varies depending on the context.
<b>Aboriginal Child Placement Principle</b>	The purpose of the Aboriginal Child Placement Principle is to enhance and preserve Aboriginal children's sense of identity as Aboriginal, by ensuring that Aboriginal children are maintained within their own biological family, extended family, local Aboriginal community, wider Aboriginal community and their Aboriginal culture.
<b>Aboriginal kinship care</b>	Aboriginal kinship care is provided by relatives or friends for an Aboriginal child who cannot live with their parents, where Aboriginal family, community and Aboriginal culture are valued as central to the child's safety, stability and development.
<b>age of criminal responsibility</b>	The age at which a child is legally deemed to be capable of committing a criminal offence and may be subjected to criminal legal processes such as being charged (see also ' <i>doli incapax</i> '). In Victoria, the age of criminal responsibility is 10 years. Under the <i>Children, Youth and Families Act 2005 (Vic)</i> (CYFA) it is conclusively presumed that a child under the age of 10 cannot commit an offence.
<b>arrest</b>	The act of apprehending and taking into custody a person suspected of committing an offence. In Victoria, children as young as 10 can be arrested.
<b>bail</b>	A decision to allow a person charged with an offence to remain at liberty pending the finalisation of criminal proceedings, on the condition that the person return to court at a specified time. The alternative to bail is remand. The <i>Bail Act 1977 (Vic)</i> requires bail decision-makers to consider a range of factors in determining whether to grant bail or remand a child in custody.
<b>bail decision-maker</b>	A court, bail justice or police officer.
<b>bail justice</b>	A person appointed to make decisions out of court hours about whether a person should be released on bail or remanded in custody. Bail justices are volunteers and are not magistrates.

## Definitions

<b>care team</b>	A group of professionals working together to case manage a child or young person subject to Youth Justice supervision. Youth Justice practice guidelines require the care team to work alongside the child or young person and their family and other networks to deliver services and supports aimed at managing and addressing offence-specific behaviours. For children and young people involved with other agencies such as Child Protection, the role of care team coordinator is usually held by the professional or agency with the most involvement with the child or young person.
<b>case plan</b>	A document developed by a Youth Justice case manager that details the plan for working with a child or young person to address their offending behaviour. The case plan outlines key risk/needs factors and intervention strategies. Youth Justice practice guidelines require the case plan to be realistic and achievable and to consider the young person's protective factors. The case plan must be completed within 6 weeks of commencement of the young person's court order.
<b>Category 1 and 2 incidents</b>	A reportable incident in youth justice custody. A Category 1 incident is an incident that has resulted in a serious outcome such as a child or young person's death or severe trauma. A Category 2 incident involves an event that threatens the health, safety and/or wellbeing of a child or young person or staff.
<b>caution</b>	A formal warning given by police to a child as an alternative to prosecution.
<b>charge/charged</b>	A person is charged with a criminal offence when a police officer provides them with a document (also known as a 'charge') that details an alleged offence by that person.
<b>Charter for children in out-of-home care</b>	The Charter for children in out-of-home care was developed in accordance with section 16(f) of the CYFA. It provides a framework of principles to promote the wellbeing of children in care.
<b>child</b>	A person under the age of 18 years. In this report we also refer to 'children and young people' under the age of 18 years. Given that youth justice centres house young people older than 18, and the Taskforce and inquiry considered the cases of some young people aged 18 to 25 years, in this report we also use the term 'young person' in this broader sense.
<b>Child Protection</b>	The Victorian statutory Child Protection Service is delivered by the Department of Families, Fairness and Housing (DFFH) (previously the Department of Health and Human Services (DHHS)) and is specifically targeted to those children at risk of harm where their parents are unable or unwilling to protect them.
<b>Children's Court</b>	A specialist court that hears cases involving the care and protection of, and alleged criminal offending by, children in Victoria.
<b>Children's Court diversion</b>	A pre-plea option under the CYFA that allows a child appearing before the Criminal Division of the Children's Court to complete a diversion plan and have their charges discharged without a criminal record. The Children's Court grants an adjournment for the child to participate in a diversion program. The prosecutor and the child must consent to the adjournment. Children's Court diversion is also known as the Children's Court Youth Diversion Service.
<b>Children's Koori Court</b>	A division of the Children's Court that sentences Aboriginal children who have been found guilty of committing an offence. An Elder or respected person sits next to the judge or magistrate, provides cultural advice, and may speak to the child about their circumstances and why they are in court. The Children's Koori Court is available at 12 locations throughout Victoria.



<b>Commission</b>	The Commission for Children and Young People (Victoria)
<b>contracted agency</b>	A community service organisation contracted by Child Protection to undertake case management or specified functions in relation to a child subject to a protection order.
<b>Criminal Division</b>	A division of the Children's Court that hears matters relating to alleged criminal offending by children aged 10 to 17 years at the time of the commission of the alleged offence, and under the age of 19 years at the time of being brought before the court. Under the CYFA, the Criminal Division has jurisdiction to hear most criminal charges against children.
<b>crossover child</b>	In this report, a child with involvement in both the youth justice system and the child protection system. This term is used in policy and academic research. While it is not ideal to impose labels on children and young people involved in social service systems, in the interests of brevity, the Commission considers on balance that 'crossover child' is a reasonably neutral and fair description.
<b>Country</b>	Land with which Aboriginal people have a spiritual and cultural connection and for which they have custodial responsibility. Country includes people, places, resources, stories and cultural obligations associated with an area.
<b>cultural safety</b>	A principle to ensure that an environment is welcoming, safe and respectful of a person's culture and identity.
<b>cultural support plan</b>	A plan to strengthen Aboriginal children and young people's connection to culture. The CYFA requires a 'cultural plan' to be developed and reviewed for all Aboriginal children placed in out-of-home care, to ensure the maintenance of the child's connection to their family, community and culture. Aboriginal children and young people under the supervision of Youth Justice must also be offered a cultural support plan.
<b>disability</b>	In accordance with section 3 of the <i>Disability Act 2006 (Vic)</i> , 'disability' means: <ul style="list-style-type: none"> <li>• a sensory, physical or neurological impairment or acquired brain injury or any combination thereof which: <ul style="list-style-type: none"> <li>– is, or is likely to be, permanent; and</li> <li>– causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and</li> <li>– requires significant ongoing or long-term episodic support; and</li> <li>– is not related to ageing; or</li> </ul> </li> <li>• an intellectual disability; or</li> <li>• a developmental delay.</li> </ul>
<b>doli incapax</b>	A legal presumption that children aged 10 to 13 years lack sufficient intellectual and moral development to be held criminally responsible. In order to rebut the presumption, the prosecution must prove that at the time of the alleged offence, the child knew that their actions were 'seriously wrong'.
<b>dual track</b>	In Victoria, a system allowing an adult court to sentence a young person under the age of 21 years to youth justice custody rather than adult imprisonment, where there are 'reasonable prospects for the rehabilitation' of the young person, or where the young person 'is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison' ( <i>Sentencing Act 1991 (Vic)</i> , section 32).

## Definitions

<b>Family Division</b>	A division of the Children's Court that hears matters relating to the care and protection of children at risk of harm and applications for intervention orders.
<b>family violence</b>	Behaviour by a person towards a family member that is physically, sexually, emotionally, psychologically or economically abusive. Family violence also includes behaviour that is threatening or coercive, or that in any way controls or dominates the family member and causes them to feel fear for their safety or the wellbeing of another person, and behaviour that causes a child to hear or witness, or otherwise be exposed to, the effects of any of these behaviours ( <i>Family Violence Protection Act 2008</i> (Vic), section 5).
<b>In our own words inquiry</b>	A systemic inquiry into the Victorian out-of-home care system conducted by the Commission for Children and Young People, culminating in a 2019 report entitled <i>In our own words: systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system</i> .
<b>Independent Visitor Program</b>	The Commission's Independent Visitor Program enables volunteer visitors, supported by Commission staff, to observe conditions and hear directly from children and young people about issues affecting them at Parkville and Malmsbury youth justice centres. Volunteers conduct monthly visits, and the program aims to ensure that Aboriginal children and young people are visited by an Aboriginal Independent Visitor. The Commission raises issues identified by children and young people with relevant senior DJCS staff or the Minister. Independent Visitors also conduct exit interviews with children and young people being released from youth justice custody.
<b>intellectual disability</b>	In accordance with section 3 of the <i>Disability Act 2006</i> (Vic), 'intellectual disability', in relation to a person over the age of 5 years, means the concurrent existence of: <ul style="list-style-type: none"> <li>• significant sub-average general intellectual functioning; and</li> <li>• significant deficits in adaptive behaviour,</li> </ul> each of which became manifest before the age of 18 years.
<b>isolation</b>	The placing of a child or young person detained in a youth justice centre in a locked room separate from others and from the normal routine of the centre (CYFA, section 488). A child or young person can be isolated in their room or in an isolation cell. See also 'lockdown'.
<b>judicial officer</b>	A magistrate or judge.
<b>lockdown</b>	The isolation of children and young people detained in a youth justice centre in their rooms, 'in the interests of the security of the centre' under section 488(7) of the CYFA. A lockdown can apply to an entire youth justice centre or to part of a centre. It can also occur as part of 'rotations', where units or parts of units are locked down for a set amount of time while other children and young people are allowed out of their rooms.
<b>mental illness</b>	A medical condition that is characterised by a significant disturbance of thought, mood, perception or memory ( <i>Mental Health Act 2014</i> (Vic), section 4).
<b>out-of-home care</b>	Out-of-home care is a temporary, medium- or long-term living arrangement for children and young people who cannot live in their family home. This most commonly refers to statutory out-of-home care, where a child or young person cannot live with their family at home and a legal order is in place to support the arrangement. Statutory out-of-home care consists of kinship care, foster care, residential care and lead tenant arrangements. In Victoria, DFFH (previously DHHS) has oversight of these arrangements.

<b>parole</b>	A process allowing a child or young person sentenced to youth justice custody to serve part of their sentence in the community under supervision.
<b>remand</b>	A decision to hold a person in custody pending the finalisation of criminal proceedings against them, rather than releasing them on bail. This term also refers to a category of custody (sometimes described as ‘unsentenced detention’), and is used in contrast to sentenced detention.
<b>residential care</b>	A type of out-of-home care provided by paid staff, usually in a residential home. Children and young people who live in residential care are often those who have experienced the greatest level of trauma and require the most expert therapeutic care and support.
<b>risk-need-responsivity model</b>	A model for identifying and responding to risk and needs among children and young people under Youth Justice supervision. According to the Youth Justice Case Management Framework, evidence-based assessment procedures identify who will benefit from interventions (Risk Principle), what interventions will reduce reoffending in different young people (Need Principle), and how to deliver successful interventions (Responsivity Principle).
<b>secure welfare</b>	A secure facility established under section 44 of the CYFA. A child considered to be at substantial and immediate risk of harm may be placed in secure welfare by either a decision of the Children’s Court or DFFH. Victorian secure welfare facilities are located at Ascot Vale and Maribyrnong.
<b>sentencing order</b>	An order made by a court and imposed on a person found guilty of an offence. The CYFA contains a hierarchy of sentencing orders that the Children’s Court can impose on a child or young person found guilty of an offence. This includes sentences involving no supervision by Youth Justice (such as an undertaking or a fine), sentences involving supervision by Youth Justice in the community (such as probation, a youth attendance order or a youth control order), and custodial sentences. The Children’s Court can also defer sentencing to enable the child to participate in a group conference.
<b>summons</b>	A notice indicating when a person must go to court in relation to alleged criminal conduct by the person. The CYFA contains a presumption that a criminal proceeding against a child will be commenced by summons.
<b>targeted care package</b>	An allocation of funding that is tailored specifically to meet the individual needs of a particular child or young person in out-of-home care and aimed at providing an alternative to residential care.
<b>Taskforce 1000</b>	Taskforce 1000 was established in 2014 in response to the over-representation of Victorian Aboriginal children in out-of-home care. It examined the individual circumstances of 980 children and was co-chaired by the Secretary of DHHS and the Commissioner for Aboriginal Children and Young People. It culminated in the Commission’s 2016 report <i>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</i> .
<b>we/our</b>	The terms ‘we’ and ‘our’ refer to the Commission for Children and Young People. The Commission does not speak for the Aboriginal community, but has sought to capture the community’s views, experiences and aspirations for Aboriginal children and young people in Victoria.

## Definitions

<b>wellbeing/social and emotional wellbeing</b>	The Aboriginal concept of wellbeing encompasses social, emotional, physical, cultural and spiritual dimensions. Healthy connections to community, culture and Country are key to Aboriginal people's wellbeing, alongside positive relationships with immediate and extended family members and kin. Wellbeing is a protective factor against contact with the youth justice system.
<b>Youth Justice</b>	The agency responsible for the statutory supervision of children and young people in the youth justice system. Youth Justice Community Services is responsible for the supervision of children and young people in the community. Youth Justice Custodial Operations is responsible for the safety of children and young people in custody at Parkville and Malmsbury youth justice centres. Youth Justice Community Services maintains the lead case management role for all children and young people, whether in the community or in custody.
<b>youth justice centre</b>	A youth justice custodial facility. The CYFA distinguishes between a 'youth residential centre' (for children aged 10 to 14 years) and a 'youth justice centre' (for children aged 15 years and older). The CYFA also refers to a 'remand centre' for children and young people who are denied bail. For ease, this report refers to all youth justice custodial facilities as 'youth justice centres'. There are currently 2 youth justice centres in Victoria, at Parkville and Malmsbury. A third is planned at Cherry Creek.
<b>youth justice custody</b>	In this report, a general term used to refer to the deprivation of a child or young person's liberty in a youth justice centre, whether on sentence or remand. The CYFA and the Sentencing Act refer to 'detention' and 'detaining' a child or young person in a custodial facility.
<b>Youth Justice Review</b>	An independent review undertaken by Penny Armytage and Professor James Ogloff AM in 2016 and 2017, culminating in a 2017 report entitled <i>Youth justice review and strategy: meeting needs and reducing offending</i> , containing 126 recommendations for reform of the youth justice system.
<b>youth justice system</b>	In this report, 'youth justice system' refers to all criminal legal processes and practices applying to children and some young people who are suspected of committing an offence, alleged to have committed an offence or found guilty of an offence. This includes police processes, bail and remand, Children's Court proceedings, community-based supervision by Youth Justice and custody in youth justice centres. It also includes Victoria's dual track system.

# Executive summary

This report examines the lived experiences of Aboriginal children and young people in Victoria and the factors contributing to their over-representation in the youth justice system. It presents the findings and recommendations of the Koori Youth Justice Taskforce and the Commission's systemic inquiry, *Our youth, our way*. The Koori Youth Justice Taskforce considered all Aboriginal children and young people in contact with Youth Justice from October 2018 to March 2019. The Commission commenced its systemic inquiry in May 2019.

The Commission does not speak on behalf of Aboriginal communities. However, we are dedicated to promoting Aboriginal voices and we defer to the knowledge and expertise of Aboriginal people in shaping responses to the issues affecting them and their communities. This report is called *Our youth, our way* as it seeks to reflect the Aboriginal community's vision for Aboriginal children and young people in Victoria.

## Stories of strength and resilience

The Commission is privileged to share the stories of the strong and resilient Aboriginal children and young people who spoke to us. While we heard stories of young people's pain and trauma, we also witnessed their hope and positivity in the face of the most dire of circumstances and heard their aspirations for the future. Young people were able to share words of praise and encouragement for their peers, families and communities, and for people in the service systems. They often reflected on the past with great maturity and insight.

*If I could go back, I'd change what happened – take all that pain and anger that starts with what our ancestors went through. – Kirrae, 22*

*We should have more rights than we do... I want to change, I want to see the world become a better place, I want to stand up and fight for my rights. – Malkar, 19*

We hope these stories will motivate policymakers to achieve the vision for change contained in this report – a reimagined system that protects the rights of Aboriginal children and young people and supports them to heal and thrive.

When the inquiry visited regional locations, groups of Aboriginal children and young people shared stories about their desire to connect with culture, to be heard, to feel safe and protected, and to move forward. They communicated through Aboriginal symbols and spoke about connection with family and community. Their stories have been burned on to a possum skin cloak that has been presented to the Victorian Parliament with this report. These messages are featured at the beginning of each chapter. They are strong messages for a new way of doing justice.

*Our youth, our way is a chance for us as a state and community to adhere to Aboriginal knowledge and practices for our people and young people... This inquiry shines a light on the opportunity to embed cultural ways of business and change the way business is done from a youth justice perspective to one that truly diverts and supports our young mob in their communities. – Executive Officer, Koorie Youth Council*

## Koori Youth Justice Taskforce

The Koori Youth Justice Taskforce was led by the Commissioner for Aboriginal Children and Young people in partnership with the Department of Justice and Community Safety (DJCS). It examined the cases of all Aboriginal children and young people in contact with Youth Justice programs (including those on supervised bail, diversion and community orders, and in custody) during the period 1 October 2018 to 31 March 2019 – a total of 296 children and young people. This included a case file review, case planning sessions for 69 individual children and young people, and 13 regional forums involving youth justice stakeholders throughout Victoria.

## The Commission's systemic inquiry

In May 2019, the Commission for Children and Young People established a systemic inquiry into the over-representation of Aboriginal children and young people in the youth justice system, pursuant to section 39 of the *Commission for Children and Young People Act 2012 (Vic)*. The terms of reference for the inquiry were:

1. To identify systemic issues contributing to the over-representation of Aboriginal children and young people in the youth justice system.
2. To examine the lived experiences of Aboriginal children and young people in the youth justice system.
3. To determine the extent to which youth justice services, policy, practice and facilities:
  - i. recognise and uphold the human rights of Aboriginal children and young people
  - ii. are culturally safe and responsive to the unique needs of Aboriginal children and young people
  - iii. address broader factors that may contribute to offending behaviours, including but not limited to intergenerational trauma, child protection intervention, disconnection from culture, Country and community
  - iv. address the over-representation of Aboriginal children and young people
  - v. work together with the Department of Health and Human Services (Child Protection) to provide integrated support for Aboriginal children and young people who are under the

statutory supervision or custody of Youth Justice and are Child Protection clients, especially those in out-of-home care.

4. To determine the extent to which existing youth justice frameworks progress self-determination for Aboriginal communities by allowing them to provide community-led solutions to youth offending and recidivism.

The voices of Aboriginal children and young people shaped the findings in this report. The Commission interviewed 93 Aboriginal children and young people aged 11 to 25 years, including children and young people identified through the Taskforce. The Commission also met with 15 Aboriginal youth groups throughout Victoria to facilitate individual consultations with children and young people.

Commission staff asked each young person to describe their experience of the youth justice system, focusing on the aspects that were most important to them. Consequently, not all children and young people spoke about the same issues. In adopting this approach, the Commission sought to ensure cultural safety, respect youth participation principles, and comply with best practice for trauma-informed interviewing.

The Commission also:

- spoke to the families of Aboriginal children and young people involved in the youth justice system
- consulted Aboriginal community members, Aboriginal organisations, community service organisations, Youth Justice staff and others who work with Aboriginal children and young people
- analysed data obtained from Youth Justice and other relevant agencies, as well as data obtained through the Commission's monitoring work and our Independent Visitor Program
- undertook a public consultation process, receiving 8 written submissions from Aboriginal, human rights and legal organisations and one submission from an individual
- visited New Zealand, with senior representatives of DJCS, to gain insights into various aspects of its youth justice system.

## How this report is structured

The Commission's findings and recommendations are grouped under the key themes identified through the Taskforce and inquiry:

- A self-determined youth justice system
- A just & age-appropriate system
- A child-centred system
- Family, community & culture
- A caring & stable home
- Wellbeing
- Education & learning
- Entering the youth justice system
- Pathways out of the youth justice system
- Safe custody.

Discussion of each of these themes begins with an *Our way* vision statement that reflects what the Commission heard from Aboriginal community members about their aspirations for Aboriginal children and young people connected to the youth justice system.

## Systemic inequality in the Victorian youth justice system

In recent years, the Victorian Government has increased investment in initiatives to reduce the over-representation of Aboriginal children and young people in the youth justice system. DJCS has prioritised and undertaken significant work, in partnership with the Aboriginal Justice Caucus and the Aboriginal community, to focus on Aboriginal children and young people and implement change. It is important to acknowledge that some gains have been achieved, with reductions in the number of Aboriginal children and young people under Youth Justice community and custodial supervision over the past 5 years. Youth Justice is ahead of its target to reduce the average daily number of Aboriginal children and young people aged 10 to 17 years under its supervision by at least 43 children by 2023.

Nevertheless, overall inequality in youth justice system outcomes remains and further investment and work are required. It continues to be an everyday reality that Aboriginal children and young people in Victoria are disproportionately targeted by the police, sentenced by the courts, and removed from their families and

communities. While the raw numbers are small, the over-representation remains stark.

Data indicates that on an average day in the most recent full year of published data, 2019–20, Aboriginal children and young people:

- accounted for 15% of children and young people aged 10 to 17 years under Youth Justice supervision in Victoria (in the community and in custody), despite making up only 1.5% of Victorian children and young people aged 10 to 23 years
- were 10 times more likely than non-Aboriginal children and young people to be subject to community-based supervision
- were 9 times more likely than non-Aboriginal children and young people to be in youth justice custody.

Data also shows that:

- Victoria Police is more likely to arrest and detain, and less likely to caution, Aboriginal children and young people than their non-Aboriginal peers
- Aboriginal children and young people are over-represented in every category of Youth Justice court order, including supervised bail, remand, community-based sentences and custodial sentences
- Aboriginal children and young people who are granted bail are more likely to be recorded for breaching bail conditions than non-Aboriginal children and young people
- courts are more likely to sentence Aboriginal children and young people to longer periods of community-based supervision than non-Aboriginal children and young people
- year-on-year, Aboriginal children and young people are detained (on sentence and remand) for more days on average than non-Aboriginal children and young people
- Aboriginal children and young people enter Youth Justice supervision at a younger age than non-Aboriginal children and young people.

A very high proportion of Aboriginal children and young people involved in the youth justice system also have Child Protection involvement. Children involved in both the youth justice and child protection systems are sometimes referred to as 'crossover children'. Many crossover children have experienced out-of-home care.

## Challenges faced by Aboriginal children and young people in Victoria

Aboriginal children and young people in the youth justice system are likely to have experienced greater cumulative adversity compared to their non-Aboriginal counterparts.

Aboriginal children and young people and their communities have been targeted by the state in an unbroken chain of harmful interventions since early colonisation. For many Aboriginal people, these state-inflicted interventions have directly caused generations of trauma and broken connection to Country and community. The devastating consequences of this have led to inequalities in life experiences, including a higher prevalence of low educational attainment and earning, housing insecurity, unequal health outcomes, and early mortality. Many Aboriginal children and young people in the youth justice system have also experienced exposure to family violence and substance misuse, as well as the impact of being forcibly removed from their families.

The harmful impacts of these interventions are well-recognised in the literature and acknowledged in government policy frameworks and initiatives. However, despite this, a culture of over-policing and surveillance, forced removal of children from their families, disproportionate youth justice system outcomes and adverse experiences persist. The weight of trauma associated with these actions was palpable in many of the children and young people the Commission spoke with. For many, the state was not only the source of this trauma, but had also failed to provide adequate responses to address the ongoing devastation it produced.

## Current policy context

Victoria's youth justice system is in a state of change. There has been significant new investment and reform following the recommendations of the 2017 Youth Justice Review. Implementation of these recommendations is ongoing; however, early progress is encouraging. Promising reforms include a new strategic vision captured in the *Youth Justice Strategic Plan 2020–2030*, and a new *Youth Justice Case Management Framework*, practice guidelines and custodial operating philosophy. The development of an Aboriginal Youth Justice Strategy and a new Youth

Justice Act, as recommended by the Youth Justice Review, present opportunities to build on this work.

Youth justice system reform in Victoria is taking place alongside a strong policy agenda to advance Aboriginal self-determination, led by the Aboriginal Justice Caucus and the Aboriginal Justice Forum and supported by DJCS. Advancing Aboriginal self-determination is a key priority for the Victorian Government and underpins a range of policy initiatives.

This new strategic agenda acknowledges the state's past failure to adequately address the over-representation of Aboriginal children and young people in the youth justice system. It also provides the imperative for influencing policy directions and outcomes to create the conditions necessary to transfer decision-making control, power and resources to Aboriginal people and community on the matters that affect their lives. This includes a renewed imperative to enable Aboriginal expertise and self-determined initiatives to achieve better justice outcomes for Aboriginal children and young people.

## Achieving self-determination in the youth justice system

The Commission found that services designed, controlled and delivered by the Aboriginal community have the greatest potential to produce the best outcomes for Aboriginal children and young people in contact with the youth justice system. To ensure that youth justice system interventions are effective, the Aboriginal community must be actively involved in determining appropriate responses, interventions and programs at key decision-making points in the system.

The Commission recommends that the Victorian Government legislate to authorise Aboriginal communities to design, administer and supervise key elements of the youth justice system in accordance with their own readiness, capacity and capability. To complement this change, there should be a positive duty on the Secretary of DJCS to develop strategic partnerships with Aboriginal communities, as well as an obligation to report on measures taken to improve outcomes for Aboriginal children and young people.

Self-determination in the youth justice system cannot be achieved without strengthening the role of Aboriginal organisations. This must include sustainable resourcing and improved support to build the sector's



organisational and workforce capacity. There is also a need to resource and strengthen the monitoring and evaluation capacity of Aboriginal-led service providers working with Aboriginal children and young people in the youth justice system.

Aboriginal organisations must be able to recruit suitably qualified staff and build multi-disciplinary teams to meet the various needs of Aboriginal children and young people and deliver appropriate therapeutic interventions and supports. Staff must be properly remunerated and retained. This means resourcing the sector to invest in staff, support their development and build sustainable career pathways.

The Commission recommends the establishment of a peak body or bodies for Aboriginal youth sector workers and organisations to determine best practice, develop initiatives to support staff retention and career progression, and facilitate monitoring and evaluation of programs.

## Improving data collection and reporting in the youth justice system

The Commission found that current collection and reporting of data on the experiences of Aboriginal children and young people in the youth justice system is lacking. Despite the willingness of agencies to provide their data for the inquiry, in many instances important data was not captured, unable to be provided, or unusable because of gaps and inconsistencies in collection. Where data is captured, it is often deficit-based with little reporting on strengths-based achievements. Without adequate data, the youth justice system lacks transparency and it is impossible to identify and evaluate system improvements.

Reform is needed to capture and regularly publish accurate, up-to-date information on the ways in which Aboriginal children and young people enter the youth justice system, what happens to them once they do, and the extent to which identification as Aboriginal or not influences their trajectory through the system. Improving data collection and analysis has the potential to increase transparency and accountability within the youth justice system. However, indicators must be determined by Aboriginal stakeholders to guide effective reform, and to move beyond a primarily deficits-based narrative.

The Commission recommends the establishment of a centralised mechanism for the regular publishing of

accurate, cross-agency, linked data to provide a single, authoritative source of information on Aboriginal children and young people in the youth justice system and their outcomes.

## A just & age-appropriate system

### Shifting the focus to early intervention

The Commission found that the youth justice system is disproportionately focused on late, punitive responses to offending behaviour. There is a dearth of effective prevention, early intervention and individualised support to meet the specific needs and experiences of Aboriginal children and young people.

*We need more supports for families earlier... they see these behaviours at age 7 at school. It's not all of a sudden they're in court. – Aunty*

Aboriginal children and young people told the Commission about the absence of effective, early services and supports throughout their childhood. In some cases, there were no early supports available at all, while in others, services were at capacity or inaccessible due to geographic distance. Some services, particularly substance misuse support services, were restricted to older young people, leaving younger age groups without access to the interventions and services they needed.

*When I was 12 to 15 I really needed to be linked in to some support services, but there wasn't any for kids under 15. I started using drugs at 11 and started getting into trouble – just little stuff – and as soon as the police know you, that's it. It doesn't take much – they see you on the street, pull over and harass you. I didn't have any support services until I was like 15, 16... You need somewhere that you can just drop in. Appointments are one thing, but you need a place that you can go with your friends and do something that isn't drugs, just go somewhere and have something to eat, where people actually enjoy going, with good workers. – Karl, 21*

## Executive summary

The Commission observed clear links between the failure of the youth justice and child protection systems to support Aboriginal children and young people in areas such as housing, family violence, health and trauma, and their continued involvement in the youth justice system. In many cases, these early systemic failures were contributing factors that led to deterioration in mental health and wellbeing, relationship breakdowns and compounded trauma, together with increased and escalating offending behaviour.

The Commission recommends the establishment of culturally based, multi-service youth hubs across the state to coordinate and provide holistic supports for Aboriginal children and young people. Youth hubs should be designed, developed and managed by Aboriginal communities and organisations.

We also recommend legislative change to require youth justice system decision-makers to prioritise early intervention and diversionary processes at all points on the youth justice system continuum, and to ensure that children and young people are subject to the least intrusive intervention necessary in the circumstances.

### Increasing the minimum age of criminal responsibility

*It is a travesty that 11, 12, 13 year olds are getting locked up. These kids are currently referred to as statistics, as numbers. When we're normalising this view of our kids as just numbers in the justice system, not as Elders of the future or as children, there's something really wrong.*  
– Aboriginal Justice Caucus

In Victoria, children as young as 10 are exposed to the potentially harmful and stigmatising aspects of the formal criminal legal process, including being arrested, questioned, charged, remanded in custody, prosecuted, convicted, sentenced and incarcerated.

Children aged 10 to 13 years lack the emotional, mental and intellectual maturity of adults. Research shows that rapid brain development in adolescence influences risk-taking behaviours, emotional regulation, certain decision-making and impulse control. Children in early adolescence are not at a cognitive level of development where they are able to fully appreciate the

criminal nature of their actions or the lifelong consequences of criminalisation.

Aboriginal children are at increased risk of early contact with the youth justice system due to a complex combination of factors, including a legacy of dispossession, intergenerational trauma and incarceration, marginalisation, systemic racism and inequality. For many Aboriginal children, their experiences of trauma, family violence, placement in out-of-home care, mental illness, substance misuse and poverty, compounded by ongoing government failure to address their unmet needs in these areas, also make them vulnerable to contact with police and criminalisation at a young age.

Victoria's current minimum age of responsibility has devastating consequences for Aboriginal children and their families. Aboriginal children aged 10 to 13 years are vastly over-represented in the Victorian youth justice system. Most of the Aboriginal children and young people consulted for the inquiry were younger than 14 at the time of their first contact with police. Rather than being diverted away from the youth justice system, many of these children found that early contact with police led to repeated contact and entrenchment in the system. Research is clear that the younger a child is at their first contact with the youth justice system, the longer their involvement is likely to be, and the more likely they are to enter the adult criminal justice system.

Raising the minimum age of criminal responsibility to 14 years, and providing therapeutic, culturally based, child-centred and coordinated responses to anti-social behaviour in Aboriginal children under 14 years, would better address the underlying causes of such behaviour. It would also prevent children from being unnecessarily criminalised and exposed to the harms associated with youth justice system involvement.

### Increasing the minimum age of incarceration

Depriving a child of liberty deprives them of their childhood. Any period in custody can be harmful to a child, and can impair healthy development and exacerbate trauma and mental illness. It can also disrupt education and limit employment opportunities. Custody is considerably more expensive than community-based alternatives, and is usually counterproductive to the goal of preventing reoffending.

Aboriginal children aged 10 to 15 years are substantially over-represented in, and disproportionately harmed by, youth justice custody. Custody removes Aboriginal children from their families, communities, Country and culture and dislocates them from their protective factors. It often exacerbates existing mental health concerns among Aboriginal children and young people, and creates new ones. Many Aboriginal children and young people told the Commission that custody did not stop them engaging in offending behaviour. This is consistent with research from the Sentencing Advisory Council and others, which shows that custody is not effective at reducing reoffending.

The Commission recommends legislative change to prohibit children under the age of 16 years being sentenced to, or remanded in, youth justice custody.

## A child-centred system

*Instead of being treated like a criminal, you could be treated like a person who has done the wrong thing. – Hayleigh, 21*

The Commission examined the extent to which the youth justice and related systems operate in a child-centred way, focusing on inter-agency collaboration, relationships between Aboriginal children and young people and their workers, participation by children and young people in Youth Justice processes, and the systems' responsiveness to the individual needs of Aboriginal children and young people. Reform is needed to create a more child-centred system.

### Inter-agency collaboration

The Commission found that, despite good intentions, government agencies often failed to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people in the youth justice system. This led to missed opportunities to secure positive outcomes by addressing identified needs, trauma and welfare concerns. Multiple system failures also compounded disadvantage for Aboriginal children and young people with long histories of involvement with the child protection and youth justice systems.

The Commission found that poor internal information management systems within individual agencies is a

barrier to effective inter-agency information-sharing. In just under half of the cases reviewed in Taskforce case planning sessions, there were significant gaps in the information held by departments about the individual child or young person. The Commission observed that the more entrenched children and young people were in the youth justice and child protection systems, the more difficult it was to obtain accurate and specific details about their circumstances and the support that was being provided to them.

The Commission also found that when agencies collaborate effectively and focus on young people's individual needs and strengths, better outcomes can be achieved. The Commission makes a series of recommendations to improve inter-agency collaboration and outcomes for Aboriginal children and young people.

### Relationships between Aboriginal children and young people and their workers

The Commission found that Aboriginal children and young people in the youth justice system are better supported and more connected to services when they have a trusted, reliable adult in their lives who is able to advocate for their needs. In many cases this will be an Aboriginal worker.

The Taskforce case file review revealed that, throughout their involvement with Youth Justice, 21 Aboriginal children and young people had had between 6 and 10 Youth Justice case managers each, and 6 had had more than 10 case managers each. There was also a high turnover of Youth Justice staff apparent within the span of individual youth justice orders, with only 58% of children and young people retaining the same case manager for the duration of their order. A high turnover of workers limits opportunities to build trusting relationships with Aboriginal children and young people and can lead to their disconnection from the service system.

It is crucial that Youth Justice workers build trusting relationships with the Aboriginal children and young people they work with, even where the child or young person has a trusting relationship with a Koori Youth Justice worker or another Aboriginal worker. The inquiry revealed examples of positive, trusting relationships between Aboriginal children and young people and their Youth Justice workers. However, we also heard from young people who did not feel that they had

therapeutic or positive relationships with their Youth Justice workers. The Commission also observed patterns of discourse on the part of some workers during the Taskforce case planning sessions that appeared to indicate a greater systemic focus on problems and barriers than on solutions based on young people's strengths and needs.

Koori Youth Justice workers play a central role in supporting Aboriginal children and young people in culturally appropriate ways. The Commission welcomes the Victorian Government's recently announced plans to expand the Community-Based Koori Youth Justice Program and increase the number of Koori Youth Justice workers across Victoria. In implementing this expansion, it will be important to ensure that Aboriginal organisations and Koori Youth Justice workers are adequately resourced to provide holistic support for Aboriginal children and young people in the youth justice system, including girls and young women.

In addition, the Commission recommends the development of a framework to identify an Aboriginal child or young person's trusted worker, and give them a central role in planning and decision-making concerning the child or young person's care.

### **Participation by Aboriginal children and young people in the youth justice system**

The Commission found that meaningful participation by Aboriginal children and young people in the youth justice system is limited. Youth Justice must ensure that Aboriginal children and young people have meaningful input into, and influence on, the decisions that affect them in the youth justice system, both at an individual and systemic level. We recommend the development of a whole-of-government Aboriginal youth engagement strategy.

### **Meeting the individual needs of Aboriginal children and young people**

The youth justice system must be responsive to the unique experiences, circumstances and strengths of each Aboriginal child and young person who has contact with it. This means being sensitive to the multiple aspects of a young person's identity, and the cumulative risks of discrimination and marginalisation that some children and young people experience because of other aspects of their identity, including gender, disability and LGBTQI+ status. The

Commission found that a failure to recognise these intersecting needs can impact on access to services and supports in the community, as well as experiences within the youth justice system.

## **Family, community & culture**

Aboriginal family, community and culture are inextricably intertwined; for Aboriginal children and young people, connection with family and community provides the foundations for identity, culture and Country.

Family and community are strong supports for Aboriginal children and young people in contact with the youth justice system, and are critical to creating lasting and positive change in their lives. During the inquiry, almost all Aboriginal children and young people identified their family or Elders as their most significant supports. This is noteworthy given the high proportion who were also known to Child Protection and had limited contact with their immediate family.

Despite Youth Justice policies recognising the vital role of families and support networks for children and young people, significant gaps remain in both policy and practice.

### **Youth Justice community supervision**

Throughout the Taskforce and the inquiry, the Commission observed the need to improve engagement by Youth Justice with the families of Aboriginal children and young people under community supervision. In particular, Youth Justice must properly acknowledge family members' crucial role in informing case management and the identification of options to support children and young people to succeed.

The Commission recommends the introduction of family group conferencing based on the New Zealand model as a formal mechanism for family involvement in planning and decision-making regarding appropriate interventions for children who are engaging in offending behaviour. Family group conferencing should provide integrated and coordinated welfare responses to address the needs of children and young people and their families, and the underlying causes of the offending behaviour.

## Maintaining family connections while in custody

Youth Justice practice guidelines and procedures acknowledge the importance of children and young people maintaining connections with family while in custody through visits, phone calls and temporary leave. However, the Commission found that for Aboriginal children and young people these were often applied inconsistently or ineffectively. While there were examples of good practice, contact with family was often inadequately planned, communicated and supported. This can harm the wellbeing of Aboriginal children and young people and their families, and undermine young people's successful reintegration into the community.

The Commission heard that family disconnection brought about by incarceration also has significant effects on siblings, parents and other family members' wellbeing.

*I need family. That's all I care about. All I need right now is my mum and my little brother, but I can't have 'em because they're both locked up.*  
– Sibling

## The impact of family disadvantage

Aboriginal families and communities are strong and resilient. However, many Aboriginal families also experience disadvantage in various forms, including poverty, housing instability, family violence and mental illness. Systemic racism and intergenerational trauma, legacies of colonisation and the forced removal of Aboriginal children from their families, contribute to this disadvantage and impact the ability of some Aboriginal families to nurture Aboriginal children and young people. Without meaningful support for families to address the many challenges they face, Aboriginal children and young people are at increased risk of coming into contact with the youth justice system or becoming entrenched within it.

Aboriginal children and young people told the Commission about their experiences of poverty, and their families struggling to meet basic needs such as housing and food. For some, poverty led to instability and drove early offending behaviour.

*I had nowhere to stay. I had to break into houses to find a place to stay. – James, 18*

*We were kids. We didn't have any money so I was stealing food for us to eat, and one of the other kids ran out of iron and couldn't walk.*  
– Toby, 15

The Taskforce and inquiry also revealed that many Aboriginal families living in regional areas experience significant barriers to accessing culturally safe and local services, including substance misuse, family violence, health and housing services. In addition, not all Koori Youth Justice programs are available statewide.

Many Aboriginal families with children and young people in the youth justice system also face considerable challenges in supporting their children to attend court and comply with Youth Justice orders. The Commission found that Youth Justice, Child Protection and other responsible agencies often do not provide adequate support to address the needs of Aboriginal families whose children are involved in the youth justice system. This impacts on the ability of children and young people to successfully comply with orders and exit the youth justice system. The provision of such support could reduce reoffending and improve outcomes.

## Trauma and grief

Many Aboriginal families are affected by trauma and grief. The Taskforce case file review indicated that 78% of Aboriginal children and young people in the cohort had a history of trauma and abuse, and 66% had experienced family violence as a victim/survivor or a witness. Every child and young person who was the subject of a Taskforce case planning session had experienced trauma.

The Commission also found that a significant number of Aboriginal children and young people had experienced the death of one or more immediate family members. For most of these children and young people, there was a clear link between experiences of trauma, grief, mental ill-health, substance misuse and offending behaviour. Better supports and services are needed to respond to trauma experienced by Aboriginal children and young people and their families.

## Supporting caring responsibilities

The Commission found that Youth Justice often fails to recognise and support the caring responsibilities of Aboriginal children and young people in the youth justice system who are themselves parents or carers. Aboriginal young people told the Commission that complying with Youth Justice obligations while balancing caring loads often involved conflicting responsibilities and placed them under significant pressure. In some cases, young people may be forced to choose between meeting a Youth Justice obligation and attending to caring responsibilities. This can make caring more difficult, limit young people's ability to participate in rehabilitation programs, and damage family relationships.

## Intergenerational contact with the youth justice system

Sixty-one per cent of children and young people in the Taskforce case file review had at least one immediate family member (parent, sibling or extended family) with current or past involvement in the criminal justice system. For 14% of the total cohort, both parents had current or past involvement in the criminal justice system.

*I have young kids and it's breaking my heart not being with them. I want to get my kids out of the justice system. I have to get them back before they get in and out of prison. That's my mum's history, and mine, and my dad's – he lost his parents when he was 13, and then he just starts thieving, and it all starts and then it all continues, like the same cycle. – Tiana, 25*

Meeting the needs of Aboriginal children and young people, their families and their dependents is crucial for reducing the over-representation of Aboriginal children and young people in the youth justice system not only now, but also for future generations.

## Culture as protection, strength and wellbeing

Connection to culture is a powerful protective factor for Aboriginal children and young people. For those involved in the youth justice system, culture can assist with healing, protect health and wellbeing, and build a strong sense of identity and connection to community

and Country. This was highlighted at every Taskforce regional forum and by community members throughout the inquiry. Most Aboriginal children and young people who spoke to the Commission also emphasised the centrality of culture to their sense of self and ability to heal.

*Keep your culture, don't let it die out. It's what's kept me strong. – Zeke, 18*

The Taskforce and inquiry revealed that the youth justice system often fails to facilitate or support meaningful – ongoing and consistent – connections with culture for Aboriginal children and young people. For children and young people in the Taskforce, this included many instances where Youth Justice case managers did not prioritise young people's cultural needs.

Youth Justice practice guidelines require all Aboriginal children and young people to be offered a cultural support plan. These are designed to connect children and young people to their community, enhance their sense of belonging, and provide cultural supports to assist in diverting them from the youth justice system. Thoughtfully prepared, meaningful cultural support plans have the potential to act as a strong protective mechanism for Aboriginal children and young people. However, the Commission found that most Aboriginal children and young people in the Taskforce case file review did not have a cultural support plan in place. There is considerable scope for improvement in Youth Justice's practices regarding the completion of cultural support plans, and the involvement of family and community members in the development of plans. The Commission welcomes recent efforts in this area and has made recommendations to drive further improvement.

## A caring & stable home

Access to a safe, stable and supportive home environment is fundamental to health and wellbeing. Ideally, Aboriginal children and young people will find this with their families and caregivers, who are the experts in raising them safe and secure in their history, culture and community. However, this is not the case for many Aboriginal children and young people connected to the youth justice system in Victoria.

Most Aboriginal children and young people under Youth Justice supervision in Victoria have also experienced Child Protection involvement. The Commission found that the child protection system does not provide a caring home for too many Aboriginal crossover children, many of whom have experienced out-of-home care and, in particular, residential care. The current residential care system often fails to provide a caring home for Aboriginal children and young people, instead placing them at an unacceptable risk of harm.

The Commission found that, in some cases, the experience of out-of-home care and, in particular, residential care, contributes to offending behaviour, police contact, and involvement in the youth justice system for Aboriginal children and young people. This results in adverse outcomes that might have been avoided had these children and young people not been in care. It creates a moral imperative for the Victorian Government, and relevant government and non-government agencies, to immediately close off the pathways to the criminalisation of Aboriginal children and young people in care.

The Commission also found that the child protection system does not act 'as a good parent would' for too many Aboriginal children and young people involved with both Child Protection and Youth Justice. During the Taskforce, the Commission observed that Child Protection too often appeared to abdicate its responsibilities when a child or young person in its care became involved in the youth justice system. This included Child Protection not attending court when the child or young person had a criminal matter. This can significantly impair the ability of the legal representative and the court to be informed of the child or young person's circumstances and to identify and address the causal factors that have contributed to the alleged offending.

During the inquiry, the Commission also heard of cases in which Child Protection opposed bail for children and young people for whom it had responsibility. In some cases, Child Protection suggested that it needed more time to organise appropriate housing and supports for the child or young person, while in others it argued that custody was the safest place for the child or young person.

The Commission also found that a significant proportion of Aboriginal children and young people in the youth justice system experience housing insecurity and that there is a severe lack of culturally appropriate

accommodation options available. For some children and young people, insecure housing and involvement in the youth justice system are directly linked.

We recommend changes to improve the ways in which the child protection system cares for Aboriginal children and young people who are also in the youth justice system, and to address the housing needs of Aboriginal children and young people who are involved with Youth Justice.

## Wellbeing

The Aboriginal concept of wellbeing encompasses social, emotional, physical, cultural and spiritual dimensions. This means healthy connections to community, culture and Country, alongside positive relationships with immediate and extended family members. A holistic approach to improving the wellbeing of Aboriginal children and young people in the youth justice system requires recognising and responding to the links between experiences of trauma and grief, mental health conditions, substance misuse and youth justice system involvement.

Participants at every Taskforce regional forum raised mental health and substance misuse as areas requiring attention in their region. The Taskforce case file review indicated that 53% of the cohort presented with a mental health condition, and 32% had self-harmed, engaged in suicidal ideation or attempted suicide.

The Commission's findings are consistent with those of the Royal Commission into Victoria's Mental Health System, which found that twice as many Aboriginal people aged 18 to 24 years experience considerable psychological distress compared to non-Aboriginal people.

Many Aboriginal children and young people also spoke to the Commission about their challenges with substance dependence, including intergenerational drug and alcohol misuse, early use of substances, and self-medicating with drugs and alcohol to treat unresolved trauma. This is consistent with findings from the 2019 Youth Justice survey which indicated that 94% of all Aboriginal children and young people under Youth Justice supervision (both in custody and in the community) had a history of alcohol and/or drug misuse and that 88% had offended while under the influence.

## Executive summary

Children and young people in Victoria have insufficient access to mental health and alcohol and other drugs (AOD) support services in their communities. This is especially true for Aboriginal children and young people and for those in contact with the youth justice system. Even when age-appropriate services are available, Aboriginal children and young people in contact with the youth justice system have additional unique and complex needs that public mental health services are failing to meet.

Aboriginal children and young people and their workers identified challenges in accessing mental health and AOD services in rural and regional areas, including an absence of local services, distance to services and long wait times. Barriers to accessing mental health and AOD services in rural and regional areas were particularly acute for children and young people with complex trauma and/or those requiring specialist treatment for issues like suicidality or sexual abuse.

*What do we do with a 13 year old who has been using drugs? We can't get them in anywhere. We can see the pathway, and we just think, 'We hope they can survive through this part till we can give them something.'* – Youth Justice worker

Given these barriers to accessing mental health and AOD services, Aboriginal children and young people subject to Youth Justice community supervision often do not receive the support they need. This increases the risk of non-compliance with their conditions of bail or community-based sentencing orders, and of their further entrenchment in the youth justice system.

Youth Justice custodial facilities are not equipped to meet the mental health treatment needs of Aboriginal children and young people who are detained. Aboriginal children and young people told us about the severe impacts of custody on their mental health. The current custodial treatment model lacks a youth-specific focus, Aboriginal workers, coordinated and integrated service delivery, and sufficient transitional support following release from custody.

The Commission recommends resourcing Aboriginal organisations to provide in-reach mental health care for Aboriginal children and young people in custody. In-reach transitional support would also assist Youth Justice workers to build relationships with community

organisations and facilitate better referrals to treatment for Aboriginal children and young people exiting custody.

Mental health and AOD responses for Aboriginal children and young people in the youth justice system cannot be improved without better access to culturally safe support in the community. The Commission heard positive feedback about Aboriginal healing centres currently operating in Victoria.

*This place is awesome. There's a man who comes and does men's business with us, making didgeridoos. It's rehabilitation. It's changing me – I'm finding a better version of myself and I didn't even know I had it in me. – Malkar, 19*

The Commission recommends the establishment of at least 2 additional healing centres for Aboriginal children and young people, and the expansion of culturally based mentoring programs.

## Education & learning

Aboriginal children and young people told the Commission that they value education and want to attend school. Despite this, very few reported positive school experiences. On the contrary, many young people spoke about how the current school system in Victoria is not designed for, or responsive to, the specific needs of Aboriginal students. Some experience the system as racist or otherwise hostile.

### Disengagement and exclusion from education

The Commission found that Aboriginal children and young people in contact with the youth justice system are likely to have experienced prior disengagement and exclusion from school. Almost every young person for whom a Taskforce case planning session was held had experienced chronic absenteeism, periods of disengagement and low educational attainment. A further 39% of children and young people had cognitive or learning disabilities.

Many children and young people raised educational matters during the inquiry. Of these children and young people, 32% discussed external socio-economic and environmental factors that affected their capacity to engage in education, including family circumstances



and practical challenges associated with getting to school. Where attendance rates were known for the children and young people in the Taskforce case file review, almost 40% had an attendance rate of between zero and 10%.

*School was good for me, but it was hard getting there. They didn't have any help for us fellas.*  
– Bodhi, 23

One-fifth of young people who discussed educational matters with the Commission talked about being suspended or expelled. Some children and young people described experiences amounting to informal expulsion, where a student is encouraged or forced to leave a school without a formal expulsion.

*I never got expelled on my record, but I was asked to leave schools 3 or 4 times.* – Rory, 20

*He got expelled at 12 for fighting and we tried to put him back in, but they wouldn't give him a second chance. Aboriginal kids don't get a second chance.* – Nan

There is a clear link between exclusion from school and contact with the youth justice system. In 2019, the Youth Justice annual survey found that 65% of Aboriginal children and young people under Youth Justice supervision (in the community and in custody) had been previously suspended or expelled from school.

Children and young people also told the Commission about their experiences of bullying and racism in schools. For some, this resulted in their disengagement from school.

*I get nervous when I think about school. I was the odd one out. I love doing work, but I felt like I was treated different. I was pushed aside cos they knew I was Aboriginal... Students were racist too and that's why I left...* – Corei, 17

Almost half of children and young people who raised educational matters with the Commission discussed barriers to their engagement with education. Over

one-third of children and young people involved in Taskforce case planning sessions did not complete any years of secondary school. This is consistent with data from the 2019 Youth Justice annual survey which found that 78% of Aboriginal children and young people under Youth Justice supervision had a highest completed level of education of Year 9 or less. Some children and young people told the Commission that a lack of educational support affected their level of attainment.

The Commission's findings reflect other Victorian data that indicates that Aboriginal children and young people have lower rates of school attendance, are more likely to be suspended or expelled from school, and have lower levels of educational attainment than non-Aboriginal students. They also experience unacceptable rates of racialised bullying, which contributes to their disengagement from education. Each of these factors increases the risk of contact with, and entrenchment in, the youth justice system.

While current early intervention and diversion initiatives aimed at addressing young people's disengagement from education in Victoria are positive, more work is needed to meet the education and learning needs of Aboriginal children and young people who are involved in, or at risk of contact with, the youth justice system. Direct support for Aboriginal children and young people in schools should be increased and access to educational support for Aboriginal children and young people in the youth justice system should be prioritised.

## Aboriginal culture in education

Many Taskforce regional forums identified the importance of embedding Aboriginal culture in education. The centrality of culture was also a feature of the Taskforce case planning sessions, where 49% of case plan actions involved a cultural element as a means of re-engaging the young person. Of children and young people who raised educational matters with the Commission, one-fifth said that they wanted more Aboriginal culture in school.

The Commission found that educational reform is needed to create culturally safe schooling options for Aboriginal students, to allow them to thrive academically and to protect them from contact with the youth justice system.

*We need more schools, but not just general schools – more schools that Koori kids feel good at, because when Koori kids go to general schools, they don't really feel good at them. – Peyton, 16*

The Commission recommends further work, in partnership with Aboriginal communities, to develop schooling options embedded in culture for Aboriginal students.

## Education in custody

The Commission heard that Aboriginal children and young people in youth justice custody have often experienced fragmented contact with education prior to custody. This can make re-engagement in a custodial setting especially challenging. For Aboriginal children and young people in custody, education must be strengths-based and embedded in culture. It must also support employment following release from custody.

Parkville College delivers an Aboriginal education program in Parkville and Malmsbury youth justice centres. However, the Commission heard that it is constrained by limited physical spaces, unit and centre lockdowns, and inadequate resourcing to support Aboriginal students in their learning. The children and young people we spoke to, and staff at Parkville College, indicated that more classroom support was needed for young people in the Aboriginal education program, and that there were not enough Aboriginal staff to deliver this support.

The Commission recommends an additional Aboriginal education support role for Parkville College at each youth justice centre, with a focus on directly assisting Aboriginal students in the classroom and planning transition into education or employment pathways in the community.

## Entering the youth justice system

Interactions with police are typically the first point of entry for children and young people into the youth justice system. Throughout the Commission's consultations, Aboriginal children and young people, family members, Elders and service stakeholders shared compelling and concerning stories about

negative experiences with Victoria Police. These included experiences of police mistreatment, excessive detention in police cells, a lack of faith in the police complaints process, and an unacceptable discrepancy in the use of cautions between Aboriginal and non-Aboriginal children and young people.

Examining the exercise of police powers falls outside the Commission's inquiries jurisdiction under the Commission for Children and Young People Act. This means the Commission is unable to make recommendations directed to Victoria Police. However, in order to accurately represent Aboriginal children and young people's voices, and to provide important context for the inquiry, the Commission has reported these experiences.

Ninety children and young people talked to the Commission about their first contact with police and the youth justice system. Seventy-two per cent were under 14 years at the time of first contact. In 2018, 43% of Aboriginal children and young people in Victoria who were processed by police for alleged offending were aged 10 to 14 years, compared to only 28% of non-Aboriginal children and young people in the same age group.

Forty-two per cent of children and young people who spoke to the Commission about their first contact with police referred to negative experiences that made them feel upset, scared, angry and/or disrespected. Many reported mistrust or dislike of the police as a result. Some children and young people explicitly mentioned racism and many children and young people spoke about police violence or mistreatment in their first contact.

*I said I was only 13 cos I thought they'd be less rough, but they weren't. Still rough... I came home crying. I was so angry and I hadn't even done anything wrong... that's what kicked me out of school too. – Corei, 17*

Children and young people indicated that their treatment by police worsened over time. Several said that once they had a 'reputation' or were known to police, their rate of contact increased. Children and young people also reported being harassed and targeted by police.

*It was hard. Every time they saw me on the street, they'd search me and tell me they don't want me in their town. – Cadell, 17*

In 2019, 57% of Aboriginal children aged 10 to 13 years recorded by Victoria Police for an incident had also been recorded for an earlier incident within the previous 12 months, compared with 36% of non-Aboriginal children in the same age group.

The cautioning rate for Aboriginal children and young people in Victoria declined from 14.6% of outcomes in 2008 to 3.9% of outcomes in 2015, while the proportion of arrests increased over the same period. Data from the Crimes Statistics Agency shows that between January 2018 and December 2019 Aboriginal children and young people aged 10 to 17 years were cautioned in 13% of incidents compared to 21% of incidents involving non-Aboriginal children and young people. This is important given that most children and young people who are effectively cautioned will not have further contact with the criminal justice system.

*They didn't caution, no reprimand, no nothing, just, 'You're under arrest, you're going to the station with us.' It was so scary. – Watjpa, 21*

Aboriginal children and young people are substantially over-represented in arrests, with data indicating that in 2018 and 2019, 47% of incidents involving Aboriginal children and young people resulted in arrest, compared to 35% of incidents involving non-Aboriginal children and young people.

Seventy-one children and young people spoke to the Commission about their experiences in police custody, including police interviews and detention in police cells. Many children and young people experienced police custody at a very young age and spoke about poor conditions that had a negative impact on their health and wellbeing.

Twenty-one children and young people talked about overt racism, mistreatment or abuse in police custody. This included not having access to essential medical care and being physically and verbally abused. The Commission also heard about children and young people being denied a lawyer or support person, feeling pressured to give information and feeling threatened if they chose to exercise their right to silence.

*They put me in the cells, took my sling off because they thought I was going to self-harm. They threw me in the cell for 8 hours. They didn't give me painkillers or anything, not even a fucking drink of water. They didn't even notify my mum, nothing. I got out at 3 am after my independent person came. – Summer, 18*

Over 70% of the children and young people the Commission consulted spoke about racism, mistreatment or violence by police. These allegations raise significant human rights issues. Fifty-eight children and young people talked about physical and emotional mistreatment by police, including violence and sexually abusive behaviour. This included tightening of handcuffs, unnecessary use of capsicum spray, verbal threats, yelling and swearing, and unsafe conditions in police vans.

Allegations also included extremely serious allegations of racial, physical and sexual abuse. Examples included multiple officers tackling a child or young person to the ground, sexual threats, striking with batons, kicking and stomping. Some children and young people reported sustaining broken bones and serious injuries as a consequence of police assaults.

*He yelled at me, dragged me out and slammed me on the ground, stung me and threw me in a cell for 3 days without talking to me. I got a broken jaw and the police said that they didn't know my jaw was broken for 3 days. – Karrwin, 20*

*When I was 16 they bashed me and put me in hospital. They put me in a neck brace. They lied to the judge, saying they didn't do anything. – Jamie, 18*

Twenty-five children and young people explicitly mentioned racism and racial abuse in the context of police interactions.

*Some of them, recently when they were chasing me, they were saying, 'I'll catch you one day, you little black dog.' – Otis, 14*

Several children and young people also told the Commission that as a consequence of personal and collective experiences, Aboriginal children and young people experience fear when they interact with police.

*Some Koori kids maybe been assaulted by police so as soon as they see their uniform they might start running. It's just their instincts now.*  
– Dustin, 15

Several children and young people reported concealing behaviour by police, including turning off body cameras and video recorders, taking off badges and taking young people outside of the view of cameras.

The Commission recommends that these issues be reviewed by an independent and properly mandated body with specialist knowledge and expertise in relation to children and young people. This review should include an examination of police powers and the exercise of discretion in the investigation and processing of Aboriginal children and young people suspected of offending, including cautioning, diversion, arrest, summons, custody and complaints processes. The review should also be empowered to make recommendations for improved police practice and policy in relation to Aboriginal children and young people.

## Pathways out of the youth justice system

*Rather than keeping them in the system, we must be thinking at every point, 'How do we get them out?' – Elder*

Most Aboriginal children and young people will have no contact with the youth justice system, and of those who do, most will grow out of offending behaviour. Unfortunately, Aboriginal children and young people are at greater risk of contact with the youth justice system, and have a higher likelihood of ongoing contact than non-Aboriginal children and young people. A key factor that can influence the likelihood of ongoing contact and further offending is the nature of interactions and experiences with the youth justice system itself.

## Improving access to diversion

Diversion can provide an effective pathway out of the youth justice system for Aboriginal children and young people. However, many Aboriginal children and young people told the Commission that they had no, or limited, access to diversion. This may be due to a range of factors, including a lack of culturally appropriate programs, inconsistent decision-making, or a perception that diversion is only for children and young people with little or no criminal history who are charged with 'low-level' offences.

Diversionary programs should be available at all stages of the youth justice system, from apprehension to final disposition. The Victorian Government needs to invest in a range of programs, particularly Aboriginal-led programs, that meet the needs of Aboriginal children and young people across the state.

Opportunities for Aboriginal children and young people to access Children's Court diversion should be as broad as possible. Access should not be restricted by prior offending or by particular categories of offences, or dependent on an admission of guilt, where the child or young person is otherwise suitable for diversion. Access to Children's Court diversion should also not be conditional on the prosecutor's consent.

## Bail and remand

There has been a significant increase in recent years in the number of supervised bail orders among Aboriginal children and young people, and in the number of Aboriginal children and young people on remand. Between 2014–15 and 2018–19, the number of Aboriginal children and young people held on remand in Victoria on an average day almost doubled.

The Youth Justice remand population also increased as a proportion of the overall Youth Justice custodial population in this period. In 2014–15, Aboriginal children and young people on remand accounted for 33% of all Aboriginal children and young people in youth justice custody on an average day, while in 2018–19 they accounted for 48% of all Aboriginal children and young people in youth justice custody.

The Commission found that aspects of the bail system create barriers to Aboriginal children and young people being granted bail and complying with bail conditions, and that Aboriginal children and young people are experiencing remand at unacceptably high rates. This

places them at risk of harm and entrenchment in the youth justice system.

High rates of remand for Aboriginal children and young people substantially contribute to their over-representation in the youth justice system. High rates of non-custodial outcomes following remand, and short periods of remand, particularly over weekends, indicate that Aboriginal children and young people are being remanded unnecessarily.

Amendments to bail laws in 2017 and 2018 have made it significantly more difficult to get bail, which has had unintended and punitive consequences for Aboriginal children and young people. Although the *Bail Act 1977* (Vic) includes a range of safeguards for Aboriginal children and young people, these have become more difficult for bail decision-makers to apply. Reversing these amendments for children and young people would allow bail decision-makers to adopt a child-centred approach and significantly increase the opportunity for Aboriginal children and young people to be granted bail and remain with their families and in their communities.

In addition, the Commission recommends the establishment of a 24-hour bail system for children and young people across Victoria, with access to specialised and trained decision-makers who have expertise in working with children and young people, and Aboriginal children and young people. This system should also include access to corresponding support services.

Thirty-five children and young people told the Commission about having a difficult time on bail, mainly in relation to complying with bail conditions such as curfews, not being allowed to associate with friends or family members, and having to report to police or Youth Justice. The overwhelming feedback from children and young people was that bail conditions set them up to fail, and made it very difficult to conduct a normal life, including going to school and spending time with family.

*I wasn't allowed to hang out with my own cousin. How does that work? They set you up to fail. They could support us to be better people together, not tell us, 'You can't hang out with your own cousin.'* – Chelsea, 16

*It was tough. Even when I was going to my family's house, I still got breached. Once I was at Nan and Pop's house having dinner and I was put back in custody.* – Watanom, 19

The imposition of onerous bail conditions places Aboriginal children and young people at risk of breaching bail and being remanded in custody. Bail conditions should be reasonable and proportionate, and only restrict children and young people to the extent necessary to keep them safe, reduce their risk of reoffending and ensure that they attend court.

Bail decision-makers need appropriate specialisation and expertise, and timely and appropriate advice, to set bail conditions that support children and young people to address offending behaviour and avoid breaching bail and being remanded in custody.

Although Victoria's bail laws stipulate that bail must not be refused for a child solely due to a lack of adequate accommodation, the Youth Justice Review observed that children and young people without appropriate housing are likely to be remanded. Aboriginal children and young people told the Commission about unstable living arrangements and accommodation issues affecting their ability to receive or comply with bail.

The Commission recommends the establishment of home-like supported bail residences across Victoria for Aboriginal children and young people. These would be in addition to the recommended residential healing centres, which would be available to support Aboriginal children and young people facing alcohol or drug and/or mental health challenges while they are on bail.

It is the Aboriginal community's vision that no Aboriginal child or young person should be incarcerated. Until that goal is achieved, the Commission acknowledges that there will be a small number of Aboriginal young people with very complex needs who will be assessed as posing a high risk of reoffending and will therefore be refused bail. For these young people, the Commission recommends establishing 2 small, home-like remand residences that provide therapeutic and culturally based care. These residences should be designed in partnership with Aboriginal organisations, and there should be a strong emphasis on employing Aboriginal staff to provide care and support. This will avoid the harmful effects of custody for young people for whom there is no other option but remand.

## Court and legal assistance

While some Aboriginal children and young people told the Commission that they felt respected in the mainstream Children's Court, others found court confusing, stressful, disempowering and difficult to understand.

The Children's Koori Court has the capacity to positively engage Aboriginal children and young people in the criminal legal process, and to support them to address offending behaviour in a culturally and age-appropriate manner. It also has the potential to improve connections and referrals to culturally strengthening services. Aboriginal children and young people told the Commission they were able to participate freely and meaningfully in Children's Koori Court proceedings and valued the strong guidance of Elders. However, there is limited availability of the Children's Koori Court across the state.

Most Aboriginal children and young people access mainstream legal services, rather than specialist services that have been designed to be both culturally safe and child-centred. Aboriginal children and young people reported to the Commission that they have mixed experiences with legal assistance services, and a large proportion did not have a good understanding of the legal process they were involved in.

Aboriginal children and young people in Victoria need statewide access to specialist legal services that can provide holistic support. Aboriginal-led services respond directly to local communities and have the capacity to link Aboriginal children and young people with critical supports and cultural resources that address their individual needs and aspirations. The Commission welcomes the Victorian Government's allocation of resources to re-establish *Balit Ngulu*, a specialist legal service for Aboriginal children and young people, and encourages further efforts to ensure all legal assistance services are culturally safe and child-friendly.

## Supervised community orders

Although the number of supervised community orders made in relation to Aboriginal children and young people more than halved from 2010 to 2019, Aboriginal children and young people remain 10 times more likely to be under Youth Justice community supervision than non-Aboriginal children and young people. Aboriginal children and young people are also spending longer

periods of time on supervised community orders compared to a decade ago.

Aboriginal children and young people told the Commission that they have difficulty complying with the conditions of supervised community orders. As with bail conditions, the conditions of supervised community orders must be proportionate and should not interfere with a child or young person's ability to lead a normal life. They should support a child or young person to address the underlying causes of their offending behaviour without creating barriers that are likely to lead them back into the youth justice system.

As with bail, decision-makers need specialist expertise in order to assess and respond to the needs of Aboriginal children and young people in setting the conditions of supervised community orders. Magistrates who are trained and specialised in the sentencing of Aboriginal children and young people are best equipped to ensure that conditions attached to community orders are reasonable, and that the child or young person is realistically able to comply with them. However, the sentencing framework must also support this, and must not mandate the imposition of onerous, unreasonable, unfair or unrealistic conditions. Rather, it should be structured to minimise the use of restrictive conditions.

## Safe custody

Despite recent efforts to improve the operation of Victoria's youth justice centres, the state's large-scale institutional centres remain harmful and often unsafe environments for Aboriginal children and young people. The best-performing youth justice systems show that it is essential to shift from large institutional facilities to small, home-like residences close to young people's communities. Until the goal of no Aboriginal child or young person being incarcerated is achieved, the Commission recommends that Aboriginal children and young people who receive custodial sentences be supervised in an environment that is embedded in culture, developmentally enriching, therapeutic, safe and home-like.

## Improving cultural safety and support in youth justice custody

The Commission observed recent efforts to improve cultural safety in youth justice custody. However, Victorian youth justice centres are, on the whole, not culturally safe for Aboriginal children and young people. This includes poor physical design, limited cultural spaces and infrequent and inadequate access to cultural programs.

Aboriginal children and young people need better support to maintain, develop and strengthen their cultural connections while in custody. This should include ensuring that custodial placement decisions prioritise placing each Aboriginal child or young person with at least one other Aboriginal child or young person where possible, and working with Aboriginal communities to establish a community steering committee to guide and monitor the design and implementation of cultural services and programs in youth justice centres.

In addition, all programs and services, including risk assessments, should be culturally safe. The Commission heard concerns that the risk assessment tools used by Youth Justice are culturally inappropriate and may contribute to higher rates of Aboriginal children and young people being categorised as ‘high risk’. There is research that supports these claims.

Data shows that Aboriginal children and young people who are assessed using these tools are more likely to receive a higher risk rating than non-Aboriginal children and young people. This is problematic because it can stigmatise a young person to be classified as ‘high risk’, and lead to Aboriginal children and young people being subjected to higher intensity interventions than they require, which can in itself be criminogenic.

Youth Justice should validate its risk assessment tools for use with Aboriginal children and young people and ensure that all Aboriginal children and young people have access to culturally safe youth offending programs in custody, preferably delivered by Aboriginal organisations.

## Strengthening support for Aboriginal Liaison Officers

Throughout the Taskforce and inquiry, the Commission heard positive feedback about Aboriginal Liaison Officers and observed the important role they play in supporting the cultural needs of Aboriginal children and young people in youth justice centres. However, the Commission found that these roles are ill-defined and overloaded. The Commission recommends that DJCS review the Aboriginal Liaison Officer program to assess how it can meet the competing needs and demands placed on the program, with a view to strengthening it.

## Harmful conditions in youth justice centres

The Commission found that isolations and lockdowns are harsh and damaging practices that occur too frequently for Aboriginal children and young people in Victoria’s youth justice centres, although the number of isolations has reduced significantly in recent years.

*I think for Aboriginal children, isolation, if you’ve come from a family of neglect or been in and out of foster [care] or Child Protection, isolation just continues that paradigm of people not caring about them, that they’re just a pain that needs to be hidden. It’s a generational thing – our ancestors were moved on to missions, off Country, split from family. I think it brings up that past trauma. It’s not good for their mental health at all. It does more damage than good.*  
– Aboriginal Independent Visitor

The Commission also found that, despite some recent improvements, Aboriginal children and young people, and Aboriginal girls in particular, were substantially over-represented in incidents of attempted suicide and self-harm in Victoria’s youth justice centres. In 2018 and 2019, Aboriginal girls and young women were involved in 63% of Category 2 incident reports relating to self-harm, despite only accounting for 35% of the female population in youth justice centres. Building on the recent improvements, the Commission recommends that DJCS develop a strategy to provide consistent therapeutic responses to Aboriginal children and young people at risk of suicide or self-harm in youth justice centres.

## Executive summary

The Commission found that Aboriginal children and young people inside Victorian youth justice centres also experience violence and the use of force at unacceptably high rates. In 2018–19, Aboriginal children and young people were alarmingly over-represented in relation to injury as a result of a serious assault in custody. Many Aboriginal children and young people told the Commission about experiencing or witnessing conflict and violence in youth justice custody.

In 2018 and 2019, force and restraints were used against Aboriginal children and young people in Victorian youth justice centres in 1,689 incidents, which translates to more than twice a day, each day. The use of handcuffs on Aboriginal girls and young women was disproportionately high, accounting for 48% of incidents involving girls and young women. It was beyond the scope of this inquiry to assess the use of force incidents in more detail; however, the over-representation of Aboriginal children and young people who had use of force techniques applied against them warrants further analysis and monitoring by Youth Justice.

Despite the high levels of violence and use of force in Victoria's youth justice centres, some children and young people told the Commission that life is safer behind bars.

*Parkville felt like home. I went to school every day. I had my own room and I was all set up. The workers helped me, and I could talk to them. I knew that when I woke up that I would have food and stuff and wouldn't have to worry about going without food. The great part about Parkville is that I knew I was safe. One day I reckon if I have a really shit day I would try to do something to end up back in there. I think if you were allowed to smoke in Parkville, kids wouldn't want to leave ever. – Gabrielle, 15*

Without discounting the positive effect that some Youth Justice staff, teachers and health professionals can have for children and young people in custody, this also indicates that the Victorian Government is failing in its obligation to ensure that all Aboriginal children and young people have the support they need to grow and thrive outside custody. Many of the children and young people who told us that custody was positive for them had also had prior involvement with the child protection

system, suggesting that there had been a failed opportunity to provide safety and security in the community.

This also suggests that some Aboriginal children and young people experience a type of institutionalisation in youth justice centres, where it becomes hard for them to imagine a life beyond the gates. It is a serious indictment on the government and society if children and young people feel that they prefer to be in custody than outside.

### Leaving custody

The Commission found that Aboriginal children and young people do not have consistent access to culturally appropriate services and supports when they leave custody.

Children and young people said they needed the right kind of support after they left custody, including help with finding work, housing and transport, and being connected to cultural programs. Many children and young people indicated that they also needed support for material needs, such as clothes, phones and transport.

*I want to know what school I'm going to, where I'll be living, who is going to pick me up. I want YJ [Youth Justice] to be supportive of me. Who is going to be out the front waiting for me? I get the feeling that I'm going to walk out of here with my property, not going to know anyone, no phone, who to contact. I'm scared. It's like getting kicked out of home all over again. – Pearl, 19*

The Commission recommends that the Victorian Government work with the Commonwealth Government to ensure that all Aboriginal children and young people who leave youth justice custody have access to culturally appropriate and reliable community-based support for as long as required. This may include intensive case management; housing; employment and training; and mental health, drug and alcohol and cultural support services.



## Structural and institutional racism

The Commission found during the Taskforce and inquiry that there are vast disparities in the rates at which Aboriginal and non-Aboriginal children and young people enter the youth justice system, and in how they are treated once in the system. As Aboriginal children and young people move through the youth justice system, they are over-represented at every step. The factors contributing to over-representation are numerous, complex and inter-related.

Over-representation does not reflect the criminality of Aboriginal children and young people in the youth justice system. Rather, it is the result of structural racism produced by the structures, policies and practices that underpin our social institutions and determine how they operate.<sup>1</sup> This applies not only to the youth justice system, but also to its inter-relationship with other systems, including the child protection, health, housing and education systems.<sup>2</sup>

The findings in this report demonstrate that present inequalities in youth justice outcomes cannot be disconnected from Australia's racist history of systemic oppression, dispossession and discrimination. The current distribution of advantage and disadvantage is not just a happenstance:<sup>3</sup> the material success of

Australian society is built upon the dispossession of Aboriginal people<sup>4</sup> and historically, the criminal justice system was employed as an instrument of this dispossession.<sup>5</sup>

For Aboriginal children and young people in contact with the youth justice system, these historical injustices are not a thing of the past; they are an everyday reality. Recognising the operation of structural racism allows us to better understand the lived experiences of Aboriginal children and young people in the youth justice system, and what we can do to support them to thrive.

1 'Structural racism' describes the ways in which history, public policies, institutional practices and culture interact to maintain a racial hierarchy that allows privileges and disadvantages to endure and adapt over time. This definition conceptualises 'institutional racism' as an aspect of structural racism. As articulated by John Powell, '[I]nstitutional racism shifts our focus from the motives of individual people to practices and procedures within an institution. Structural racism shifts our attention from the single, intra-institutional setting to inter-institutional arrangements and interactions.': JA Powell, 'Structural racism: building upon the insights of John Calmore', *North Carolina Law Review*, 2008, 86(3):791–816, p 796. A structural racism lens helps us to identify and examine the racial legacy of Australia's past, how racism persists in our state institutions, and how individuals internalise and respond to racialised structures.

2 For further discussion of the relationship between different social institutions and their practices that embed racist outcomes for Aboriginal people in Australia, see C Cunneen, 'Institutional racism and (in)justice: Australia in the 21st century', *Decolonization of Criminology and Justice*, 2019, 1(1):29–51.

3 Dr Camara Jones argues that adopting an 'a-historical stance', whereby the present is disconnected from the past and the distribution of advantage and disadvantage is understood as 'just a happenstance', constrains our understanding of how to make change happen: C Jones, *Seeing the water: seven values targets for anti-racism*.

*action*, Harvard Medical School Centre for Primary Care website, 2020, accessed 20 February 2021.

4 M McKenna, *Moment of truth: history and Australia's future*, Quarterly Essay 69, Black Inc., 2018.

5 H Blagg, N Morgan, C Cunneen and A Ferrante, *Systemic racism as a factor in the over-representation of Aboriginal people in the criminal justice system*, Equal Opportunity Commission, Melbourne, 2005, pp 28–29. See also State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, Department of Premier and Cabinet, Victorian Government, 2018, p 26: 'The structures and systems established during colonisation had the specific intent to exclude Aboriginal people and their laws, customs and traditions, resulting in entrenched systemic and structural racism.'

# Findings and recommendations

## Chapter 4 A self-determined youth justice system

### Finding 1

Services designed, controlled and delivered by the Aboriginal community have the greatest potential to produce the best outcomes for Aboriginal children and young people.

### Recommendation 1

That the new Youth Justice Act:

- a) enable the Secretary of DJCS to authorise Aboriginal communities to design, administer and supervise elements of the youth justice system, including:
  - delivering cautions and alternatives to proceedings, including diversionary options
  - delivering family group conferencing and restorative justice group conferencing
  - determining the location and delivery of hearings (including Koori Court hearings)
  - determining the conditions of community-based youth justice orders
  - designing and administering community-based youth justice options, including alternatives to custody
- b) place a positive duty on the Secretary of DJCS to develop strategic partnerships with Aboriginal communities, and report regularly on measures taken to improve outcomes for Aboriginal children and young people.

### Recommendation 2

That the Victorian Government resource and develop the capacity of Aboriginal organisations to design, coordinate and deliver youth supports, including through a peak body or bodies for Aboriginal youth sector workers and organisations.

### Finding 2

Current collection and reporting of data on the experiences of, and outcomes for, Aboriginal children and young people in the youth justice system are inadequate.

### Recommendation 3

That the Victorian Government ensure that relevant agencies record data on Aboriginal and non-Aboriginal children and young people at each point in their journey through the youth justice system, using indicators developed and approved in partnership with the Aboriginal community.

### Recommendation 4

That DJCS, in partnership with the Aboriginal community, establish a centralised mechanism for the regular publishing of accurate, cross-agency, linked data to provide a single, authoritative source of information on Aboriginal children and young people in the youth justice system and their outcomes.

### Recommendation 5

That DJCS partner with an Aboriginal organisation to pilot Kapiti Youth Support's Outcomes Measurement Model used in New Zealand.

## Chapter 5

# A just & age-appropriate system

### Finding 3

The youth justice system is disproportionately focused on late, crisis-driven, punitive responses to offending behaviour, at the expense of effective early interventions and supports that meet the individual needs and reflect the unique experiences of Aboriginal children and young people, and keep them in the community and out of the system.

### Recommendation 6

That the Aboriginal Youth Justice Strategy prioritise early intervention and prevention strategies and justice reinvestment programs led by the Aboriginal community.

### Recommendation 7

That the Victorian Government resource the establishment of a culturally based, multi-service, accessible youth hub in each region to coordinate and provide holistic supports for Aboriginal children and young people. Youth hubs should be designed and developed in partnership with, and managed by, Aboriginal communities and organisations.

### Finding 4

Victoria's low minimum age of criminal responsibility disproportionately harms Aboriginal children.

### Recommendation 8

That the *Children, Youth and Families Act 2005* be amended to increase the minimum age of criminal responsibility in Victoria to 14 years. This should not be subject to any exceptions.

### Recommendation 9

That the Victorian Government, in partnership with Aboriginal organisations, develop and provide a range of culturally responsive and gender-specific programs and services that are tailored to meet the needs of Aboriginal children under the age of 14 years who are engaging in anti-social behaviour, and to address the factors contributing to the behaviour.

### Finding 5

Current laws allowing children to be remanded in, or sentenced to, youth justice custody disproportionately harm Aboriginal children.

### Recommendation 10

That the *Children, Youth and Families Act 2005*, the *Sentencing Act 1991* and the *Bail Act 1977* be amended to prohibit:

- a) children under the age of 16 years being sentenced to, or remanded in, youth justice custody
- b) children under the age of 18 years being sentenced to adult imprisonment
- c) the transfer of children under the age of 18 years from youth justice custody to an adult prison.

### Recommendation 11

That the new Youth Justice Act require youth justice system decision-makers:

- a) to prioritise early intervention and diversionary processes at all points on the youth justice system continuum
- b) to ensure that children and young people are subject to the least intrusive intervention that is necessary in the circumstances, including a decision not to take any formal action against the child or young person
- c) not to commence a criminal proceeding against a child or young person if there is another appropriate means of dealing with the matter.

## Chapter 6 A child-centred system

### Finding 6

Government agencies often fail to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people involved in the youth justice system. This limits positive outcomes and compounds disadvantage.

### Finding 7

When agencies collaborate and focus on young people's individual needs and strengths, better outcomes are achieved.

### Recommendation 12

That the Victorian Government pilot in at least 2 regions an integrated case management program for Aboriginal children and young people in the youth justice system, based on *A place to go*.

### Recommendation 13

That Youth Justice ensure that the proposed Aboriginal Case Management Review Panels are chaired by a senior Aboriginal person, include senior representatives of relevant departments and service providers, adopt a strengths-based approach, give due weight to the views of the child or young person and place culture at their centre. The panels should be monitored at Secretary level by all relevant departments to ensure collaboration and accountability in relation to nominated actions, and to identify and address any systemic issues that arise. The panels should be established in consultation with the Commissioner for Aboriginal Children and Young People.

### Recommendation 14

That Youth Justice establish regular regional Koori youth justice forums with local justice partners and social services.

### Finding 8

Aboriginal children and young people are able to receive better support and feel more connected to services when they have a trusted, reliable adult in their lives who is able to advocate for their needs. In many cases, this will be an Aboriginal worker.

### Recommendation 15

That Youth Justice ensure that its staff are adequately resourced and trained to comply with practice guidelines focused on building trusting, stable and therapeutic relationships with Aboriginal children and young people. In particular, Youth Justice staff should be equipped to understand and respond to different behaviours in Aboriginal children and young people, and to apply a culturally safe and trauma-informed approach.

### Recommendation 16

That Youth Justice review its policies, guidelines and training to ensure that they do not promote 'deficit discourse' with respect to Aboriginal children and young people, and consider the adoption of a strengths-based framework for case management of Aboriginal children and young people.

### Recommendation 17

That the Victorian Government, in implementing the expansion of the Community-Based Koori Youth Justice Program announced in March 2021, ensure that the program has sufficient capacity to provide holistic support for Aboriginal children and young people in the youth justice system, including through increased brokerage funding and an appropriate gender distribution among Koori Youth Justice workers (see Recommendation 21).

### Recommendation 18

That Youth Justice develop a framework to identify an Aboriginal child or young person's most trusted worker, and give them a central role in planning and decision-making concerning the child or young person's care. DFFH should commit to the same framework for Aboriginal children and young people for whom DFFH has joint responsibility with Youth Justice. This should be reflected in the revised protocol between Child Protection and Youth Justice (see Recommendation 40).

#### Finding 9

Meaningful participation by Aboriginal children and young people in the youth justice system is limited.

### Recommendation 19

That Youth Justice ensure that Aboriginal children and young people have meaningful input into, and influence on, the decisions that affect them in the youth justice system. This should include working with the Koorie Youth Council or another Aboriginal youth organisation to develop Youth Justice youth participation principles, and implementing regular and ongoing training for staff on effective youth participation.

### Recommendation 20

That the Victorian Government fund and partner with the Koorie Youth Council to design, implement and lead a whole-of-government Aboriginal youth engagement strategy.

#### Finding 10

The youth justice system often fails to adequately respond to the individual needs of Aboriginal girls and young women, children and young people with disability, and LGBTQI+ young people.

### Recommendation 21

That DJCS ensure that the youth justice system is responsive to the specific needs of all Aboriginal children and young people, including young women, young people with disability and LGBTQI+ young people. This should include:

- a) resourcing more Aboriginal-led, designed and delivered programs for Aboriginal girls and young women
- b) employing more female Koorie Youth Justice workers
- c) ensuring that all children and young people entering Youth Justice supervision or youth justice custody are screened for disability, referred for a further assessment if the result indicates the likelihood of a disability, and assisted to access appropriate supports
- d) ensuring that disability screening and assessment tools and processes are culturally appropriate
- e) implementing specific training for all Youth Justice staff in relation to working with LGBTQI+ children and young people
- f) reviewing policies, procedures and accommodation options to ensure that the needs of transgender and gender-diverse children and young people are met, including by amending databases so that they can accurately record gender descriptors.

## Chapter 7 Family, community & culture

#### Finding 11

Family and community are strong supports for Aboriginal children and young people in contact with the youth justice system, and are critical to creating lasting and positive change in their lives.

#### Finding 12

Youth Justice fails to meaningfully involve the families of many Aboriginal children and young people under community supervision in planning, decision-making, programs and supports.

### Recommendation 22

That DJCS work with DFFH, DET and other agencies, and in partnership with the Aboriginal community, to implement mandatory pre-charge family group conferencing, based on the New Zealand model, for all children and young people whom police are considering charging, and for whom a warning, caution or other less intensive diversionary process is not appropriate.

Without limiting the purposes of the pre-charge family group conference, its primary purpose should be to provide:

- a) integrated and coordinated welfare responses to address the holistic needs of children and young people and the underlying causes of their offending behaviour
- b) a formal mechanism for family involvement in planning and decision-making regarding appropriate interventions and supports for the child and their family.

### Recommendation 23

That DJCS convene a working group of Aboriginal organisations to design Aboriginal-led family group conferences for Aboriginal children and young people, informed by *iwi*-led conferences in New Zealand.

#### Finding 13

Youth Justice fails to keep many Aboriginal children and young people in custody connected to their families and communities. Contact with families is often inadequately planned, communicated and supported. This can harm the wellbeing of Aboriginal children and young people and their families.

### Recommendation 24

That Youth Justice strengthen family and community connection for Aboriginal children and young people in custody by:

- a) expanding the definition of 'family' for Aboriginal children and young people in all practice guidelines, instructions and procedures to include extended family, kin and Aboriginal community members
- b) implementing a generous visits program to increase the frequency and flexibility of visits, leave, and phone and virtual contact
- c) providing adequate information to children and young people and their families about visits and other contact opportunities, and proactively planning regular visits and communication with family
- d) amending practice guidelines and procedures to ensure that contact (including through phone calls) is not linked to, or limited by, children and young people's behaviour or ranking in behaviour management systems
- e) continuing the availability of video visits post-COVID-19 to enable more frequent contact, or to facilitate contact when physical visits are not possible.

#### Finding 14

The families of Aboriginal children and young people in the youth justice system experience multiple forms of disadvantage. Youth Justice, Child Protection and other agencies often do not provide adequate support to address the needs of Aboriginal families whose children are involved in the youth justice system.

#### Finding 15

Youth Justice often fails to recognise and support the caring responsibilities of the many Aboriginal young people in the youth justice system who are themselves parents or carers. This can contribute to intergenerational harm and youth justice system involvement.

### Recommendation 25

That the Victorian Government fund holistic family support programs, including through services delivering multi-systemic therapies, to address disadvantage experienced by the families of Aboriginal children and young people in the youth justice system. These programs should be available in every region and designed and led by Aboriginal organisations. They should be available through youth justice family group conferencing, in addition to other avenues.

### Recommendation 26

That Youth Justice improve its support for Aboriginal children and young people and their families by:

- a) updating its practice guidelines to ensure that they clearly address the impact of family disadvantage on Aboriginal children and young people's ability to comply with Youth Justice obligations, and direct Youth Justice staff to facilitate or provide necessary family supports
- b) ensuring that its practice guideline on working with families addresses the situation of young people with their own caring responsibilities.

### Recommendation 27

That youth justice family group conferencing include consideration of Aboriginal children and young people's family circumstances, home environment and caring responsibilities, with a view to identifying and facilitating all necessary family supports.

### Finding 16

Connection to culture can be transformative and instrumental in supporting Aboriginal children and young people to avoid contact with the youth justice system. However, the youth justice system does not facilitate meaningful connections to culture for most Aboriginal children and young people.

### Recommendation 28

That the new Youth Justice Act require youth justice system decision-makers at all points on the youth justice continuum, including police, judicial officers and Youth Justice staff, to:

- a) recognise that strong connections with culture, family and community are essential for Aboriginal children and young people to thrive
- b) have regard to the need to strengthen connection to culture, family and community in decision-making affecting Aboriginal children and young people.

### Recommendation 29

That the new Youth Justice Act require the Secretary of DJCS to ensure that every Aboriginal child and young person under Youth Justice supervision has a cultural support plan.

### Recommendation 30

That Youth Justice review and update its approach to cultural support planning, with a view to improving practice and accountability in complying with practice guidelines and strengthening the role of families. The review should consider the need for additional resourcing for Aboriginal organisations to develop and implement high-quality cultural support plans for children and young people in the youth justice system.

### Recommendation 31

That DJCS ensure that the families of Aboriginal children and young people are meaningfully involved in the Youth Justice cultural support planning process, whether by means of family group conferencing or through the strengthening of existing processes.

### Recommendation 32

That DJCS, DFFH and DET work together and with Aboriginal organisations to develop protocols for the sharing of cultural support plans with the young person's consent. An Aboriginal child or young person should only have one cultural support plan across all agencies.

### Recommendation 33

That the Victorian Government implement systems to ensure that there is appropriate monitoring of the quality and implementation of cultural support plans, and the involvement of the young person and their family in the development of plans.

## Chapter 8 A caring & stable home

### Finding 17

Most Aboriginal children and young people under Youth Justice supervision have also experienced Child Protection involvement. Many of these 'crossover children' have also experienced out-of-home care. In some cases, the experience of out-of-home care and, in particular, residential care, contributes to offending behaviour, police contact and involvement in the youth justice system for Aboriginal children and young people.

### Recommendation 34

That the Victorian Government monitor and publicly report on the implementation of the *Framework to reduce criminalisation of young people in residential care*, including a focus on its effectiveness at reducing the criminalisation of Aboriginal children and young people.

### Recommendation 35

That DJCS support the development, including via adequate resourcing, of a crossover list between the Family Division and the Criminal Division of the Children's Court, beginning with regional headquarter courts, to strengthen the court's ability to identify and meet the needs of Aboriginal children and young people, and holistically address the underlying causes of their offending behaviour.

### Recommendation 36

That the Victorian Government ensure that sentencing legislation requires judicial officers to consider the impact of various factors on a child or young person's behaviour, including:

- a) the systemic racism, increased disadvantage and postcolonial and intergenerational trauma experienced by Aboriginal children and young people, including any culturally inappropriate responses that may have worsened the effects of trauma
- b) any experience of trauma, including the effect of that trauma on the child or young person's development and capacity to avoid problematic behaviour, and the relationship between trauma and any mental illness, neurological difficulties or developmental issues
- c) removal from family, home, community and school, or other disruption to the child or young person's living situation or education
- d) any experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers, and the need for the child or young person to have safe, stable and secure living arrangements
- e) the child or young person's age, including developmental age, when they first offended and at their current offence and sentence.

### Finding 18

The child protection system does not provide a stable, caring home for too many children and young people involved with Child Protection and Youth Justice. In particular, the current residential care system often fails to provide a caring home for Aboriginal children and young people, instead placing them at an unacceptable risk of harm.



### Finding 19

The child protection system is failing to act ‘as a good parent would’ for too many Aboriginal children and young people involved with Child Protection and Youth Justice. In particular, the child protection system too often abdicates its responsibilities to children and young people when they come into contact with the youth justice system.

### Recommendation 37

That the Victorian Government continue to build on its commitment to improve early intervention and family preservation services, with new investment over time informed by monitoring of recently funded and other existing programs.

### Recommendation 38

That the Victorian Government, in implementing the recommendations from the Commission’s *In our own words* inquiry, particularly recommendation 16, work with Aboriginal organisations to identify and develop alternatives to residential care that meet the needs of Aboriginal children and young people with complex trauma and challenging behaviours.

### Recommendation 39

That DFFH work in partnership with the Aboriginal Children’s Forum, the Aboriginal Justice Forum and relevant departments to develop a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system.

### Recommendation 40

That:

- a) DJCS and DFFH urgently review and update the *Protocol between child protection and youth justice*
- b) DFFH provide clear guidance to Child Protection workers in both the Child Protection Manual and the *Protocol between child protection and youth justice* to clarify their obligations to perform their statutory duty to the children and young people they work with throughout any contact with the youth justice system. Similar guidance should be provided to contracted agencies.

### Recommendation 41

That DFFH ensure that Child Protection is properly supporting children and young people involved in both the youth justice and child protection systems, preferably by establishing a senior ‘crossover’ role in each division or by another mechanism that achieves the same outcome.

### Recommendation 42

That the Victorian Government require and resource Child Protection to provide an appropriate level of support to children and young people throughout their contact with the youth justice system, including by:

- a) rostering Child Protection staff to the Children’s Court
- b) empowering the Criminal Division of the Children’s Court to compel Child Protection workers and/or contracted agency staff to attend hearings and to provide the court with reports concerning children and young people under Child Protection’s care
- c) ensuring that Child Protection workers and/or contracted agency staff visit and support children and young people in custody, actively engage with Youth Justice staff and attend hearings, appointments, assessments and meetings as advocates for children involved with both Youth Justice and Child Protection.

### Finding 20

A significant proportion of Aboriginal children and young people in the youth justice system experience housing insecurity. For some young people, insecure housing and involvement in the youth justice system are directly linked. Supported accommodation can assist these young people to stay out of the youth justice system.

### Recommendation 43

That the Victorian Government establish Aboriginal community-controlled crisis accommodation for Aboriginal children and young people in every region, informed by the model provided by Nungurra Youth Accommodation Services.

### Recommendation 44

That the Victorian Government establish at least 4 Aboriginal community-controlled youth foyers across the state, with consideration given to 3 regional locations and one metropolitan location.

## Chapter 9 Wellbeing

### Finding 21

Many Aboriginal children and young people in contact with the youth justice system experience poor mental health and low levels of access to mental health services.

### Recommendation 45

That DJCS fast-track plans to introduce mandatory, ongoing mental health training for Youth Justice community staff to enable them to identify, understand and respond to trauma and mental health concerns experienced by Aboriginal children and young people.

### Recommendation 46

That the Victorian Government resource Aboriginal organisations to provide in-reach mental health support for Aboriginal children and young people in youth justice custody, and facilitate transitional and post-release mental health treatment for Aboriginal children and young people.

### Finding 22

Most Aboriginal children and young people in contact with the youth justice system experience substance misuse.

### Recommendation 47

That the Victorian Government work with the Aboriginal community to design and establish at least 2 healing centres for Aboriginal children and young people, in addition to Bunjilwarra and Baroona. Consideration should be given to establishing a dedicated healing centre for Aboriginal girls and young women, and another for Aboriginal children and young people under the age of 16 years.

### Finding 23

Many Aboriginal children and young people and their families and community members believe that Aboriginal cultural mentoring programs improve young people's mental health and wellbeing, make a positive difference in their lives and reduce offending behaviour.

### Recommendation 48

That the Victorian Government:

- a) resource additional strengths-based cultural mentoring programs for Aboriginal children and young people across the state, designed in partnership with local Aboriginal communities and in accordance with youth participation principles
- b) in expanding the Aboriginal Youth Mentoring Program under the Aboriginal Youth Justice Strategy, establish dedicated programs for Aboriginal girls and young women, and for Aboriginal children and young people in custody.

## Chapter 10 Education & learning

### Finding 24

Most Aboriginal children and young people in contact with the youth justice system have experienced disengagement and exclusion from education.

### Recommendation 49

That the Victorian Government improve Aboriginal children and young people's engagement in education by:

- a) expanding the Navigator program to include children aged 10 years and above
- b) ensuring targeted educational support for Aboriginal children and young people in the youth justice system, whether through the expansion of the LOOKOUT program, the Youth Justice Education Pathway Coordinator role, the Education Justice Initiative program or the role of Parkville College

- c) resourcing the expansion of the Out Teach program to another region, with consideration given to it being led by an Aboriginal organisation
- d) expanding the Aboriginal Early School Leavers program to enable more Aboriginal organisations to provide material support to Aboriginal children and young people in contact with the youth justice system
- e) considering the expansion of referral pathways to the Aboriginal Youth Support Service from education providers
- f) regularly publishing data on the suspension of Aboriginal children and young people from Victorian government schools
- g) implementing mandatory reporting of informal expulsions and requiring parents or guardians to provide information regarding the student's departure from school, in line with the Victorian Ombudsman's 2017 recommendations
- h) strengthening efforts to tackle and eliminate racism in schools.

### Finding 25

Aboriginal children and young people want to learn about and feel connected to their culture in education and learning environments.

### Recommendation 50

That DET consult Aboriginal children and young people and work in partnership with Aboriginal communities to design and deliver additional schooling options embedded in culture for Aboriginal students, taking into consideration the example of Worawa College.

### Finding 26

Aboriginal children and young people, their families and community members believe an operational Aboriginal engagement role located in schools and dedicated to supporting at-risk young people would reduce contact with the youth justice system.

### Recommendation 51

That DET review the supports provided to Aboriginal children and young people, including the Koorie Engagement Support Officer (KESO) role, with a view to increasing direct support for Aboriginal children and young people in schools, and prioritising access to educational support for Aboriginal children and young people in the youth justice system.

### Finding 27

Aboriginal children and young people in custody want their education to be strengths-based and embedded in culture, and to support employment upon release.

### Recommendation 52

That DET develop and fund an ongoing identified Aboriginal education support role for Parkville College at each youth justice centre. The role should have a particular focus on directly assisting Aboriginal students in the classroom and with planning transition into education or employment pathways in the community.

### Recommendation 53

That the Victorian Government expand partnerships with community organisations and implement a strategy to create more employment opportunities in a variety of fields for Aboriginal children and young people in contact with the youth justice system, with priority for those leaving custody.

## Chapter 11 Entering the youth justice system

### Finding 28

Limits to the Commission's mandate meant we could not inquire into the role of police in contributing to the over-representation of Aboriginal children and young people in the youth justice system. However, the experiences children and young people shared with us, and our research, raise significant concerns about police systems, practice and culture. These concerns include:

- a) unacceptable discrepancy in the use of cautions between Aboriginal and non-Aboriginal children and young people
- b) mistreatment by police during arrest and other contact
- c) excessive detention and mistreatment during detention in police cells
- d) a lack of faith in the police complaints process.

### Recommendation 54

That the Victorian Government commission an independent and properly mandated body with specialist knowledge and expertise in relation to children and young people to undertake an urgent review of the experiences of Aboriginal children and young people with Victoria Police. This review should:

- a) include an examination of police powers and the exercise of discretion in the investigation and processing of Aboriginal children and young people suspected of offending, including cautioning, diversion, arrest, summons, custody and complaints processes
- b) be empowered to make recommendations for improved police practice and policy in relation to Aboriginal children and young people.

## Chapter 12 Pathways out of the youth justice system

### Finding 29

Diversion can be an effective response to offending behaviour, which in turn can limit the ongoing involvement of children and young people in the youth justice system. However, Aboriginal children and young people have insufficient access to culturally appropriate diversion programs across Victoria.

### Recommendation 55

That the Victorian Government prioritise investment in Aboriginal-led diversionary programs across Victoria that meet the needs of Aboriginal children and young people, drawing on relevant interstate and New Zealand examples.

### Recommendation 56

That the Victorian statutory Children's Court diversion scheme be amended to maximise opportunities for children and young people to obtain diversion. This should include introducing a presumption in favour of diversion, removing the requirement for prosecutorial consent to diversion, and reviewing current exclusions under section 356B of the *Children, Youth and Families Act 2005* for certain road safety offences.

### Finding 30

Aspects of the bail system create barriers to Aboriginal children and young people being granted bail and complying with bail conditions, exposing them to damaging custodial remand environments.

### Recommendation 57

That the *Bail Act 1977* be amended to exclude children and young people from the operation of the 2017 and 2018 amendments, including the requirement to show exceptional circumstances or compelling reasons.

### Recommendation 58

That the *Bail Act 1977* be amended to expand sections 3A and 3B to require decision-makers, in making determinations under the Act, to take into account:

- a) the systemic racism, increased disadvantage and postcolonial and intergenerational trauma experienced by Aboriginal children and young people, including any culturally inappropriate responses that may have worsened the effects of trauma
- b) any experience of trauma, including the effect of that trauma on the child or young person's development and capacity to avoid problematic behaviour, and the relationship between trauma and any mental illness, neurological difficulties or developmental issues
- c) removal from family, home, community or school, or other disruption to the child or young person's living situation or education
- d) any experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers, and the need for the child or young person to have safe, stable and secure living arrangements
- e) the child or young person's age, including developmental age, at the time of the alleged offence.

### Recommendation 59

That the Victorian Government fully resource a 24-hour bail system for children and young people across Victoria, whether this is a Children's Court bail and remand service, or otherwise involves access to specialised and trained decision-makers who have expertise in working with children and young people, and Aboriginal children and young people. The 24-hour bail system should also include access to corresponding support services.

### Recommendation 60

To reduce the likelihood of remand and increase compliance with bail orders, that the Victorian Government:

- a) increase the number of roles in the Koori Intensive Support Program to enable statewide access
- b) resource and, in partnership with Aboriginal organisations, establish therapeutic, home-like supported bail accommodation options across Victoria.

### Finding 31

Aboriginal children and young people are experiencing remand at unacceptably high rates, putting them at risk of harm and entrenchment in the youth justice system.

### Recommendation 61

That the Victorian Government work towards having no Aboriginal child or young person on remand. As a step towards this, the Victorian Government should provide community-based alternatives to custody for Aboriginal young people on remand. In particular, DJCS should invest in establishing a minimum of 2 small, home-like facilities that provide therapeutic and culturally appropriate care for Aboriginal children and young people on remand.

### Finding 32

The court experiences of Aboriginal children and young people in the youth justice system are mixed. The Children's Koori Court has strong potential to improve engagement and outcomes for Aboriginal children and young people, but is not consistently accessible across Victoria.

### Recommendation 62

That the Victorian Government resource the expansion of the fully specialised Children's Court, commencing with rural and regional headquarter courts, to support the court's work with Aboriginal children and young people. Specialisation for all magistrates undertaking Children's Court work should include training in child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural safety.

### Recommendation 63

That the Children's Koori Court be expanded to sit at more locations and with greater frequency at existing locations.

### Recommendation 64

That the Victorian Government review the role of Elders in the Children's Koori Court process with a view to strengthening Elder participation and self-determination. This should include consideration of the role of Elders in New Zealand's Rangatahi Courts and Queensland's Youth Murri Courts, and the ability to conduct hearings in more culturally appropriate spaces.

### Finding 33

Aboriginal children and young people have mixed experiences with legal assistance services, and many do not have a good understanding of the criminal legal process.

### Recommendation 65

That the Victorian Government ensure that *Balit Ngulu* is resourced to provide specialist legal services statewide for Aboriginal children and young people on an ongoing basis.

### Recommendation 66

That the Victorian Government develop and implement measures to increase the capacity of mainstream legal assistance providers to ensure culturally and age-appropriate services are delivered to Aboriginal children and young people.

### Finding 34

Supervised community orders provide alternatives to custody, but their conditions can set Aboriginal children and young people up to fail and further entrench them in the youth justice system.

### Recommendation 67

That the *Children, Youth and Families Act 2005* be amended to include a presumption against the use of restrictive conditions in supervised community orders, except where necessary and achievable in the individual circumstances of the child or young person.

## Chapter 13

### Safe custody

#### Finding 35

Despite some efforts to improve cultural safety, Victorian youth justice centres are large institutional facilities that are not culturally safe for Aboriginal children and young people.

#### Recommendation 68

That DJCS:

- a) work with Aboriginal communities in Victoria to establish a community steering committee to guide and monitor the design and implementation of cultural services and programs in youth justice centres
- b) validate its risk assessment tools for use with Aboriginal children and young people
- c) ensure that all Aboriginal children and young people have access to culturally safe youth offending programs in custody, preferably delivered by Aboriginal organisations
- d) establish a dedicated, permanent indoor cultural space at the Malmsbury youth justice centre secure site
- e) evaluate the recent improvements to cultural spaces in youth justice centres and continue to improve these spaces to provide access to culturally enriching environments
- f) ensure that custodial placement decisions prioritise, where possible, placing Aboriginal children and young people with at least one other Aboriginal child or young person
- g) give every Aboriginal child or young person remanded or sentenced to custody a cultural connection package, preferably tailored to their needs and cultural connection. This care package should not be connected with behaviour management and incentive programs.

#### Finding 36

Aboriginal Liaison Officers play an important role in supporting the cultural needs of Aboriginal children and young people in youth justice centres. However, these roles are ill-defined and overloaded.

#### Recommendation 69

That DJCS review the Aboriginal Liaison Officer program to assess how it can meet the competing needs and demands placed on the program, with a view to strengthening it. The review should include an assessment of the training needs of, and remuneration for, the Aboriginal Liaison Officer role.

#### Finding 37

While the number of isolations in youth justice custody has reduced in recent years, isolations and lockdowns are harsh and damaging practices that occur too frequently for Aboriginal children and young people in Victoria's youth justice centres.

#### Recommendation 70

That DJCS:

- a) urgently progress the implementation of the *Youth Justice custodial workforce plan*, and monitor the extent to which it is reducing the use of isolation and lockdown
- b) ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in youth justice centres
- c) immediately introduce care packages for all children and young people experiencing isolation or lockdown to relieve stress, boredom and psychological damage.

### Recommendation 71

That the Victorian Government ensure that the body designated as the National Preventive Mechanism for youth justice facilities is a body with specialist expertise in children and young people including child development, working with vulnerable children and young people, and Aboriginal children and young people.

### Finding 38

Aboriginal children and young people are at higher risk of serious injury or death by self-harm or suicide than other children and young people in Victoria's youth justice centres.

### Recommendation 72

That DJCS urgently develop a strategy to provide improved, consistent and therapeutic responses to children and young people at risk of suicide or self-harm in youth justice centres. The strategy should include specific elements to ensure a culturally safe and improved response to Aboriginal children and young people.

### Finding 39

Aboriginal children and young people inside Victorian youth justice centres experience violence and use of force at unacceptably high rates.

### Recommendation 73

That DJCS fast-track plans to equip custodial staff with the training and skills they need to undertake trauma-informed, evidence-based and person-centred interventions. This should include support to understand the trauma often experienced by, and complex needs of, children and young people in custody, and to anticipate, de-escalate and respond effectively to challenging behaviours without resorting to the use of force. Training should also include a specific focus on intergenerational trauma.

### Finding 40

Victoria's large-scale institutional youth justice centres are harmful, often unsafe environments for Aboriginal children and young people. The best-performing youth justice systems show that it is essential to shift from large institutional facilities to small, home-like residences close to young people's communities.

### Recommendation 74

That the Victorian Government work towards having no Aboriginal child or young person in custody. As a step towards this, the Victorian Government should work with Aboriginal communities to establish 3 small, home-like facilities for Aboriginal children and young people serving custodial sentences. These facilities should have no more than 6 beds. Although these facilities would be secure, they must allow for Aboriginal children and young people to connect with their culture and community.

### Finding 41

The transition from custody back into the community is a critical point in time, but Aboriginal children and young people do not have consistent access to culturally appropriate services and supports when they leave custody.

### Recommendation 75

That the Victorian Government work with the Commonwealth Government to ensure that all Aboriginal children and young people who leave youth justice custody have access to culturally appropriate and reliable community-based support for as long as required. This may include intensive case management, housing, employment and training, and mental health, drug and alcohol and cultural support services.



# 1 About this report

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YOUR  
POWER

YOUR  
STRENGTH

YOUR  
VOICE

YOUR  
STORIES

REPORT  
TO  
GOV'T

# About this report

This report is the culmination of the Koori Youth Justice Taskforce and the Commission's systemic inquiry into the over-representation of Aboriginal children and young people in the youth justice system.

## Koori Youth Justice Taskforce

In 2016, the Victorian Government commenced a system-wide review of youth justice services, conducted by Penny Armytage and James Ogloff. The findings of this review were published in 2017 in *Youth justice review and strategy: meeting needs and reducing offending* (Youth Justice Review).<sup>6</sup> The Youth Justice Review observed that the youth justice system had failed to address the over-representation of Aboriginal children and young people and recommended that the Commissioner for Aboriginal Children and Young People be resourced to undertake 'the equivalent of a Taskforce 1000 project for every Koori young person involved in youth justice'.<sup>7</sup>

In response to this recommendation, the Victorian Government supported the Koori Youth Justice Taskforce, led by the Commissioner for Aboriginal Children and Young People in partnership with the Department of Justice and Community Safety (DJCS), to examine the cases of Aboriginal children and young people in contact with Youth Justice, and to seek to identify and respond to particular issues that impact on their development, wellbeing and cultural connectedness. The Taskforce is a key initiative under *Burra Lotjpa Dunguludja*.<sup>8</sup>

The Taskforce included all Aboriginal children and young people in contact with Youth Justice programs (including those on supervised bail, diversion, community orders and in custody) during the period

1 October 2018 to 31 March 2019 – a total of 296 children and young people. Most were aged under 18 years; however, a proportion were aged 18 years or older (for example, those in the dual track system at Malmsbury youth justice centre).<sup>9</sup>

The Taskforce had 3 main components:

- a case file review
- case planning sessions for individual children and young people
- regional forums involving youth justice stakeholders throughout Victoria.

### Taskforce case file review ('audit tool')

The Taskforce undertook a review of each child and young person's case file. This involved the completion by Youth Justice staff of a desktop survey (referred to throughout the Taskforce as the 'audit tool') for each child or young person. The survey contained 233 questions, with 35 additional 'follow up' questions, covering family history, health and wellbeing, cultural connectedness (including cultural support plans), disability, trauma and family violence, substance use, education, training and employment, housing, assessments, early intervention and diversion, bail, court, Youth Justice involvement, custody, Youth Justice Aboriginal services and Child Protection history.

The survey was designed by DJCS and the Commission in partnership. The questions were endorsed by a reference group comprising representatives of Aboriginal community-controlled organisations (ACCOs) and relevant government agencies.

The survey was completed primarily by Youth Justice case managers using information from the Youth Justice Client Relationship Information System (CRIS). Answers to some questions relied on information from Justice Health, the Department of Health and Human Services (DHHS),<sup>10</sup> the Department of Education and

<sup>6</sup> P Armytage and J Ogloff, *Youth justice review and strategy: meeting needs and reducing offending*, Victorian Government, 2017.

<sup>7</sup> Recommendation 6.27: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 94. Taskforce 1000 was established in 2014 in response to the over-representation of Victorian Aboriginal children in out-of-home care. It examined the individual circumstances of 980 children and was co-chaired by the Secretary of DHHS and the Commissioner for Aboriginal Children and Young People.

<sup>8</sup> Goal 4.1: State of Victoria, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, Victorian Government, 2018.

<sup>9</sup> See Chapter 3 'Overview of the Victorian youth justice system' for an explanation of the dual track system.

<sup>10</sup> From 1 February 2021 the Department of Health and Human Services (DHHS) was split into 2 new departments: the Department of Health, and the Department of Families, Fairness and Housing (DFFH). As the Taskforce and inquiry

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Training (DET) and Victoria Police, and those agencies were responsible for completing relevant parts of the survey. Written consent was obtained from children and young people for the sharing and use of their information.

### Limitations

The Commission notes the following significant limitations in the data obtained from the Taskforce case file review:

- The survey completion rate was in some cases and regions considerably lower than expected.
- In many cases, questions were answered 'unknown' or 'unable to ascertain from CRIS' or left blank, or information was internally inconsistent or contradictory.<sup>11</sup>
- In some cases, entire sections of the survey were left blank.
- CRIS is updated continuously and information extracted from it is only representative of one point in time.

The poor completion rate may in part be attributable to the cumbersome nature of CRIS and the difficulty of extracting information from it, and/or the design and length of the survey. As discussed in Chapter 6.1 'Collaboration', it may also reflect a lack of information known and recorded about children and young people involved with Youth Justice. The completed surveys also included significant amounts of free text from which it was difficult to extract data. As a result, answers to some questions were deemed unreliable and the Commission excluded these.<sup>12</sup>

were undertaken prior to this change, this report refers to DHHS in relation to the work of the Taskforce and the inquiry. However, relevant recommendations in this report are directed to DFFH or the Department of Health.

<sup>11</sup> Quantitative data analysis excluded these responses. In addition, 'not applicable' answers were excluded in some cases based on the structure of the relevant question or group of questions.

<sup>12</sup> If more than 25% of a question was unanswered, it was deemed unreliable and excluded.

### Taskforce case planning sessions ('private sessions')

The Taskforce conducted confidential individual case planning sessions (referred to throughout the Taskforce as 'private sessions') for 69 Aboriginal children and young people under Youth Justice supervision across Victoria.<sup>13</sup> These children and young people were identified by Youth Justice from the case file review as having particularly complex needs. Children and young people were eligible for a Taskforce case planning session if they were aged 10 to 14 years, or older if they were female, living in out-of-home care, had previously been in custody, or had any history of self-harm or attempted suicide. In addition, some children and young people were selected based on referrals from Aboriginal community members, Koorie Engagement Support Officers and Regional Aboriginal Justice Advisory Committee (RAJAC) Executive Officers. The consent of each child and young person was obtained before the case planning session was conducted.

Case planning sessions were held for children and young people ranging in age from 11 to 22 years (Table 1.1). Twenty-two per cent (n = 15) of the children and young people for whom a case planning session was held identified as female. The remainder (n = 54) identified as male.

**Table 1.1** Taskforce case planning session participants by age at time of session

Age group	No.	%
11–14	8	12%
15–17	39	57%
18+	22	32%
<b>Total</b>	<b>69</b>	<b>100%*</b>

\* Percentages may not add up to 100 due to rounding.

Sixty-two per cent of the case planning sessions (n = 43) were held in regional locations (Table 1.2).

<sup>13</sup> Subsequently, one young person withdrew from the Taskforce process.

**Table 1.2** Taskforce locations and case planning sessions

Regional Aboriginal Justice Advisory Committee region*	Taskforce location	Number of case planning sessions
Barwon South West	Geelong	9
	Warrnambool	1
Gippsland	Bairnsdale	2
	Morwell	6
Grampians	Ballarat	4
Hume	Shepparton	9
	Wodonga	2
Loddon Mallee	Bendigo	4
	Mildura	6
Northern Metropolitan	Northcote	5
Southern Metropolitan	Dandenong	12
Western Metropolitan	Melton	6
Eastern Metropolitan	Kilsyth	3
<b>Total</b>	<b>13</b>	<b>69</b>

\* Regions are based on the 9 Regional Aboriginal Justice Advisory Committee (RAJAC) regions rather than DJCS regions, as the plans developed during the Taskforce regional forums (described later in this chapter) are intended to form part of the RAJAC justice plans.

Each session was co-chaired by the Commissioner for Aboriginal Children and Young People, the Director of Aboriginal Youth Justice and the DJCS Regional Director, and attended by key service providers who were involved in, or should have been involved in, the young person's care or supervision. This included Youth Justice, Child Protection and DET staff, youth, disability and housing workers, representatives from the local ACCO or other Aboriginal organisation, and RAJAC Chairs and Executive Officers.

The case planning sessions adopted a strengths-based approach by focusing on the strengths, aspirations and goals of each child and young person.<sup>14</sup>

The purpose of each case planning session was to discuss and identify key supports and actions required for the child or young person, by considering factors

<sup>14</sup> See 'How we speak about Aboriginal children and young people' later in this chapter for a brief discussion of strengths-based approaches.

driving offending behaviour, actions that had previously been taken to support the young person, barriers to success and alternatives for providing support. The sessions also focused on how agencies and organisations could work together more effectively to meet the needs of each child or young person.

A Taskforce case plan was developed for each child or young person containing various actions that were delegated to attendees at the session. Progress on actions was reviewed by the Commission and DJCS 4 weeks and 8 weeks after the session. In June 2020, approximately 6 months after the case planning process concluded, an audit of the progress on actions was undertaken by DJCS. This audit found that 70% of actions had been completed.<sup>15</sup> Youth Justice has indicated that it will continue to work on actions from the Taskforce plans;<sup>16</sup> however, there is no specific external monitoring role in relation to this work. Of 66 children and young people who were under Youth Justice supervision at the time of their Taskforce case planning session, 33% were in the youth justice system on 6 April 2021.

A limitation of data from the case planning sessions is that they involved discussions about children and young people at a specific point in time, so they do not necessarily constitute a comprehensive record of all issues relevant to those children and young people.

## Taskforce regional forums

The Taskforce travelled to 9 regions and conducted 13 forums co-chaired by the Commissioner for Aboriginal Children and Young People and senior DJCS representatives.<sup>17</sup> Regional forums were attended by local Elders, the RAJAC Chair and Executive Officer,<sup>18</sup> local ACCO staff, the Victorian Aboriginal Child Care

<sup>15</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>16</sup> DJCS advised the Commission that the Director, Aboriginal Youth Justice monitors the progress of remaining actions from Taskforce case planning sessions as part of her role. In addition, children and young people for whom a Taskforce case planning session was held will be reviewed through new Aboriginal Case Management Review Panels (see Chapter 6.1 'Collaboration' for a discussion of these).

<sup>17</sup> Barwon South West (Geelong and Warrnambool), Eastern Metropolitan, Gippsland (Morwell and Bairnsdale), Grampians (Ballarat), Hume (Shepparton and Wodonga), Loddon Mallee (Bendigo and Mildura), Northern Metropolitan, Southern Metropolitan and Western Metropolitan.

<sup>18</sup> Regional Aboriginal Justice Advisory Committee representatives were not available to attend every regional forum.

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Agency and other Aboriginal organisations, senior representatives of DJCS, Koori Youth Justice workers, Aboriginal Liaison Officers and other Youth Justice staff, Child Protection and other DHHS staff, Koorie Engagement Support Officers and other DET staff, relevant non-Aboriginal community service organisations from the region, representatives of Victoria Police, court staff and local legal practitioners.

The objectives of the regional forums were to:

- review each region based on the results of the Taskforce case file review and any themes arising from case planning sessions
- highlight good practice
- identify needs, gaps and opportunities for process and practice improvements
- bring multiple agencies together to facilitate improved and positive outcomes for Aboriginal children and young people in the youth justice system.

Workshops were convened at each regional forum to facilitate attendees devising a regional action plan. Regional action plans contained key youth justice-related actions that were identified as important to support children and young people.

## The Commission's systemic inquiry

On 15 May 2019, the Commission established a systemic inquiry under section 39 of the *Commission for Children and Young People Act 2012 (Vic)* titled *Our youth, our way: systemic inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system*. The terms of reference for the inquiry were:

1. to identify systemic issues contributing to the over-representation of Aboriginal children and young people in the youth justice system<sup>19</sup>

<sup>19</sup> We acknowledge that many people dispute the use of the word 'justice' in the phrases 'criminal justice system' and 'youth justice system', and that some have argued that a more accurate description would be the 'criminal *injustice* system' (G Zdenkowski, C Ronalds and O Richardson (eds), *The criminal injustice system*, Pluto, Sydney, 1987). Given the significant over-representation of Aboriginal children and young people in the youth justice system, it is clear that many do not experience 'justice' at the hands of the system. While acknowledging the complexity and contested nature of these terms, we use 'youth justice system' throughout this report to distinguish it from the adult system. In this report

2. to examine the lived experiences of Aboriginal children and young people in the youth justice system
3. to determine the extent to which youth justice services, policy, practice and facilities:
  - i. recognise and uphold the human rights of Aboriginal children and young people
  - ii. are culturally safe and responsive to the unique needs of Aboriginal children and young people
  - iii. address broader factors that may contribute to offending behaviours, including but not limited to intergenerational trauma, child protection intervention, disconnection from culture, Country and community
  - iv. address the over-representation of Aboriginal children and young people
  - v. work together with the Department of Health and Human Services (Child Protection) to provide integrated support for Aboriginal children and young people who are under the statutory supervision or custody of Youth Justice and are Child Protection clients, especially those in out-of-home care
4. to determine the extent to which existing youth justice frameworks progress self-determination for Aboriginal communities by allowing them to provide community-led solutions to youth offending and recidivism.

Building on the data and findings of the Taskforce, the inquiry sought to focus on the systemic drivers of Aboriginal over-representation in the youth justice system and the lived experiences of Aboriginal children and young people and their families and communities.

## Methodology

The inquiry's methodology had 5 key components (described in more detail below):

- consultation with Aboriginal children and young people
- consultation with family members and members of the Aboriginal community
- consultation with Aboriginal organisations, service providers, Youth Justice staff and others who work with Aboriginal children and young people

'youth justice system' refers not only to services provided by Youth Justice, but more broadly, to all criminal legal processes applying to children and young people in Victoria, including police and Children's Court processes.

- analysis of data obtained from DJCS, DHHS, DET, the Children’s Court and other agencies
- analysis of data obtained through the Commission’s monitoring work and the Independent Visitor Program (IVP).

In addition, the Commission:

- undertook a literature review of international approaches to youth justice, particularly in relation to First Nations children and young people
- analysed relevant legislation, policy and practice manuals and guidelines, previous reviews relating to youth justice and human rights requirements
- undertook a public consultation process, receiving 8 written submissions from Aboriginal, human rights and legal organisations, and one from an individual (see Appendix 2 for a list of submissions)
- visited New Zealand in February 2020 with senior representatives of DJCS to gain deeper insight into various aspects of its youth justice system.

### Consultation with Aboriginal children and young people

The Commission interviewed 93 Aboriginal children and young people between the ages of 11 and 25 years (Table 1.3). This group comprised children and young people who were included in the Taskforce, and other Aboriginal children and young people who had been involved in or left the youth justice system in the previous 12 months. The Commission also met with 15 Aboriginal youth groups to facilitate individual consultations with Aboriginal children and young people. We obtained the written consent of all children and young people consulted for the inquiry.

**Table 1.3** Consultation participants by age at time of interview

Age group	No.	%
11–14	11	12%
15–17	47	51%
18+	35	38%
<b>Total</b>	<b>93</b>	<b>100%*</b>

\* Percentages may not add up to 100 due to rounding.

Of the 93 children and young people we consulted, 75% (n = 70) identified as male and 25% (n = 23) identified as female. Eighty-four per cent (n = 78) of the children and young people interviewed lived in regional

areas, and 16% (n = 15) lived in metropolitan Melbourne.

Interviews were led by Aboriginal staff where possible and primarily conducted in person. In a small number of cases, they were conducted via video link. Some consultations were undertaken in groups. Children and young people were consulted both in the community and in custody. Twenty-eight children and young people were in Parkville or Malmsbury youth justice centres at the time of their interview and 2 were in adult custodial facilities. The remainder were interviewed in the community.

Every consultation began with the use of a ‘gathering circle’ engagement tool (Figure 1.1). The gathering circle is a symbol used by Aboriginal communities to depict the gathering of people around a campfire. It was chosen to represent safety in our conversation and connection to culture. Through this tool, each young person was asked about:

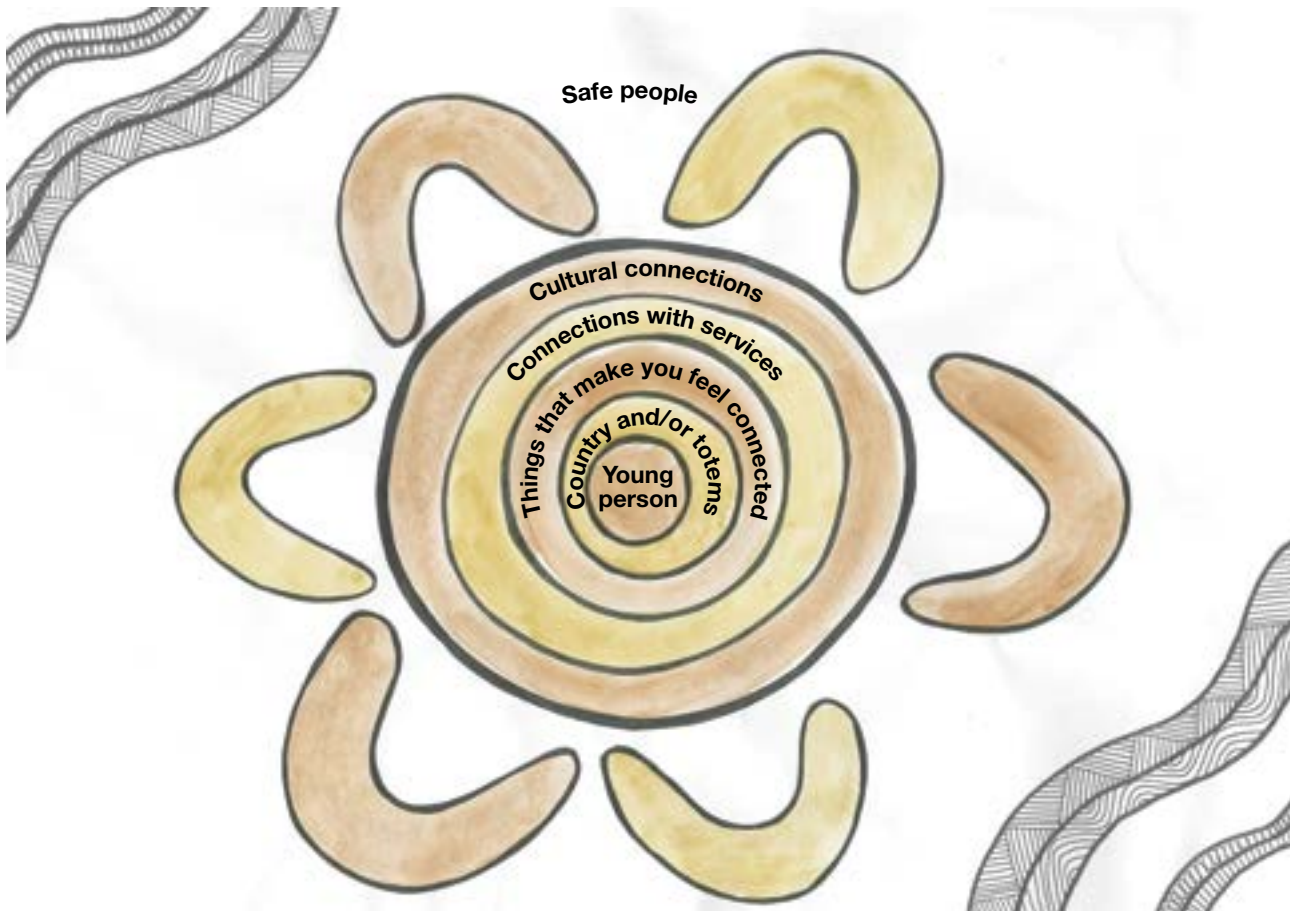
- who they are
- how they connect to culture
- what their service connections were (in community or in custody)
- who the safe people around them were (who they would want sitting around their campfire).

A hard copy of their gathering circle was given to each young person at the end of their consultation as a visual representation of the support they had around them and what kept them strong in culture.

Culturally significant objects, such as smoking bowls, clap sticks and *marn grook* (a possum skin ball), were also used to encourage a sense of connection to culture and community, and to create a safe space for discussion.

Commission staff invited the young person to describe their experience of the youth justice system, focusing on the aspects that were most important to them. Where necessary, staff used prompts based on key themes (for example, the young person’s experience with bail, court, custody and their case manager). This format meant that not every young person was asked the same questions, and consequently, that not every young person spoke about the same issues. This could be viewed as a limitation of the methodology.

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**Figure 1.1** Inquiry gathering circle engagement tool

In adopting this approach, the Commission sought to ensure cultural safety, comply with best practice for trauma-informed interviewing of children and young people, and respect the following youth participation principles:

- young people are experts in their own lives and experiences
- young people's participation in civil and community life is a human right
- youth participation helps address power imbalances in decision-making.<sup>20</sup>

This report draws heavily on the voices and experiences of the children and young people consulted for the inquiry.<sup>21</sup> Quotations from children and young people, and stories and case studies based

on their experiences have been de-identified by changing names and removing identifying features. In some case studies, identifying features have been altered rather than removed.

### **Consultation with families and Aboriginal community members**

The Commission interviewed 6 family members of Aboriginal children and young people involved in the youth justice system. These consultations were guided by the issues that family members wished to raise. We also spoke to family and community members at Taskforce regional forums and at other community engagement events.

The Commission also consulted with a broader group of respected Aboriginal community members and Elders to capture their voices and aspirations for Aboriginal children and young people.

<sup>20</sup> Youth Affairs Council Victoria, *Youth participation*, Youth Affairs Council Victoria website, accessed 27 August 2020.

<sup>21</sup> Some matters raised by children and young people and their families during the inquiry may constitute reportable allegations under the Victorian Reportable Conduct Scheme administered by the Commission under the *Child Wellbeing and Safety Act 2005* (Vic). The report does not identify these.



## Consultation with Aboriginal organisations and other stakeholders

The Commission undertook more than 70 consultations with workers, services and other youth justice system stakeholders throughout Victoria. These included ACCOs and other Aboriginal organisations, community service organisations, community groups, RAJAC Chairs and Executive Officers, Koori Youth Justice workers, Youth Justice workers and youth workers (see Appendix 1 for a list of organisations consulted). The Commission travelled across the state, including to Horsham, Echuca, Swan Hill, Lakes Entrance, Orbost and Portland as part of this consultation process.

## Analysis of data from Youth Justice and other agencies

The Commission sought and obtained quantitative data from Youth Justice (DJCS), DHHS, DET, the Children's Court, the Crime Statistics Agency (CSA), and the Victorian Social Investment Integrated Data Resource (VSIIDR) on Aboriginal children and young people involved in the youth justice system.

Despite the assistance of these agencies, the Commission was unable to obtain all relevant data and information necessary to support a robust analysis of every systemic issue affecting Aboriginal children and young people in the youth justice system. Limitations included:

- information on Aboriginal 'crossover' children and young people involved with both Youth Justice and Child Protection being spread across DJCS and DHHS and not readily accessible in CRIS
- a very high proportion of Children's Court data with an unknown indicator for Aboriginal status
- an absence of comprehensive data on Aboriginal and non-Aboriginal children and young people who are refused access to Children's Court diversion
- the lack of an Aboriginal identifier in Youth Justice's custodial visits database.

These issues are examined in Chapter 4.2 'Data on Aboriginal children and young people in the youth justice system'.

## Data from the Commission's monitoring work

The Commission drew on data from its regular monitoring of youth justice centres. This includes

reviewing reports of serious incidents in youth justice centres,<sup>22</sup> daily lockdown reports and reports from the Commission's IVP.<sup>23</sup>

## How we speak about Aboriginal children and young people

The way we speak to and about Aboriginal children and young people matters. Discourse 'shapes what can and cannot be considered "truth", and influences group and individual relationships accordingly'.<sup>24</sup> 'Deficit thinking' or 'deficit discourse' is a mode of thinking that frames and represents Aboriginal people in a reductionist narrative of negativity, deficiency and failure.<sup>25</sup> Such thinking has been shown to reinforce negative stereotypes and undesired behaviours, inhibit the use of alternative solutions, limit the provision of opportunities that facilitate growth and thriving, and create barriers to improving outcomes.<sup>26</sup> It can lead to

<sup>22</sup> Section 60A of the *Commission for Children and Young People Act 2012* (Vic) requires the Secretary to provide the Commission with information about adverse incidents occurring in youth justice centres. DJCS and the Commission's agreed protocols define 'adverse incidents' as Category 1 incidents, and specified Category 2 incident types, including allegations of assault by Victoria Police reported to Youth Justice and incidents that require a child to be taken offsite for medical treatment.

<sup>23</sup> The Independent Visitor Program enables volunteer visitors to observe conditions and to hear directly from children and young people about issues affecting them at both Parkville and Malmsbury youth justice centres. Volunteers conduct monthly visits, and the program aims to ensure that Aboriginal children and young people are visited by an Aboriginal Independent Visitor. Issues identified by children and young people are raised with relevant senior Department of Justice and Community Safety staff or the Minister. Independent Visitors also conduct exit interviews with children and young people being released from youth justice custody.

<sup>24</sup> W Fogarty, H Bulloch, S McDonnell and M Davis, *Deficit discourse and Indigenous health: how narrative framings of Aboriginal and Torres Strait Islander people are reproduced in policy*, The Lowitja Institute, Melbourne, 2018, accessed 17 August 2020, p 2.

<sup>25</sup> Fogarty et al., *Deficit discourse and Indigenous health*.

<sup>26</sup> W Fogarty, M Lovell, J Lagenberg and M-J Heron, *Deficit discourse and strengths-based approaches: changing the narrative of Aboriginal and Torres Strait Islander health and wellbeing*, The Lowitja Institute, Melbourne, 2018, accessed 17 August 2020, p 4. See also Y Paradies, R Harris and I Anderson, *The impact of racism on Indigenous health in Australia and Aotearoa: towards a research agenda*, Discussion paper no. 4, Cooperative Research Centre for Aboriginal Health, Darwin, 2008, accessed 17 August 2020; N Priest, Y Paradies, P Stewart and J Luke, 'Racism and health among urban Aboriginal young people', *BMC Public Health*, 2011.

## 1. About this report

Aboriginal people themselves being seen as the problem.<sup>27</sup>

'Strengths-based approaches' are considered to provide an alternative to deficit discourse.<sup>28</sup> This concept brings together a range of practice strategies which 'have in common a focus on the generally untapped gifts, positive attributes, and under-developed capabilities' of people, families and communities who are seeking help for problems.<sup>29</sup> Throughout the inquiry and this report, the Commission has sought to avoid deficit discourse by focusing on the strengths of Aboriginal children and young people and their families and communities.

## Scope of findings and recommendations

Section 39 of the Commission for Children and Young People Act gives the Commission the power to inquire into 'child protection or youth justice services provided, or omitted to be provided, by the Secretary'.<sup>30</sup> Much of this report is focused on the services provided by Youth Justice and Child Protection. However, children and young people consulted for the inquiry shared their experiences of *all* aspects and stages of the youth justice system, including police contact, arrest, cautioning and Children's Court proceedings,<sup>31</sup> as well as their involvement with Child Protection and Youth Justice. These experiences provide highly valuable insights into the operation of the entire youth justice system and the drivers of over-representation. In addition, other parts of the service system and other areas of government, such as education and health, affect children and young people's interaction with the

youth justice system, and these areas are also addressed in this inquiry.<sup>32</sup>

Police are typically the first and primary point of entry for children and young people into the youth justice system. Police practice is thus inseparable from a consideration of the factors that contribute to the over-representation of Aboriginal children and young people in the youth justice system. However, given the scope of the Commission's statutory inquiry powers, we are unable to make recommendations directed to police. Accordingly, in Chapter 11 'Entering the youth justice system' we describe what young people told us about their experiences with police, and recommend further work to address the serious concerns highlighted by those experiences.

While the Commission's statutory inquiry powers also do not allow us to make recommendations directed to the Children's Court, we do have the power to make recommendations to the Victorian Government regarding matters affecting the court, such as legislative reform concerning the youth justice system, or the funding of particular programs or initiatives.<sup>33</sup> We therefore make recommendations in Chapter 12.3 'Court' and elsewhere in the report directed to the government to improve the experiences of Aboriginal children and young people in the Children's Court.

## Structure of this report

This report brings together evidence gathered through the inquiry and the Taskforce case file review, case planning sessions and regional forums. Given the importance of Aboriginal children and young people's lived experiences, and the voices of Aboriginal communities, the report gives more weight to this qualitative evidence than it does to the case file review.

**Chapter 2: Our way** describes the Aboriginal community's vision for Aboriginal children and young

<sup>27</sup> Fogarty et al., *Deficit discourse and strengths-based approaches*.

<sup>28</sup> KA Thurber et al., 'Strengths-based approaches for quantitative data analysis: a case study using the Longitudinal Study of Indigenous Children', *SSM – Population Health*, 2020, 12:100637. See also Chapter 6.2 'Relationships with workers' for a discussion of deficit discourse.

<sup>29</sup> L Nissen, 'Bringing strength-based philosophy to life in juvenile justice', *Reclaiming Children and Youth*, 2006, 15(1):40–46, p 41.

<sup>30</sup> Commission for Children and Young People Act, s 39(2)(b).

<sup>31</sup> In the course of consultations for the inquiry, some young people aged 18 years or older spoke both about their earlier experiences in the Children's Court and more recent experiences in adult courts. Most quotations in this report relate to the Children's Court.

<sup>32</sup> Section 39(2)(b) of the Commission for Children and Young People Act gives the Commission the power to inquire into 'services provided, or omitted to be provided, by a community service, health service, human service or school'.

<sup>33</sup> Section 9 of the Commission for Children and Young People Act gives the Commission the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under the Act. These functions include providing advice to Ministers, departments, health services and human services about policies, practices and provision of services relating to the safety or wellbeing of vulnerable children and young people (s 8(1)(a)), and promoting the interests of vulnerable children and young people in the Victorian community (s 8(1)(b)).

people in Victoria as it relates to the youth justice system.

**Chapter 3: Overview of the Victorian youth justice system** provides an overview of the Victorian youth justice system and Aboriginal children and young people in Victoria, and the current legislative and policy context for the inquiry.

Chapters 4 to 13 examine the experiences of Aboriginal children and young people in relation to various aspects of the youth justice system and related systems. Each chapter (other than Chapter 11) begins with a description of the relevant parts of the *Our way* vision, and a young person's story. Each of these chapters includes findings and recommendations.

**Chapter 4: A self-determined youth justice system** considers the changes necessary to achieve greater Aboriginal control over the structure, design and delivery of the youth justice system. It also examines gaps in data on Aboriginal children and young people in the youth justice system.

**Chapter 5: A just & age-appropriate system** recommends changes to the structure of the youth justice system to deliver more just outcomes for Aboriginal children and young people, namely increasing the minimum age of criminal responsibility and the age at which children can be incarcerated, and shifting the focus of the system from late, crisis-driven and harmful responses to effective early intervention and prevention.

**Chapter 6: A child-centred system** focuses on inter-agency collaboration, relationships between Aboriginal children and young people and their workers, youth participation, and the responsiveness of the youth justice system to the individual needs of Aboriginal children and young people. It makes recommendations directed at creating a more child-centred system.

**Chapter 7: Family, community & culture** considers a range of issues related to Aboriginal children and young people's connection with family, community and culture while in contact with the youth justice system. It includes an examination of Youth Justice practices in relation to the involvement of family, Aboriginal young people's own caring responsibilities, and the facilitation of meaningful connections to culture for Aboriginal children and young people under Youth Justice supervision.

**Chapter 8: A caring & stable home** examines the 'crossover' between the child protection and youth justice systems and the criminalisation of Aboriginal children and young people in out-of-home care. It recommends changes to improve the ways in which the child protection system cares for Aboriginal children and young people involved in the youth justice system, and to address the housing needs of Aboriginal children and young people who are involved with Youth Justice.

**Chapter 9: Wellbeing** examines the social and emotional wellbeing of Aboriginal children and young people in the youth justice system, with a focus on mental health and substance use. It recommends the establishment of healing centres and the expansion of culturing mentoring programs for Aboriginal children and young people across Victoria.

**Chapter 10: Education & learning** examines Aboriginal children and young people's disengagement from mainstream education, their desire to be connected to culture through education, DET's Koorie Education Workforce, and education in custody.

**Chapter 11: Entering the youth justice system** summarises the views and experiences of Aboriginal children and young people concerning their interactions with police.

**Chapter 12: Pathways out of the youth justice system** considers issues arising from the experiences of Aboriginal children and young people in the youth justice system following police contact, from bail and remand, through diversion and court proceedings, to community supervision by Youth Justice.

**Chapter 13: Safe custody** examines the experiences of Aboriginal children and young people in youth justice custody and transitioning from custody.



# Our way 2

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*The gathering circle represents the need for men and women to come together and work on protecting future generations. The coolamons represent the young people who must be looked after and cared for. – Young people of Horsham & Ballarat, Jardwadjali, Wotjobaluk & Wathaurong Country*

# Our way

*Our youth, our way is a chance for us as a state and community to adhere to Aboriginal knowledge and practices for our people and young people. For too long, western systems and punitive approaches have further harmed our young mob and most vulnerable. This inquiry shines a light on the opportunity to embed cultural ways of business and change the way business is done from a youth justice perspective to one that truly diverts and supports our young mob in their communities. – Executive Officer, Koorie Youth Council*

This report is about reimagining justice for Aboriginal children and young people in Victoria. It sets out a vision for what could be, not just another iteration of what has been since the beginning of colonisation. It represents a hopeful possibility for a new way, a way that aligns with Aboriginal ways – *our way*, as the Aboriginal community would say – to respond to Aboriginal children and young people who find themselves in, or who are at risk of, contact with the youth justice system.

Throughout the inquiry, the Commission heard about the everyday experiences of Aboriginal children and young people in the youth justice system. It also heard aspirations for what the youth justice system and government more broadly could achieve and ideas about how to achieve this. In particular, the Aboriginal community told the Commission how to create responses for Aboriginal children and young people that are grounded in Aboriginal ways of *knowing, being and doing*.<sup>34</sup>

<sup>34</sup> K Martin and B Miraboopa, 'Ways of knowing, being and doing: a theoretical framework and methods for Indigenous and Indigenist re-search', *Journal of Australian Studies*, 2003, 27(76):203–214, pp 209–211.

Based on what the Commission heard, this report proposes a set of foundational principles to strengthen Aboriginal children and young people's connection to culture, family, community and Country. This approach reflects the hope, dedication and promise of Aboriginal community-led programs already creating positive changes in communities around the state. It is driven by what the Commission learned from listening to Aboriginal children and young people, their families, Elders and community members, Aboriginal service providers and other youth justice system stakeholders.

## Messages from Aboriginal children and young people

*The kangaroo tracks are there because if you watch one, it never jumps backwards. I'm also jumping forward and making positive changes in my life. – Ted, 15, Northern Metropolitan region*

During the inquiry, Aboriginal children and young people around Victoria shared their experiences of contact with the youth justice system. Their voices shaped the findings in this report.

When the Commission visited regional locations, we met with groups of Aboriginal children and young people who shared stories about their desire to connect with culture, to be heard, to feel protected and to move forward. They shared symbols of gathering places and spoke about connection with family and community. They talked about needing to feel safe, pointing to symbols that represented shields and spears for protection, the stars and Elders watching over them. They referred to kangaroo tracks to symbolise change and moving forwards, and to water symbols to signify cleansing and washing away anger and troubles.

Symbols selected during these consultations have been burned on to a possum skin cloak to be presented to the Victorian Parliament together with this

## 2. Our way

report. For tens of thousands of years, possum skin cloaks have ‘protected First Peoples from cold and rain, mapped Country, told, and held, stories’.<sup>35</sup> Prior to colonisation, a person’s possum skin cloak was intimately entwined with their life story. Cloaks are ‘markers of identity’ and chronicle connections to Country and to family.<sup>36</sup> The cloak accompanying this report holds the stories of the Aboriginal children and young people who informed the findings of this inquiry – their pain, their hope and their vision for a new way of doing justice.

Each chapter in this report begins with an image of a possum skin from a particular region and describes the story and meaning of the artwork designed by young people.

### Aboriginal community voice

*A lot of the programs don’t look at our culture, our ceremony, our law. Our culture and language are missing. They all need that connection, whether they come from that Country or not. It’s important. Otherwise, they will be lost to the system. All of them talk about what they learned inside – they say they feel safe inside... I say no... feel safe in the community... feel safe through doing things our way. – Elder*

The Commission does not speak on behalf of Aboriginal communities. However, the Commission is dedicated to promoting Aboriginal voices and defers to the knowledge and expertise of Aboriginal people in shaping responses to the issues impacting them and their communities.

*It is important to know what our notion of ‘our way’ is. Having government programs just passed on to ACCOs isn’t ‘our way’. Just putting an Aboriginal flag on something doesn’t mean it’s right culturally. – Co-Chair, Aboriginal Children & Young People’s Alliance*

*... we are stronger together, we nurture our culture and have responsibilities to Country and community that make our place important and impossible to be without. If we don’t support young people to see themselves as a vital link on the continuum of our culture, we cannot be surprised when they are lost to us. – RAJAC Chair*

Throughout the Taskforce and inquiry, Aboriginal community members consistently expressed the following sentiments:

- Aboriginal communities care deeply for their children and young people and hold shared obligations for their development and protection
- there is a collective desire that Aboriginal children and young people follow Aboriginal ways of *knowing, being and doing*, and that they be taught and find pride and strength in Aboriginal culture, identity, history and spirituality<sup>37</sup>
- Aboriginal children and young people should be supported to fulfil their potential through Aboriginal methods
- Aboriginal children and young people should be provided with Aboriginal ways of healing and rehabilitation when they need it
- Aboriginal people have the right to self-determine their political status, and their economic, social and cultural development.<sup>38</sup>

*Our youth, our way* was chosen as the name of this inquiry because it affirms these sentiments. It is these

<sup>35</sup> J Hinchliffe, *The timeless and living art of possum skin cloaks*, Museums Victoria website, 2019, accessed 9 February 2021.

<sup>36</sup> Hinchliffe, *The timeless and living art of possum skin cloaks*.

<sup>37</sup> See also UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, A/RES/61/295, 2007, articles 13 and 14.

<sup>38</sup> This is reflected in article 1 of both the International Covenant on Civil and Political Rights (UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol 999, p 171, 1966) and the International Covenant on Economic, Social and Cultural Rights (UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol 993, p 3, 1966).



sentiments and the experiences of the Aboriginal people who expressed them that have informed the foundational principles and recommendations in this report.

## A new relationship between the Victorian Government and Aboriginal communities

The disproportionate criminalisation of Aboriginal children and young people in Victoria has deep roots in a history of colonisation, dispossession, stolen children and ongoing oppression.<sup>39</sup> Contact with the youth justice system has fundamentally altered the transition to adulthood for generations of Aboriginal children and young people. The Commission found that the ongoing criminalisation of Aboriginal children and young people seriously impairs the ability of many of these children and young people to live healthy and productive lives. The negative impact of these interventions ripples out to communities and across generations.

The Commission is proud that Victoria is examining inequalities in justice outcomes, reckoning with the hard and shameful truths of this state's history and implementing an agenda of Aboriginal self-determination to set it right. The Commission welcomes the establishment of the Yoo-rook Justice Commission to investigate historical and ongoing injustices against Aboriginal Victorians across all areas of life.<sup>40</sup> We also acknowledge the commitment of Youth Justice to furthering self-determination in the youth justice system and reducing the over-representation of Aboriginal children and young people.

Nevertheless, efforts to reform or improve the youth justice system along the margins – for example, through a new case management framework and expanded program offerings – are, in isolation, inadequate to shift the weight of this history and its ongoing impacts.

<sup>39</sup> See for example State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, pp 1, 26, 49; Department of Health and Human Services (DHHS), *Balit Murrup: Aboriginal social and emotional wellbeing framework 2017–2027*, DHHS, Victorian Government, 2017, accessed 9 February 2021.

<sup>40</sup> Acting Premier, Minister for Aboriginal Affairs and Co-chairs of First People's Assembly of Victoria, *Joint statement on Victoria's Truth and Justice process* [media release], 9 March 2021, accessed 9 March 2021.

There is a heightened political consciousness in Victoria now that demands a new approach to youth justice responses for Aboriginal children and young people. This is the culmination of significant advocacy from the Koorie Youth Council, including its groundbreaking *Ngaga-dji* project that was based on listening to, valuing and acting on the voices of Aboriginal children, together with tireless advocacy and leadership from the Aboriginal Justice Caucus, negotiation and implementation of the Aboriginal Justice Agreement, the advancement of Treaty negotiations between the Victorian Government and the First Peoples' Assembly of Victoria, and the establishment of a truth and justice process to formally recognise historical wrongs and ongoing injustices against Aboriginal people.

The recommendations set out in this report draw on the significant and ongoing work of the Aboriginal community on these issues. The Commission's recommendations share the Aboriginal Justice Agreement's vision for 'an equitable justice system that is shaped by self-determination'<sup>41</sup> and align with the following principles developed by the Aboriginal Justice Caucus:<sup>42</sup>

1. **Prioritise self-determination:** Always strive to transfer power, decision-making and resources to the Aboriginal community.
2. **Support cultural strengthening:** Enhance positive connections to family, community and kin to build resilience to setbacks and develop strategies for dealing with hardships.
3. **Be strengths-based:** Respect and honour the strengths and resilience of Aboriginal people, families and communities and build upon these.
4. **Be trauma-informed:** Employ healing approaches that seek to understand and respond to trauma and its impact on individuals, families and communities.
5. **Be restorative:** Aim for the restoration of victims, offenders and communities and repair the harm resulting from the crime, including harm to relationships.
6. **Use therapeutic approaches:** Recognise that at all stages of involvement with the justice system there is potential to make a positive impact on a person's life.

<sup>41</sup> State of Victoria, *Burra Lotjpa Dungaludja*, pp 8–9.

<sup>42</sup> State of Victoria, *Burra Lotjpa Dungaludja*, p 28.

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7. **Respond to context:** Recognise and adapt to meet the specific needs and circumstances of people, families and communities.
8. **Be holistic:** Address the inter-related risk factors for offending in a holistic manner, such as substance abuse, housing and unemployment.
9. **Protect cultural rights:** Respect the distinct and unique rights of Aboriginal people.
10. **Address unconscious bias:** Identify and respond to systemic racism and discrimination that persists in the justice system.

Work towards achieving Aboriginal self-determination is creating a new relationship between the Victorian Government and Aboriginal communities. This process has the capacity to achieve improved outcomes and long-term generational change for Aboriginal children and young people in contact with the youth justice system. Realising these aspirations requires a deliberate and systematic shift towards creating a system that values and promotes greater involvement of Aboriginal communities in decision-making, service design and delivery.

## A reimagined system

*Given our cultural breakdown, how do we give [Aboriginal children and young people] responsibility for something, and give them control over their lives and have a contribution to their community. The community has an obligation to give them a sense of responsibility and ownership.*

*– Director, Korin Gamadji Institute*

This report sets out the foundational principles on which a new youth justice system, and a new ethos of justice for Aboriginal children and young people, should be based. These principles are captured in a series of vision statements that correspond to the themes covered in Chapters 4 to 13 of this report. They are summarised below.

### Chapter 4 A self-determined youth justice system

Aboriginal communities have the ability to determine and influence how their children and young people are treated in the youth justice system. Aboriginal community-led, holistic and therapeutic responses support Aboriginal children and young people to stay in their communities and out of the youth justice system.

### Chapter 5 A just & age-appropriate system

Aboriginal children and young people are safe, happy and strong in their culture and communities, and supported to reach their potential and thrive. Early intervention and prevention are prioritised and children and young people's needs are met when they first arise by a coordinated youth support system. For those who come into contact with the youth justice system, the first contact is the last. No Aboriginal child or young person is incarcerated.

## Chapter 6 A child-centred system

A child-centred youth justice system that works effectively and collaboratively with related systems to meet the needs of Aboriginal children and young people and enable them to reach their potential. This system recognises and responds to the unique and specific needs of every Aboriginal child and young person who comes into contact with it. Aboriginal children and young people are listened to and involved in all decisions affecting them.

## Chapter 7 Family, community & culture

The youth justice system recognises the centrality of family, community and culture to the wellbeing and identity of Aboriginal children and young people. Families and communities are supported to nurture Aboriginal children and young people in their culture.

## Chapter 8 A caring & stable home

Aboriginal children and young people have a safe, stable and caring home to support them while they grow up. Aboriginal families and caregivers are recognised and supported as the experts in raising their children and young people safe and secure in their culture and community. All Aboriginal young people have a safe and stable place to live as they move to independence.

## Chapter 9 Wellbeing

Every Aboriginal child and young person's wellbeing is prioritised and nurtured. Aboriginal approaches to social and emotional wellbeing and healing are central to every intervention. This includes recognition of Aboriginal knowledge systems that incorporate holistic and interconnected views of health and wellbeing. Aboriginal children and young people have access to healing centres to help address trauma, substance use and mental health concerns.

## Chapter 10 Education & learning

Opportunities for education and learning are inclusive and responsive to the strengths, needs and aspirations of each Aboriginal child and young person. Education providers respect and value Aboriginal culture and assist Aboriginal children and young people to feel safe and achieve their potential.

## Chapter 11 Entering the youth justice system

Interactions with police are minimal and where they do occur, they are culturally safe and age-appropriate, and employ the least restrictive interventions possible.

## Chapter 12 Pathways out of the youth justice system

Aboriginal children and young people in the youth justice system have access to meaningful services to help them address any support needs and to facilitate pathways out of the system. Opportunities for diversion are maximised and Aboriginal children and young people are supported while on bail or community sentencing orders. Aboriginal children and young people have every opportunity to live a healthy and happy life outside of the youth justice system, with the support and encouragement of justice agencies and the broader community.

## Chapter 13 Safe custody

Until the goal of no Aboriginal child or young person being incarcerated is achieved, custody is the last resort. Alternatives to custody are prioritised. Those who receive custodial sentences or are remanded are supervised in an environment that is embedded in culture, developmentally enriching, therapeutic, safe and home-like. They are supported to transition back into the community with ongoing assistance and without stigma.

The recommendations in this report reflect what the Commission believes can be achieved in the next 5 years in moving towards the Aboriginal community's vision for Aboriginal children and young people and the youth justice system in Victoria.



# 3 Overview of the Victorian youth justice system

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*The water holes represent the Country where we love to connect and cleanse ourselves. The gathering place represents us mob getting together to yarn and discuss issues and concerns as they come up, and help each other get through things. The shield is to protect us and also means that we have other people around us to protect, such as family. The sun is there because we all shine bright. – Young people of Mildura, Latji Latji & Barkindji Country*

# Overview of the Victorian youth justice system

## Aboriginal children and young people in the youth justice system

The story of Aboriginal children and young people in Victoria is one of resistance, strength and fierce resilience.

Aboriginal children and young people, and their families and communities, have fought consistently across generations against the systemic oppression, dispossession and discrimination inflicted by state laws, policies and actions that – in the name of justice and protection – have operated to decimate their languages, their lands, their cultural identities, their lives.

The disproportionate criminalisation of Aboriginal children and young people in Victoria is an old storyline.<sup>43</sup> The data shows that Victoria Police are more likely to arrest and detain Aboriginal children and young people than their non-Aboriginal peers.<sup>44</sup> Police are less likely to caution Aboriginal children and young people than non-Aboriginal children and young people.<sup>45</sup> Aboriginal children and young people are

more likely to be refused bail,<sup>46</sup> and when bail is granted, to be recorded for breaching conditions.<sup>47</sup> Courts are more likely to sentence Aboriginal children and young people for longer periods of community-based supervision<sup>48</sup> and, year-on-year, youth justice centres hold Aboriginal children and young people (sentenced and unsentenced) for more days on average than their non-Aboriginal counterparts.<sup>49</sup>

In recent years, the Victorian Government has increased investment in initiatives to reduce the over-representation of Aboriginal children and young people in the youth justice system. DJCS has prioritised and undertaken significant work, in partnership with the Aboriginal Justice Caucus and the Aboriginal community, to focus on Aboriginal children and young people and implement change. It is important to acknowledge that some gains have been achieved, with reductions in the number of Aboriginal children and young people under Youth Justice community and custodial supervision over the past 5 years (see ‘Data snapshot’ below). Youth Justice is ahead of its target to reduce the average daily number of Aboriginal children and young people aged 10 to

<sup>43</sup> See for example, ‘One of the earliest attempts to assess its level occurred in 1977 during a symposium organised by the then Commonwealth Department of Aboriginal Affairs on the care and treatment of Indigenous young people in detention centres (Sommerlad 1977). During the 1980s there were numerous reports which outlined the over-representation of Indigenous young people in various State or Territory jurisdictions (Cunneen and Robb 1987, Semple 1988, Gale et al. 1990, Cunneen 1990). These studies indicated Aboriginal over-representation in police interventions, in court appearances and in juvenile detention centres.’ Human Rights and Equal Opportunity Commission, *Bringing them home: national inquiry into the separation of Aboriginal and Torres Strait Islander children from their families* [PDF], Human Rights and Equal Opportunity Commission, Commonwealth of Australia, 1997, accessed 4 January 2021, p 427.

<sup>44</sup> Between January 2018 and December 2019, police were more likely to arrest Aboriginal children and young people aged 10 to 17 years than any other outcome: see Table 11.2 in Chapter 11 ‘Entering the youth justice system’. For Aboriginal children and young people, 47% of incidents resulted in arrest, compared to 35% of incidents involving non-Aboriginal young people: see Table 11.2 in Chapter 11 ‘Entering the youth justice system’.

<sup>45</sup> Between January 2018 and December 2019, Aboriginal young people were cautioned in 13% of incidents compared to 21% of incidents involving non-Aboriginal young people: see Table 11.2 in Chapter 11 ‘Entering the youth justice

system’. See also Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*, Victorian Aboriginal Justice Agreement website, 2020, accessed 9 September 2020; K Shirley, ‘The cautious approach: police cautions and the impact on youth reoffending’, *Crime Statistics Agency in brief*, number 9, Crime Statistics Agency, 2017, p 13.

<sup>46</sup> This is the case nationally – see C Cunneen, R White and K Richards, *Juvenile justice: youth and crime in Australia*, Oxford University Press, Melbourne, 2015, p 156. This has not been conclusively determined for Victoria. Bail refusal is discussed further in Chapter 12.2 ‘Bail and remand’.

<sup>47</sup> In 2018, Aboriginal people (including adults) were 15.5 times more likely to be recorded for breach of bail conditions than non-Aboriginal people: Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*. Breach of bail is discussed further in Chapter 12.2 ‘Bail and remand’.

<sup>48</sup> See also Cunneen et al., *Juvenile justice*, p 159. Sentencing trends are discussed further in Chapter 12.5 ‘Community orders supervised by Youth Justice’.

<sup>49</sup> In 2018–19, Youth Justice detained Aboriginal young people for more days on average than non-Aboriginal young people in both unsentenced detention (64 days compared to 57 days) and sentenced detention (144 days compared to 124 days): Australian Institute of Health and Welfare (AIHW), *Youth justice in Australia 2018–19*, catalogue number JUV 132, AIHW, Australian Government, 2020, accessed 7 September 2020, p 27.

### 3. Overview of the Victorian youth justice system

17 years under its supervision by at least 43 children by 2023.<sup>50</sup>

Nevertheless, overall inequality in youth justice system outcomes remains and further investment and work are required. It continues to be an everyday reality that Aboriginal children and young people in Victoria are disproportionately targeted by the police, sentenced by the courts, and removed from their families and communities. While the raw numbers are small (see Table 3.1), the over-representation remains stark.

Despite these persistent inequalities in the youth justice system, the Commission is proud to see the continued resurgence of cultural knowledge and practices across the state. As articulated by the Lowitja Institute, cultural practices that have been hidden, or laid dormant under colonial policies of assimilation and dispossession, are being revived and celebrated.<sup>51</sup> Aboriginal leadership in Victoria is strong and Aboriginal expertise is being employed to restore the wellbeing of communities. If communities are properly empowered, this will secure better justice outcomes for Aboriginal children and young people.

#### Data snapshot

The 2016 Census reported that there were approximately 47,787 Aboriginal people in Victoria – about 0.8% of the Victorian population.<sup>52</sup> Over half of all Aboriginal people in Victoria were under the age of 25 and more than a third were under the age of 15.<sup>53</sup> The Victorian Aboriginal population is younger than the general Victorian population, with a median age of 23 compared to 37.<sup>54</sup> Aboriginal children and young people make up 1.5% of Victorian children and young people aged 10 to 23 years.<sup>55</sup>

According to data published by the Productivity Commission in its 2021 *Report on Government Services*,<sup>56</sup> on an average day<sup>57</sup> in 2019–20, 600 children and young people aged 10 to 17 years were subject to Youth Justice supervision in Victoria, either in the community or in custody.<sup>58</sup> Of these, 88<sup>59</sup> or 15% were Aboriginal children and young people (Table 3.1).<sup>60</sup> The 5 years to 2019–20 indicate a small but positive downward trend in the over-representation of Aboriginal children and young people under Youth Justice supervision in Victoria.

See Australian Bureau of Statistics (ABS), *National, state and territory population*, ABS website, 2020, accessed 10 February 2021 and Australian Bureau of Statistics (ABS), *Estimates and projections, Aboriginal and Torres Strait Islander Australians*, ABS website, 2019, accessed 10 February 2021.

50 This target is set under *Burra Lotjpa Dungaludja: State of Victoria, Burra Lotjpa Dungaludja*, p 30.

51 The Lowitja Institute, *Close the gap: we nurture our culture for our future, and our culture nurtures us* [PDF], Close the Gap Campaign Steering Committee, 2020, accessed 7 September 2020, p 10.

52 Australian Bureau of Statistics (ABS), *2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats*, ABS website, 2017, accessed 7 September 2020.

53 ABS, *2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats*.

54 ABS, *2016 Census: Aboriginal and/or Torres Strait Islander Peoples QuickStats*; Australian Bureau of Statistics (ABS), *2016 Census QuickStats: Victoria*, ABS website, 2017, accessed 7 September 2020.

55 According to the ABS, there are 1,144,500 children and young people aged 10 to 23 years in Victoria and 17,402 Aboriginal children and young people in that age bracket.

56 This chapter refers to Productivity Commission data published in 2021 as, at the time of writing, this is the most recent published data on the average daily numbers of Aboriginal and non-Aboriginal children and young people under Youth Justice supervision in Victoria. However, elsewhere in the report we refer to other data sources in order to better align with, and more accurately reflect, the timeframes of the Taskforce and the inquiry.

57 The number of young people under supervision on an average day is calculated by summing the number of days each young person spends under supervision during the year and dividing this total by the number of days in the financial year: see AIHW, *Youth justice in Australia 2018–19*. The Productivity Commission relies on AIHW data for its *Report on Government Services*.

58 Productivity Commission, *Report on Government Services 2021: 17 Youth justice services*, Productivity Commission, Australian Government, 2021, 17A Youth justice services – data tables, data table 17A.1. Young people aged 18 years and over may be subject to Youth Justice supervision in Victoria; however, the Productivity Commission only includes population rates for children and young people aged 10 to 17 years.

59 According to unpublished data provided to the Commission by DJCS on 9 April 2021, this figure is 81 Aboriginal children and young people. The Commission notes that the published Productivity Commission data relied on in this report may change.

60 Productivity Commission, *Report on Government Services 2021*, data tables 17A.5, 17A.6. According to the AIHW, in 2018–19, the rate of Aboriginal children and young people aged 10 to 17 years under Youth Justice supervision in Victoria on an average day was 107 per 10,000, compared to the national average of 172 per 10,000. Victoria has the second-lowest rate (behind Tasmania) of Aboriginal children and young people under supervision: AIHW, *Youth justice in Australia 2018–19*, p 9. More recent AIHW data analysing 5 Australian states over 4 years ending June 2020 indicates that Victoria also had the lowest rate ratio of Aboriginal children and young people aged 10 to 17 years in custody: Australian Institute of Health and Welfare (AIHW), *Youth detention population in Australia 2020*, catalogue number JUV 135, AIHW, Australian Government, 2021, accessed 15 April 2021.



**Table 3.1** Children and young people aged 10–17 under Youth Justice supervision on an average day (community and custody) by Aboriginal status, 2015–16 to 2019–20

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2015–16	139	18%	618	82%
2016–17	133	18%	587	82%
2017–18	118	17%	584	83%
2018–19	108	16%	555	84%
2019–20	88	15%	511	85%

Source: Productivity Commission, *Report on Government Services 2021: 17 Youth justice services*, Productivity Commission, Australian Government, 2021, data tables 17A.5 and 17A.6.

### Children and young people under Youth Justice community supervision

On an average day in 2019–20, 80% of all children and young people under Youth Justice supervision in Victoria were supervised in the community.<sup>61</sup> During this period, Aboriginal children and young people accounted for 15% of all children and young people aged 10 to 17 years under Youth Justice community-based supervision on an average day (Table 3.2).<sup>62</sup> Aboriginal children and young people in this age group were 10 times more likely than non-Aboriginal children and young people to be subject to community-based supervision.<sup>63</sup>

<sup>61</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.1.

<sup>62</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.6.

<sup>63</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.6. The rate ratio is calculated by dividing the Aboriginal rate by the non-Aboriginal rate (using rates to one decimal place) and rounding to the nearest whole number.

**Table 3.2** Children and young people aged 10–17 under Youth Justice community supervision on an average day by Aboriginal status, 2015–16 to 2019–20

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2015–16	120	18%	534	82%
2016–17	112	19%	485	81%
2017–18	98	17%	476	83%
2018–19	89	16%	452	84%
2019–20	72	15%	408	85%

Source: Productivity Commission, *Report on Government Services 2021: 17 Youth justice services*, Productivity Commission, Australian Government, 2021, data table 17A.6.

Between 2015–16 and 2019–20, the number of Aboriginal children and young people aged 10 to 17 years under community Youth Justice supervision in Victoria on an average day fell by 40%, from 120 to 72 Aboriginal children and young people. Over the 5 years to 2019–20, on an average day in Victoria, the rate of Aboriginal children and young people aged 10 to 17 years under community-based supervision fell from 125 per 10,000 in 2015–16 to 71 per 10,000 in 2019–20.<sup>64</sup>

Despite these considerable and welcome reductions, Aboriginal children and young people remain heavily over-represented in Youth Justice community supervision.

### Children and young people under Youth Justice supervision in custody

On an average day in 2019–20, 20% of all children and young people under Youth Justice supervision in Victoria were in custody, either on sentence or remand.<sup>65</sup> During this period, Aboriginal children and young people accounted for 13% of all children and young people aged 10 to 17 years supervised by Youth Justice in custody on an average day (Table 3.3).<sup>66</sup> Aboriginal children and young people were 9 times

<sup>64</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.6. During this period, the rate of non-Aboriginal children and young people under community-based supervision also fell, albeit to a lesser degree, from 10 per 10,000 in 2015–16 to 7 per 10,000 in 2019–20.

<sup>65</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.1.

<sup>66</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.5.

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more likely than non-Aboriginal children and young people to be in youth justice custody.<sup>67</sup>

**Table 3.3** Children and young people aged 10–17 in youth justice custody on an average day by Aboriginal status, 2015–16 to 2019–20

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2015–16	19	18%	84	82%
2016–17	21	17%	102	82%
2017–18	20	16%	108	84%
2018–19	19	16%	103	84%
2019–20	16	13%	103	87%

Source: Productivity Commission, *Report on Government Services 2021: 17 Youth justice services*, Productivity Commission, Australian Government, 2021, data table 17A.5.

Between 2015–16 and 2019–20, the number of Aboriginal children and young people aged 10 to 17 years in youth justice custody in Victoria on an average day fell from 19 to 16.<sup>68</sup> During this period, the rate of detention of Aboriginal children and young people aged 10 to 17 years also fell (from 20 per 10,000 to 15 per 10,000).<sup>69</sup> In the same period, the rate of detention of non-Aboriginal children and young people in the same age group rose slightly (from 1.5 per 10,000 to 1.7 per 10,000).<sup>70</sup>

The decreases in the average daily number of Aboriginal children and young people in youth justice custody between 2015–16 and 2019–20 and in the rate of Aboriginal over-representation are positive and may reflect recent efforts by Youth Justice and the Victorian Government. However, it is also important to note the possible role of COVID-19 and government health responses in contributing to the specific decrease observed from 2018–19 to 2019–20. This includes fewer children and young people gathering in public places, leading to less interaction with police, and police resources being redirected to enforcement

<sup>67</sup> 15.3 per 10,000 compared with 1.7 per 10,000: Productivity Commission, *Report on Government Services 2021*, data table 17A.5. The rate ratio is calculated by dividing the Aboriginal rate by the non-Aboriginal rate (using rates to one decimal place) and rounding to the nearest whole number.

<sup>68</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.5.

<sup>69</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.5.

<sup>70</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.5.

of public health measures. In any event, the rate of over-representation of Aboriginal children and young people in custody remains concerning and requires urgent attention.

Australian Institute of Health and Welfare (AIHW) data indicates that in 2018–19, Youth Justice detained Aboriginal children and young people for more days on average than non-Aboriginal children and young people in both unsentenced detention (64 days compared to 57 days) and sentenced detention (144 days compared to 124 days).<sup>71</sup>

#### Age and sex

Aboriginal children and young people are supervised by Youth Justice from a younger age than non-Aboriginal children and young people. In 2018, 43% of Aboriginal children and young people subject to Youth Justice supervision were aged 10 to 14 years, compared to 27.8% of non-Aboriginal children and young people.<sup>72</sup> The AIHW found that the younger a person is at the start of their first supervised sentence, the more likely they are to return to sentenced supervision before the age of 18.<sup>73</sup> The impact of early entry into the youth justice system is discussed further in Chapter 5.2 ‘Age-appropriate responses to Aboriginal children and young people’.

Data collated by the AIHW shows that rates of contact with the youth justice system among girls and young women have increased in recent decades.<sup>74</sup> The Commission observed a particularly concerning increase in the number of remand orders being made in Victoria. For Aboriginal children and young people on remand orders, females made up 16% of the cohort – a higher proportion than for females among non-Aboriginal children and young people on remand orders (9%). The number of remand orders increased by 185% for Aboriginal girls and young women (from 27 remand orders in 2010 to 77 in 2019) and by 204% for non-Aboriginal girls and young women (from 108

<sup>71</sup> AIHW, *Youth justice in Australia 2018–19*, p 27.

<sup>72</sup> Department of Premier and Cabinet (DPC), *Victorian Government Aboriginal Affairs Report 2019*, DPC, Victorian Government, 2019, accessed 25 September 2020, p 85.

<sup>73</sup> Australian Institute of Health and Welfare (AIHW), *Young people returning to sentenced youth justice supervision 2018–19* [PDF], catalogue number JUV 133, AIHW, Australian Government, 2020, accessed 7 September 2020, p 6.

<sup>74</sup> Australian Institute of Health and Welfare (AIHW), *Girls and young women in the juvenile justice system* [PDF], catalogue number AUS 162, AIHW, Australian Government, 2012, accessed 7 September, p 3.

remand orders in 2010 to 329 in 2019).<sup>75</sup> This is discussed further in Chapter 12.2 ‘Bail and remand’.

Youth Justice data indicates that from 2018 to 2019, of all Aboriginal children and young people under Youth Justice supervision (both in custody and in the community), approximately one-quarter were female. This is especially concerning.

In 2019, 386 Aboriginal children and young people were recorded by Victoria Police for an incident with a prior incident within the previous 12 months.<sup>76</sup> Two hundred and fifty-nine were male and 127 were female.<sup>77</sup>

### Child Protection involvement

A high proportion of Aboriginal children and young people under Youth Justice supervision are also known to Child Protection. A study conducted by the Sentencing Advisory Council examined the proportion of sentenced and diverted children between 1 January 2016 and 31 December 2017 who were known to Child Protection, and their level of involvement.<sup>78</sup> More than one in 3 children sentenced or diverted during this period had been the subject of a report to Child Protection,<sup>79</sup> and nearly one in 6 sentenced or diverted children experienced out-of-home care.<sup>80</sup>

The study found that sentenced and diverted children who were the subject of a child protection report were 8 times more likely than the general population to be Aboriginal.<sup>81</sup> In the cohort, sentenced and diverted children who had experienced out-of-home care were 11.5 times more likely to be Aboriginal.<sup>82</sup> The study

found that Aboriginal children were over-represented in every sentence type and child protection category.<sup>83</sup> The greatest over-representation of Aboriginal children ‘occurred at the intersection between the most severe sentence type (custodial orders) and the most serious end of the child protection system (child protection orders, out-of-home care and residential care).’<sup>84</sup> Around one in 3 of the children sentenced to a custodial order who had been the subject of a child protection order or had experienced residential care was Aboriginal.<sup>85</sup>

DJCS’ annual survey of young people involved with Youth Justice on 31 December 2019 also found that Aboriginal children and young people were disproportionately subject to a previous and/or current child protection order compared to non-Aboriginal children and young people (64% or n = 76, compared to 37% or n = 279).<sup>86</sup> The survey found that 17% (n = 20) of Aboriginal children and young people were residing in, or released to, a residential or out-of-home care placement (compared to 10%, n = 75, of non-Aboriginal children and young people).<sup>87</sup> This is discussed further in Chapter 8.1 ‘Child Protection involvement’.

## Challenges faced by Aboriginal children and young people in Victoria

*Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell*

<sup>75</sup> DJCS data provided to the Commission on 19 February 2020. See Chapter 12.2 ‘Bail and remand’. Remand orders for Aboriginal girls and young women decreased by 11% from 2016 to 2019.

<sup>76</sup> Victoria Police defines an ‘incident’ as an event where there is an allegation of one or more offences being committed.

<sup>77</sup> CSA data extracted from LEAP on 18 April 2020 and provided to the Commission on 24 July 2020.

<sup>78</sup> Sentencing Advisory Council, *Crossover kids in the youth justice system*, Sentencing Advisory Council website, 2020, accessed 26 November 2020.

<sup>79</sup> Sentencing Advisory Council, *‘Crossover kids’: vulnerable children in the youth justice system. Report 1: children who are known to Child Protection among sentenced and diverted children in the Victorian Children’s Court*, Sentencing Advisory Council, Melbourne, 2019, accessed 7 September 2020, p xx.

<sup>80</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxii.

<sup>81</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, pp xxii, 48.

<sup>82</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, pp xxii, 48.

<sup>83</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxiv.

<sup>84</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, pp xxiv, 83.

<sup>85</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxiv.

<sup>86</sup> Department of Justice and Community Safety (DJCS), *Young people involved with Youth Justice in 2019: annual survey – summary*, DJCS, Victorian Government, unpublished, accessed 7 September 2020, p 6.

<sup>87</sup> DJCS, *Young people involved with Youth Justice in 2019*, p 6.

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*plainly the structural nature of our problem.*<sup>88</sup>

Despite the diversity, vibrancy and strength of Aboriginal lives, many Aboriginal children and young people in Victoria live a reality of socio-economic inequality and circumscribed life options and life experiences.<sup>89</sup> These are not historical anomalies. They are contemporary experiences of state-inflicted inequality, institutional discrimination and dispossession that continue to negatively affect the lives and wellbeing of Aboriginal children and young people.<sup>90</sup> As identified in a project led by Associate Professor Naomi Priest in collaboration with the Victorian Aboriginal Health Service, for many Aboriginal young people, racism in Victoria is embedded in state institutions and systems and preserved by existing hierarchies, as well as being an everyday experience.<sup>91</sup>

The literature presents overwhelming evidence that Aboriginal children and young people in the youth justice system are more likely to have experienced greater cumulative adversity compared to their non-Aboriginal counterparts.<sup>92</sup> Aboriginal children and young people and their communities have been targeted by the state in an unbroken chain of harmful interventions since early colonisation.<sup>93</sup> As articulated by Professor Chris Cunneen and others, this can be characterised as ‘the period of open warfare and resistance, the

period of “protective” legislation, and the contemporary period of criminalisation’.<sup>94</sup>

For many Aboriginal people, these state-inflicted interventions have directly caused generations of trauma and broken connection to Country and community. The devastating consequences of this have led to inequalities in life experiences, including a higher prevalence of low educational attainment and earning, housing insecurity, unequal health outcomes and early mortality.<sup>95</sup> Many Aboriginal children and young people in the youth justice system have also experienced exposure to family violence and substance dependence, as well as the devastating impact of being forcibly removed from their families.<sup>96</sup>

The harmful impacts of these interventions are well recognised in the literature and acknowledged in government policy frameworks and initiatives.<sup>97</sup> However, despite this, a culture of over-policing and surveillance, forced removal of children from their families, and disproportionate youth justice system outcomes and adverse experiences persist. The weight of trauma associated with these actions was palpable in many of the young people the Commission spoke with. For many, the state was not only the source of this trauma, but had also failed to provide adequate responses to address the ongoing devastation it produced.

<sup>88</sup> The Uluru Statement, *Uluru Statement from the Heart*, From the Heart website, 2017, accessed 7 September 2020.

<sup>89</sup> M Walter, *Lives of diversity: Indigenous Australia* [PDF], occasional paper 4/2008, Census series number 2, The Academy of the Social Sciences in Australia, Canberra, 2008, p 29.

<sup>90</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, pp 1, 26, 49. See also M Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*, Prepared for Youth Justice by the Centre for Forensic Behavioural Science, Swinburne University of Technology, 2019, unpublished, accessed 7 September 2020, p 40.

<sup>91</sup> N Priest et al., ‘Yarning up with Koori kids – hearing the voices of Australian urban Indigenous children about their health and well-being’, *Ethnicity and Health*, 2016, 22(6): 631–647, p 643.

<sup>92</sup> S Baidawi and R Sheehan, ‘Crossover kids’: offending by child protection-involved youth’, *Australian Institute of Criminology trends & issues in crime and criminal justice*, number 582, 2019, p 16; State of Victoria, *Burra Lotjpa Dunguludja*, p 19.

<sup>93</sup> H Blagg and T Anthony, *Decolonising criminology: imagining justice in a postcolonial world*, Palgrave Macmillan, London, 2019, p 32.

<sup>94</sup> Cunneen et al., *Juvenile justice*, p 144. See also Blagg and Anthony, *Decolonising criminology*.

<sup>95</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 93; PwC, *Indigenous incarceration: unlock the facts* [PDF], PwC, 2017, accessed 7 September 2020, pp 64–67.

<sup>96</sup> State of Victoria, *Burra Lotjpa Dunguludja*, p 19. Young people may also have relatives who have experienced forced removal – the State Government reports that 47.1% of Aboriginal people in Victoria have a relative who was forcibly removed from their family due to stolen generations policies: DHHS, *Balit Murrup*, p 16.

<sup>97</sup> See for example, State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, pp 1, 26, 49; DHHS, *Balit Murrup*.

## The impact of the youth justice system on Aboriginal children and young people and their communities

*Indigenous youth and their families are not 'marginalised' by the justice system. They are oppressed by it.*<sup>98</sup>

Contact with the youth justice system – police, courts, custody and community-based supervision – can dramatically alter the life course of Aboriginal children and young people, as well as negatively impact on the social and emotional wellbeing of their families and communities. The data shows that Aboriginal children and young people are more likely to come into contact with the youth justice system at an earlier age than their non-Aboriginal counterparts and this early contact is associated with subsequent involvement.<sup>99</sup> As recognised in the *Bringing them home* report, the length of justice interventions can vary from a few hours or days to months or years; however, the negative effects flowing from this can last a lifetime.<sup>100</sup>

The adverse impacts of exposure to the youth justice system for Aboriginal children and young people are well documented.<sup>101</sup> Contact with the justice system can increase stress, affect relationships and have adverse employment and financial consequences for individuals.<sup>102</sup> This can be particularly traumatic for Aboriginal children and young people when justice

processes operate to separate them from their family and connections to culture, community and Country.<sup>103</sup> The collateral consequences of sentencing can also impede rehabilitation and reintegration well after the young person exits the system. This includes restrictions or disqualifications that attach to a young person because of their system involvement, leading to negative impacts on health and wellbeing,<sup>104</sup> financial security,<sup>105</sup> access to housing and accommodation,<sup>106</sup> educational attainment,<sup>107</sup> and capacity to secure employment.<sup>108</sup>

In addition to these outcomes, Woor-Dungin's criminal record discrimination project has documented the particularly oppressive impacts of criminal histories for Aboriginal Victorians.<sup>109</sup> These adverse consequences include barriers to becoming future kinship carers, to delivering healing and other mentoring programs in custodial settings, and to participating in leadership and decision-making roles on boards and in government.<sup>110</sup> These impacts affect community wellbeing and undermine the Victorian self-determination agenda.

Young people can be an asset to the networks they live in.<sup>111</sup> They may have social and cultural obligations, including caring for siblings and extended family, or children of their own. The collateral consequences of contact with the youth justice system can sever these networks, impacting on families, children and the broader community.<sup>112</sup> For young people who are parents it can also lead to ongoing generations of forced child removal with devastating and irreparable consequences for all involved. The impact of contact with the youth justice system for young people with caring responsibilities is discussed in Chapter 7.3 'Challenges experienced by Aboriginal families'. Not just parents, but friends, families and communities also

<sup>98</sup> Blagg and Anthony, *Decolonising criminology*, p 143.

<sup>99</sup> In 2018, 43% of Aboriginal young people subject to Youth Justice supervision were aged 10 to 14 years, compared to 27.8% of non-Aboriginal young people: DPC, *Victorian Government Aboriginal Affairs Report 2019*, p 85; Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation*, p 15; Arnytage and Ogloff, *Youth justice review and strategy*, Part 1, p 131: 'Following youth justice interventions, young people are now more likely to go on to commit more incidents and/or offences than they have in the past. For example, 84 per cent of adult offenders who had a previous period in youth justice evidenced a concerning proximity between release from a youth justice order to contact with police. This included 25 per cent of young people coming into contact with police in less than one month of exit and more than 50 per cent within three months.'

<sup>100</sup> Human Rights and Equal Opportunity Commission, *Bringing them home*, p 427.

<sup>101</sup> See for example, PwC, *Indigenous incarceration*, pp 31–32.

<sup>102</sup> Australian Health Ministers' Advisory Council (AHMAC), *Aboriginal and Torres Strait Islander health performance framework report 2017* [PDF], AHMAC, Australian Government, 2017, accessed 7 September 2020, p 117.

<sup>103</sup> PwC, *Indigenous incarceration*, p 32.

<sup>104</sup> PwC, *Indigenous incarceration*, p 32.

<sup>105</sup> PwC, *Indigenous incarceration*, p 31.

<sup>106</sup> PwC, *Indigenous incarceration*, p 31.

<sup>107</sup> See Chapter 10.1 'Engagement in education'.

<sup>108</sup> PwC, *Indigenous incarceration*, p 31.

<sup>109</sup> Woor-Dungin, *Criminal Record Discrimination Project: submission to Aboriginal Justice Forum 49*, Swan Hill, 2017.

<sup>110</sup> Woor-Dungin, *Criminal Record Discrimination Project*.

<sup>111</sup> M Gooda, *Justice reinvestment and its importance to Aboriginal communities*, Aboriginal Legal Service Annual Conference, Wollongong, 2012, accessed 7 September 2020.

<sup>112</sup> AHMAC, *Aboriginal and Torres Strait Islander health performance framework report 2017*, p 117.

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experience the grief of separation, the extreme stress of overwhelming concern for the wellbeing of their loved one, and the very real trauma of ongoing state intervention in their lives.

In practical ways, the Commission observed during its regional visits that the over-representation of Aboriginal people in the youth justice system also diverts attention away from a more holistic representation of the diverse lives of Aboriginal children and young people, and that deficit-based perspectives can dissuade Aboriginal children and young people from believing in themselves. Excessive focus on the youth justice system can also drain Aboriginal communities' resources and capacity to shape and achieve self-determined priorities of their own.

## Legislative context

The primary legislative basis for the youth justice system arises from the *Children, Youth and Families Act 2005 (Vic)* (CYFA) and criminal justice statutes. Other state and international instruments are also relevant to the operation of the youth justice system for Aboriginal children and young people. These are summarised in Figure 3.1 on page 86.

## Key elements of the youth justice system

Contact with the youth justice system can be broken down into 3 main stages:

- interactions with police (entry into the system and initial decision-making as to how/whether to proceed)
- Children's Court proceedings (determination of charges and sentencing)
- interaction with Youth Justice Community and Custodial Services (supervision).

Aboriginal children and young people are more likely to experience adverse outcomes at each of these contact points. Key elements of these stages are summarised in Figure 3.2 on page 87.

## Interactions with police

Victoria Police members are the first point of contact between children and young people and the youth justice system. In responding to incidents involving young people, police have a wide range of options available to them. These include deciding not to proceed against the young person, issuing a caution (a formal warning), arresting the young person and releasing them back into the community pending a summons to appear at court, charging the young person and releasing them on bail (with or without conditions), or remanding the young person in custody until they can be brought before the Children's Court.

Police decisions such as whether to caution or charge a young person will determine whether a young person progresses through the youth justice system or is diverted away from it. The use of police enforcement powers in relation to Aboriginal children and young people is discussed further in Chapter 11 'Entering the youth justice system'.

## Children's Court proceedings

A small proportion of children and young people who come into contact with police progress to formal involvement with the courts.<sup>113</sup> The Criminal Division of the Children's Court hears and determines charges against children and young people. Generally, if a child or young person is alleged to have committed an offence under the age of 18 years, and is charged before they turn 19, their case will be heard in the Children's Court. The court can deal with most charges except fatal offences, which are heard in the County or Supreme Court.<sup>114</sup> In addition, amendments to the CYFA in 2017 limited the jurisdiction of the Children's Court to hear charges against young people aged 16 and 17 years for certain non-fatal offences.<sup>115</sup>

<sup>113</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 154.

<sup>114</sup> CYFA, s 516(1)(b).

<sup>115</sup> These are 'Category A serious youth offences' and 'Category B serious youth offences'. Where a young person is charged with a Category A serious youth offence alleged to have been committed when the child was aged 16 or 17 years, the Children's Court can only hear and determine the charge if this is 'in the interests of the victim', or the young person is 'particularly vulnerable because of cognitive impairment or mental illness', or there is a 'substantial and compelling reason' for the Children's Court to hear and determine the charge. Where a young person is charged with a Category B serious youth offence alleged to have been committed when the young person was aged 16 or 17 years, the Children's Court must consider whether the charge is unsuitable to be determined summarily 'by reason

The experiences of Aboriginal children and young people in court proceedings are discussed in Chapter 12.3 'Court'.

The Children's Court has a hierarchy of sentencing options available if it finds a child or young person guilty of an offence.<sup>116</sup> This comprises sentences involving no supervision, sentences involving community-based supervision by Youth Justice, and custodial sentences involving detention in a youth justice centre.<sup>117</sup> The court must not impose a sentence unless it is satisfied that a sentence that is lower in the hierarchy is not appropriate.<sup>118</sup> The Children's Court may also defer sentencing to enable a child or young person to participate in a group conference (discussed below).<sup>119</sup>

Victoria has a 'dual track' system that allows adult courts to sentence young people (under 21 years of age) to serve a custodial sentence in a youth justice centre instead of an adult prison.<sup>120</sup> For a young person to qualify under the dual track system, the court must be convinced that they have reasonable prospects of rehabilitation, or that they are 'particularly impressionable, immature, or likely to be subjected to undesirable influences in an adult prison'.<sup>121</sup> Amendments to the *Sentencing Act 1991 (Vic)* in 2017 limited the circumstances in which adult courts can sentence a young person to 'dual track' custody for certain categories of offences.<sup>122</sup>

## The Koori Court

The Children's Koori Court (Criminal Division) is a specialist sentencing court for Aboriginal children and young people. The Koori Court currently operates in 12

locations across the state.<sup>123</sup> The Koori Court is presided over by a magistrate and Koori Elders or respected persons and deals with offences (other than sexual offences) where the young person pleads guilty, or has been found guilty of the offence.<sup>124</sup> The operation of the Koori Court and the experiences of children and young people appearing before it are discussed further in Chapter 12.3 'Court'.

## Diversion

Children and young people appearing before the Children's Court may be eligible to participate in the Children's Court Youth Diversion Service. This is an early intervention (pre-plea) program intended to divert children and young people from further progression into the youth justice system.<sup>125</sup> Diversion can include a range of activities for the young person to complete and is designed to assist with rehabilitation and reduce the risk of stigma associated with contact with the youth justice system.<sup>126</sup>

While there are few statutory limitations on eligibility for Children's Court diversion, the program tends to be targeted towards children and young people with limited or no criminal history who would otherwise be sentenced to an outcome not requiring supervision from Youth Justice. The young person's history and the circumstances of their offending are considered in determining whether diversion is appropriate. Both the prosecution and the young person must consent for the diversion to proceed.<sup>127</sup> Children and young people who successfully complete diversion will not have a disclosable criminal record.<sup>128</sup>

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of exceptional circumstances'. See ss 356 and 356A of the CYFA, as amended and inserted by the *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017 (Vic)*.

116 CYFA, s 360(1).

117 The CYFA uses the terminology of 'youth residential centre' as the detention option for younger children, and 'remand centre' for the detention option for children and young people denied bail. However, for ease this report refers to all detention options as youth justice centres.

118 CYFA, s 361.

119 CYFA, ss 360(2) and 414.

120 Under section 3(1) of the *Sentencing Act 1991 (Vic)*, a 'young offender' is an offender who at the time of being sentenced is under the age of 21 years.

121 Sentencing Act, s 32(1).

122 See Sentencing Act, ss 32(2C) and (2D), inserted by the Children and Justice Legislation Amendment (Youth Justice Reform) Act.

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123 Bairnsdale, Dandenong, Geelong, Hamilton, Heidelberg, Latrobe Valley (Morwell), Melbourne, Mildura, Shepparton, Swan Hill, Warrnambool, Portland: Children's Court of Victoria, *Koori Court*, Children's Court of Victoria website, accessed 9 September 2020.

124 CYFA, s 519(1).

125 CYFA, s 356C.

126 CYFA, s 356C.

127 CYFA, s 356D(3).

128 Children's Court of Victoria, *Youth Diversion*, Children's Court of Victoria website, accessed 11 September 2020. Section s 356(1)(b) of the CYFA provides that 'if a child completes a diversion program to the satisfaction of the Court – the Court must discharge the child without any finding of guilt'.

### 3. Overview of the Victorian youth justice system

INTERNATIONAL	United Nations Convention on the Rights of the Child	This convention requires signatory states to treat children with humanity and dignity, only using detention as a measure of last resort.
	United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)	These rules emphasise the wellbeing of children and encourage fair, humane and proportionate responses to offending behaviour that take into account the circumstances of the child. The rules establish detention as a last resort.
	United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)	These rules establish minimum standards for the deprivation of children's liberty. The rules focus on the protection of individual rights and the promotion of children's wellbeing.
	United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)	These guidelines outline a progressive approach to preventing and responding to offending by children.
	The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	This protocol aims to prevent the mistreatment of people in detention by establishing independent international and national inspection schemes.
	United Nations Declaration on the Rights of Indigenous Peoples	This declaration provides a comprehensive statement of the rights of Indigenous peoples and guidance on the responsibilities of states. It defines self-determination as the ability of Indigenous people to freely determine their political status and pursue economic, social and cultural development.
DOMESTIC	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>	<p>The Charter requires protection in the best interests of children. It also requires that children accused of offending be segregated from adults and that children convicted of offences be treated in an age-appropriate way.</p> <p>The Charter provides specific protection for the rights of Aboriginal people to enjoy their identity and culture, maintain and use their language, maintain their kinship ties and maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.</p> <p>The Victorian Government, local councils and other public authorities (including individual employees) must act in ways that are compatible with human rights and give proper consideration to relevant human rights when making decisions.</p>
	<i>Children, Youth and Families Act 2005 (Vic)</i>	This is the leading instrument for the youth justice system in Victoria. It establishes the jurisdiction of the Children's Court, sentencing principles and orders, youth justice centres and the Youth Parole Board.
	<i>Sentencing Act 1991 (Vic)</i>	This Act gives Victorian adult courts the power to sentence young people under the age of 21 years to youth justice custody rather than adult imprisonment.
	<i>Bail Act 1977 (Vic)</i>	This Act establishes bail laws and the factors decision-makers must consider in determining whether a person charged with an offence should be granted bail or remanded in custody.
	<i>Crimes Act 1958 (Vic)</i>	This Act contains serious criminal offences. Children and young people can be charged with these offences.
	<i>Summary Offences Act 1966 (Vic)</i>	This Act contains summary offences. Children and young people can be charged with these offences.

**Figure 3.1** Summary of relevant legislation, conventions and protocols



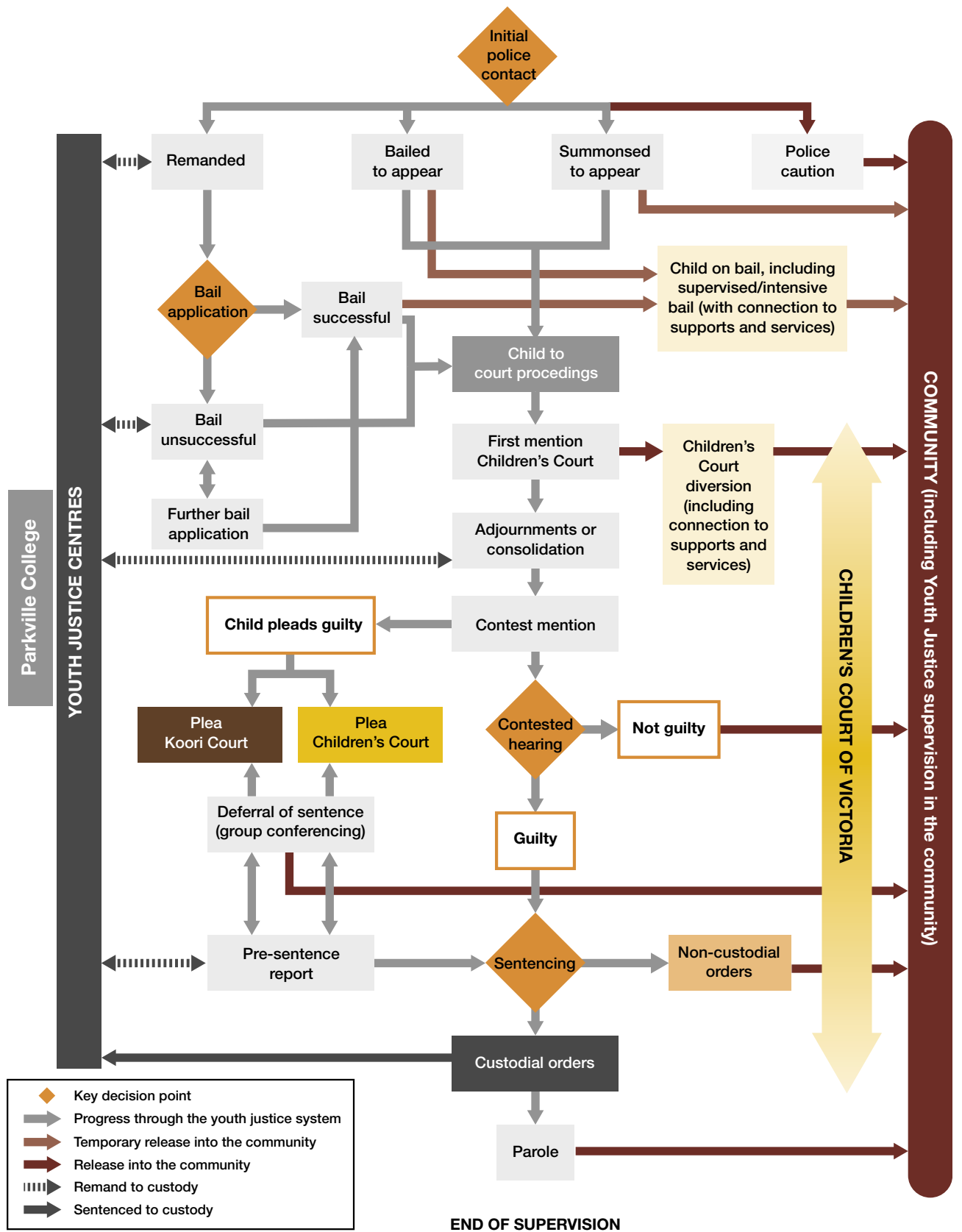


Figure 3.2 Youth justice system journey map

### 3. Overview of the Victorian youth justice system

The Commission found that Aboriginal children and young people received approximately 13% of the total diversions for children and young people between 2017 and 2019, which is slightly less than would be expected given that the proportion of Aboriginal children and young people in the Youth Justice population was 16% during this period. Diversion is discussed further in Chapter 12.1 'Diversion'.

#### Group conferencing

Youth Justice group conferencing is available to children and young people following a finding of guilt and pre-sentence. It is designed to divert children and young people from further progression into the youth justice system, and aims to reduce recidivism, increase victim satisfaction, increase community safety and provide an opportunity to repair harm caused by the offending.<sup>129</sup> Group conferences may be offered when the court is considering a sentence supervised by Youth Justice.

The purpose of a group conference is to facilitate a meeting between the child and other people, with the objectives of increasing the child's understanding of the effect of their offending on the victim and the community, reducing the likelihood of reoffending, and negotiating an outcome plan that is agreed to by the child.<sup>130</sup> The child, their legal representative and a Victoria Police representative must attend the group conference.<sup>131</sup> If they wish to participate, the victim or their representative and members of the child's family and other people of significance may also attend the group conference.<sup>132</sup>

#### Bail and remand

Children and young people may be placed on bail while awaiting a hearing or sentencing. This may include a condition to participate in a bail support program. Youth Justice has 2 bail support programs supervised by community-based staff. These are known as 'supervised bail' and 'intensive bail'. Alternatively, Victoria Police, bail justices or the Children's Court may remand a child or young person in custody while awaiting a hearing or sentencing. Decision-makers are

required to consider all other options before remanding a child or young person in custody, and any bail conditions imposed must be reasonable and no more onerous than necessary.<sup>133</sup>

The remand population in Victoria has increased steadily in recent decades, with the number of remand orders for children and young people more than doubling from 2010 to 2019.<sup>134</sup> The Commission found that Aboriginal children and young people are being placed on supervised bail orders and remanded in custody at unacceptably high rates, which is significantly contributing to their over-representation in the youth justice system. This is discussed further in Chapter 12.2 'Bail and remand'.

#### Youth Justice supervision

DJCS's Youth Justice Division is responsible for the supervision of children and young people on community-based orders and in detention in youth justice centres.

Children and young people, whether sentenced or on remand, are held in 2 youth justice centres in Victoria, and a third is planned. Parkville youth justice centre is close to the centre of Melbourne, and Malmsbury youth justice centre is approximately 100 kilometres north-west of the city. All units at Parkville youth justice centre are secure, and movement around the site is limited. Malmsbury has secure units for boys and young men under 18 years old. Young men aged 18 to 24 years are held at Malmsbury senior site, which has open units that allow more freedom.<sup>135</sup> All girls and young women are held in one unit at Parkville youth justice centre, irrespective of their behaviour or risk profile, due to the significantly smaller cohort of girls and young women compared with boys and young men.<sup>136</sup> The Victorian Government plans to hold young men aged 15 to 18

<sup>129</sup> Department of Justice and Community Safety (DJCS), *Group conferencing: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 7 September 2020, p 3.

<sup>130</sup> CYFA, s 415(4).

<sup>131</sup> CYFA, s 415(6).

<sup>132</sup> CYFA, s 415(7).

<sup>133</sup> *Bail Act 1977* (Vic), s 3B(1)(g).

<sup>134</sup> Sentencing Advisory Council, *Children held on remand in Victoria: a report on sentencing outcomes*, Sentencing Advisory Council, Melbourne, 2020, accessed 4 January 2021, p ix.

<sup>135</sup> In June 2020, a 32-bed unit opened at Malmsbury youth justice centre. This unit provides a 'Community 3' model, which is intended to be the least restrictive environment for children and young people in custody and designed to respond to the risks and needs of children and young people classified as 'low risk'.

<sup>136</sup> DJCS advised the Commission that if a girl or young woman required a unique operating environment, this would be considered as part of her placement and alternative arrangements would be made; however, this is generally not the preferred approach, given that children and young people need interaction with peers.

years at Cherry Creek youth justice centre from 2022, leaving Parkville youth justice centre to hold only boys aged under 15 years and all girls and young women.

Youth Justice responsibilities include the provision of case management, delivery of offender behaviour programs and links to support services. The Youth Justice Case Management Framework provides operational guidance for case managing children and young people, whether they are in custody or supervised in the community.<sup>137</sup> The framework commenced in February 2019 and is intended to ensure continuity of care across Youth Justice community and custodial systems, with community staff holding the lead case manager role.<sup>138</sup> The framework is supported by the Youth Justice Case Management Evidence Base, which outlines the theoretical basis underpinning Youth Justice service delivery.<sup>139</sup> The framework is also supported by a series of practice guidelines that provide detailed practice-oriented guidance for Youth Justice staff. Operating alongside the framework and practice guidelines are Director's Instructions and Practice Instructions which set out procedures for youth justice custody.

## Parole

The Youth Parole Board decides whether a child or young person may be released on parole and subject to supervision by Youth Justice in the community. The Youth Parole Board also determines whether a child or young person is not appropriate for parole.<sup>140</sup> Youth Justice case managers plan, supervise, coordinate and manage youth parole orders for children and young people transitioning into the community.

<sup>137</sup> Department of Justice and Community Safety (DJCS), *Youth Justice Case Management Framework*, DJCS, Victorian Government, unpublished, accessed 7 September 2020, p 4.

<sup>138</sup> DJCS, *Youth Justice Case Management Framework*, p 4.

<sup>139</sup> Department of Justice and Community Safety (DJCS), *Youth Justice Case Management Evidence Base*, DJCS, Victorian Government, unpublished, accessed 7 September 2020.

<sup>140</sup> For example, children and young people with sentences of less than 6 months may be considered as not appropriate for parole because their sentence is too short for an effective parole supervision process: Department of Justice and Community Safety (DJCS), *Remission: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 7 September 2020, p 7.

## Other specialised Youth Justice responses for Aboriginal children and young people

### Aboriginal Youth Justice unit

Aboriginal Youth Justice is a specialised unit within DJCS that is responsible for developing and supporting policy and program responses to reduce Aboriginal over-representation. The unit is overseen by a Director and includes:

- the Aboriginal Youth Justice Programs Team,<sup>141</sup> which oversees and provides support to DJCS-funded ACCOs and community service organisations that operate the Community-Based Koori Youth Justice Program,<sup>142</sup> Aboriginal Early School Leavers program,<sup>143</sup> Aboriginal Youth Support Service, Aboriginal Court Advice Officer<sup>144</sup> and the Koori Intensive Support Program<sup>145</sup>
- the Aboriginal Youth Justice Policy and Strategy Team, responsible for the development and implementation of the Aboriginal Youth Justice Strategy in partnership with the Aboriginal Justice Caucus, as well as furthering Aboriginal self-determination, protecting cultural rights, increasing cultural safety, addressing over-representation, developing alternatives to custody and supporting the voices of Aboriginal children and young people
- a Manager, Aboriginal Youth Justice Operations and 4 Aboriginal Liaison Officers and a team leader who operate in youth justice centres and provide Aboriginal children and young people with culturally informed support, planning and advocacy during custodial stays.<sup>146</sup>

<sup>141</sup> This team is led by a Manager, Aboriginal Youth Justice Programs.

<sup>142</sup> Also known as the Community-Based Aboriginal Youth Justice Program. This program is discussed in detail in Chapter 6.2 'Relationships with workers'.

<sup>143</sup> This program is discussed in Chapter 10.1 'Engagement in education'.

<sup>144</sup> Based within the Department of Justice and Community Safety, the Aboriginal Court Advice Officer is located in the North Eastern Melbourne Youth Justice team. This is a specialist role which provides culturally based advice and support to Aboriginal children and young people in the youth justice system appearing in court.

<sup>145</sup> Also known as the Aboriginal Intensive Support Program. This program is discussed in Chapter 12.2 'Bail and remand' and Chapter 12.5 'Community orders supervised by Youth Justice'.

<sup>146</sup> Department of Justice and Community Safety, *Aboriginal Youth Justice factsheet*, provided to Aboriginal Justice Forum members, May 2020.

### 3. Overview of the Victorian youth justice system

#### Koori Justice Unit

The Koori Justice Unit (KJU) is another unit in DJCS whose core role is to develop and support improved and equitable justice outcomes for the Aboriginal community.<sup>147</sup> As part of this responsibility, the KJU supports the work of the Aboriginal Justice Forum to coordinate the delivery of the Aboriginal Justice Agreement and related programs. KJU also builds capacity within DJCS and the Aboriginal community to:

- partner on, develop and deliver justice services and initiatives
- provide advice to ministers and staff within the department on issues affecting Aboriginal communities across Victoria
- advocate for ongoing improvement in the design and delivery of Aboriginal justice initiatives
- monitor and evaluate Aboriginal justice initiatives.<sup>148</sup>

#### Current policy context

Victoria's youth justice system is in a state of change. There has been significant reform following the recommendations of the Youth Justice Review.<sup>149</sup> Implementation of these recommendations is ongoing; however, early progress is promising. The recently released *Youth Justice Strategic Plan 2020–2030* sets out core operating principles, actions and reform directions for the next decade. In 2019, Youth Justice introduced a new Case Management Framework, together with a range of new practice guidelines to support the framework and provide practice-oriented guidance for Youth Justice staff working with children and young people. The Case Management Framework involves a more structured and individualised way of working, focused on responding to a young person's assessed risks and needs to reduce offending behaviour. The Youth Justice custodial operating philosophy<sup>150</sup> was also introduced in 2019.<sup>151</sup>

<sup>147</sup> DJCS, *Aboriginal Youth Justice factsheet*.

<sup>148</sup> DJCS, *Aboriginal Youth Justice factsheet*.

<sup>149</sup> Armytage and Ogloff, *Youth justice review and strategy*.

<sup>150</sup> Department of Justice and Community Safety (DJCS), *An operating philosophy for Victoria's youth justice centres*, DJCS, Victorian Government, 2019.

<sup>151</sup> In addition, in 2019, Youth Justice introduced new evidence-based programs to improve family functioning, reduce substance abuse and address behavioural issues (see Chapter 7.3 'Challenges experienced by Aboriginal families'). Other recent DJCS initiatives are detailed throughout the report.

An Aboriginal Youth Justice Strategy, led by the Aboriginal Justice Caucus, is in development at the time of writing and is anticipated to be informed by the findings and recommendations of this inquiry.<sup>152</sup> As part of the 2020–21 Budget, the Victorian Government has committed \$11.8 million over 4 years to deliver the Aboriginal Youth Justice Strategy and reduce the over-representation of Aboriginal children and young people in the youth justice system.<sup>153</sup> This builds on the investment of \$10.8 million over 4 years in the 2018–19 Budget, which included funding for the Koori Youth Justice Taskforce.<sup>154</sup>

This new strategic agenda acknowledges the state's past failure to adequately address the over-representation of Aboriginal children and young people in the justice system and the imperative for a new way of operating to meet this challenge. The Aboriginal Justice Agreement (Phase 3) aimed to 'close the gap in the rate of Aboriginal and non-Aboriginal people under youth justice supervision by 2031'.<sup>155</sup> As noted above, *Burra Lotjpa Dunguludja* sets a target of reducing the average daily number of Aboriginal children and young people aged 10 to 17 years under Youth Justice supervision in the community and in custody by at least 43 by 2023.<sup>156</sup>

<sup>152</sup> Department of Justice and Community Safety (DJCS), *Youth Justice Strategic Plan 2020–2030*, DJCS, Victorian Government, 2020, accessed 7 September 2020, p 22.

<sup>153</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Preventing crime and building a safer Victoria* [media release], Victorian Government, 24 November 2020, accessed 8 January 2021. This investment includes funding for development of an Aboriginal youth justice hub (see Chapter 5.1 'Early intervention'); the re-launching of Balit Ngulu, a specialist holistic legal service for Aboriginal children and young people (see Chapter 12.4 'Legal assistance'); an initiative led by the Koorie Youth Council to amplify the voice of Aboriginal children and young people in Youth Justice (see Chapter 6.3 'Participation in the youth justice system'); the establishment of Aboriginal Case Management Review Panels (see Chapter 6.1 'Collaboration'); and the expansion of the Community-Based Koori Youth Justice Program (see Chapter 6.2 'Relationships with workers'): Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people* [media release], Victorian Government, 24 March 2021, accessed 16 April 2021.

<sup>154</sup> Minister for Families and Children, Early Childhood Education and Youth Affairs, *Creating a new Aboriginal Youth Justice Taskforce* [media release], Victorian Government, 8 August 2018, accessed 14 April 2021.

<sup>155</sup> Department of Justice, *Victorian Aboriginal Justice Agreement Phase 3 (AJA3): a partnership between the Victorian Government and Koori community*, Department of Justice, Victorian Government, 2013, p 78.

<sup>156</sup> State of Victoria, *Burra Lotjpa Dunguludja*, p 30.

Nevertheless, it is important to recognise that these initiatives – however promising – are still operating within the legislative context established by sentencing and bail reforms in recent years, which continue to drive the incarceration of Aboriginal children and young people. Amendments to bail laws introduced in 2017 and 2018 have had ‘catastrophic consequences for Aboriginal children and young people in Victoria’.<sup>157</sup> The ongoing negative impacts of these legislative reforms is discussed further below and in Chapter 12.2 ‘Bail and remand’.

## Recent Victorian youth justice inquiries and reports

In addition to the Youth Justice Review, several other Victorian reports and inquiries in recent years have focused attention on the operation of the youth justice system and helped to shape the current reform agenda. These include:

- the Commission’s 2017 report *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*<sup>158</sup>
- the Victorian Parliament’s 2018 *Inquiry into youth justice centres in Victoria*<sup>159</sup>
- the Victorian Auditor-General’s 2018 report on *Managing rehabilitation services in youth detention*<sup>160</sup>
- the joint 2018 report by the Commission and the Victorian Equal Opportunity and Human Rights Commission on *Aboriginal cultural rights in youth justice centres*<sup>161</sup>

- the Koorie Youth Council’s 2018 report *Ngaga-dji (hear me): young voices creating change for justice*<sup>162</sup>
- the Victorian Ombudsman’s 2019 report *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people*.<sup>163</sup>

In addition, the Commission’s 2019 report on the out-of-home care system, *‘In our own words’: systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system* is relevant to the children and young people in the youth justice system who live in out-of-home care.<sup>164</sup>

Findings from these investigations provided added impetus and direction for this inquiry. Although some progress has been made on these issues, the Commission’s findings demonstrate that a more holistic response is needed to achieve real change for the Aboriginal children and young people whose stories form the heart of this report.

## Advancing Aboriginal self-determination

As outlined in Chapter 2 ‘Our way’, youth justice reform in Victoria is taking place alongside a strong policy agenda to advance Aboriginal self-determination, led by the Aboriginal Justice Caucus and the Aboriginal Justice Forum and supported by DJCS (see Figure 3.3).

<sup>157</sup> Victorian Aboriginal Legal Service (VALS), Submission to *Our youth, our way* inquiry, 2019, p 16. The number of supervised bail orders made in relation to Aboriginal young people has increased by 532% in the last 10 years, from 31 in 2010 to 196 in 2019: see Table 12.2 in Chapter 12.2 ‘Bail and remand’. The number of remand orders made in relation to Aboriginal young people doubled between 2010 and 2019 from 262 to 524: see Table 12.3 in Chapter 12.2 ‘Bail and remand’.

<sup>158</sup> Commission for Children and Young People, *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, Commission for Children and Young People, Melbourne, 2017, accessed 7 September 2020.

<sup>159</sup> Parliament of Victoria, *Inquiry into youth justice centres in Victoria: final report* [PDF], Legislative Council Legal and Social Issues Committee, Parliament of Victoria, 2018, accessed 7 September 2020.

<sup>160</sup> Victorian Auditor-General’s Office, *Managing rehabilitation services in youth detention*, Victorian Auditor-General’s Office, Melbourne, 2018, accessed 7 September 2020.

<sup>161</sup> Victorian Equal Opportunity and Human Rights Commission (VEOHRC) and Commission for Children and Young People,

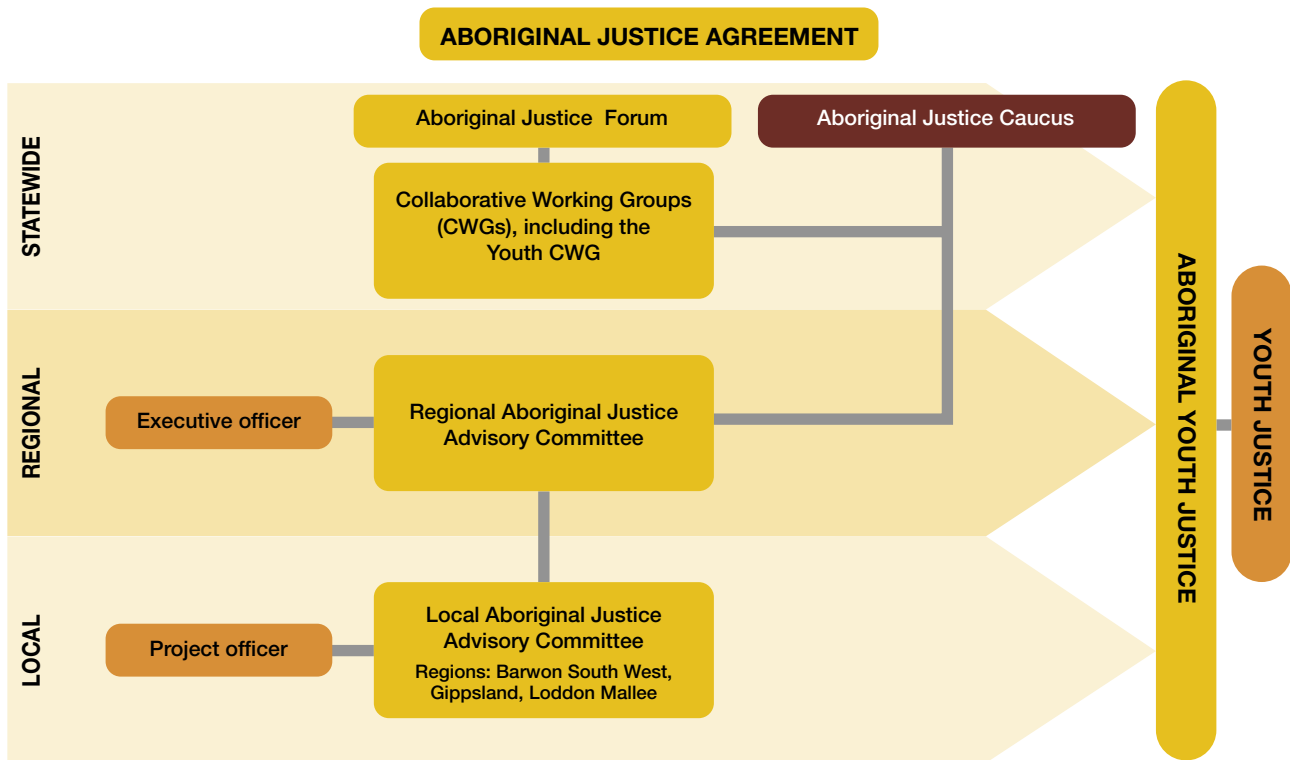
*Aboriginal cultural rights in youth justice centres* [PDF], VEOHRC, Melbourne, 2018, accessed 7 September 2020.

<sup>162</sup> Koorie Youth Council, *Ngaga-dji (hear me): young voices in creating change for justice*, Koorie Youth Council, Melbourne, 2018, accessed 22 September 2020.

<sup>163</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of children and young people*, Victorian Ombudsman, Melbourne, 2019, accessed 22 September 2020.

<sup>164</sup> Commission for Children and Young People, *‘In our own words’: systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system*, Commission for Children and Young People, Melbourne, 2019, accessed 22 September 2020.

### 3. Overview of the Victorian youth justice system



**Figure 3.3** Aboriginal Youth Justice governance structure

Advancing Aboriginal self-determination is a key priority for the Victorian Government and underpins a range of policy initiatives such as the *Victorian Aboriginal Affairs Framework 2018–2023*<sup>165</sup> and *Burra Lotjpa Dunguludja* (Figure 3.4).<sup>166</sup> These frameworks are influencing policy directions and outcomes to create the conditions necessary to transfer decision-making control, power and resources to Aboriginal people and community on the matters that affect their lives.<sup>167</sup> This includes a renewed imperative to make way for Aboriginal expertise and the power of self-determined initiatives to achieve better justice outcomes for Aboriginal children and young people. This is discussed further in Chapter 4.1 ‘Advancing self-determination’.

The Koorie Youth Council’s groundbreaking *Ngaga-dji* project has also inspired a renewed focus on centring the voices and experiences of Aboriginal children and young people in policy decisions and initiatives made about them.<sup>168</sup>

<sup>165</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 22.

<sup>166</sup> State of Victoria, *Burra Lotjpa Dunguludja*, p 11.

<sup>167</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, pp 22–27.

<sup>168</sup> Koorie Youth Council, *Ngaga-dji*.

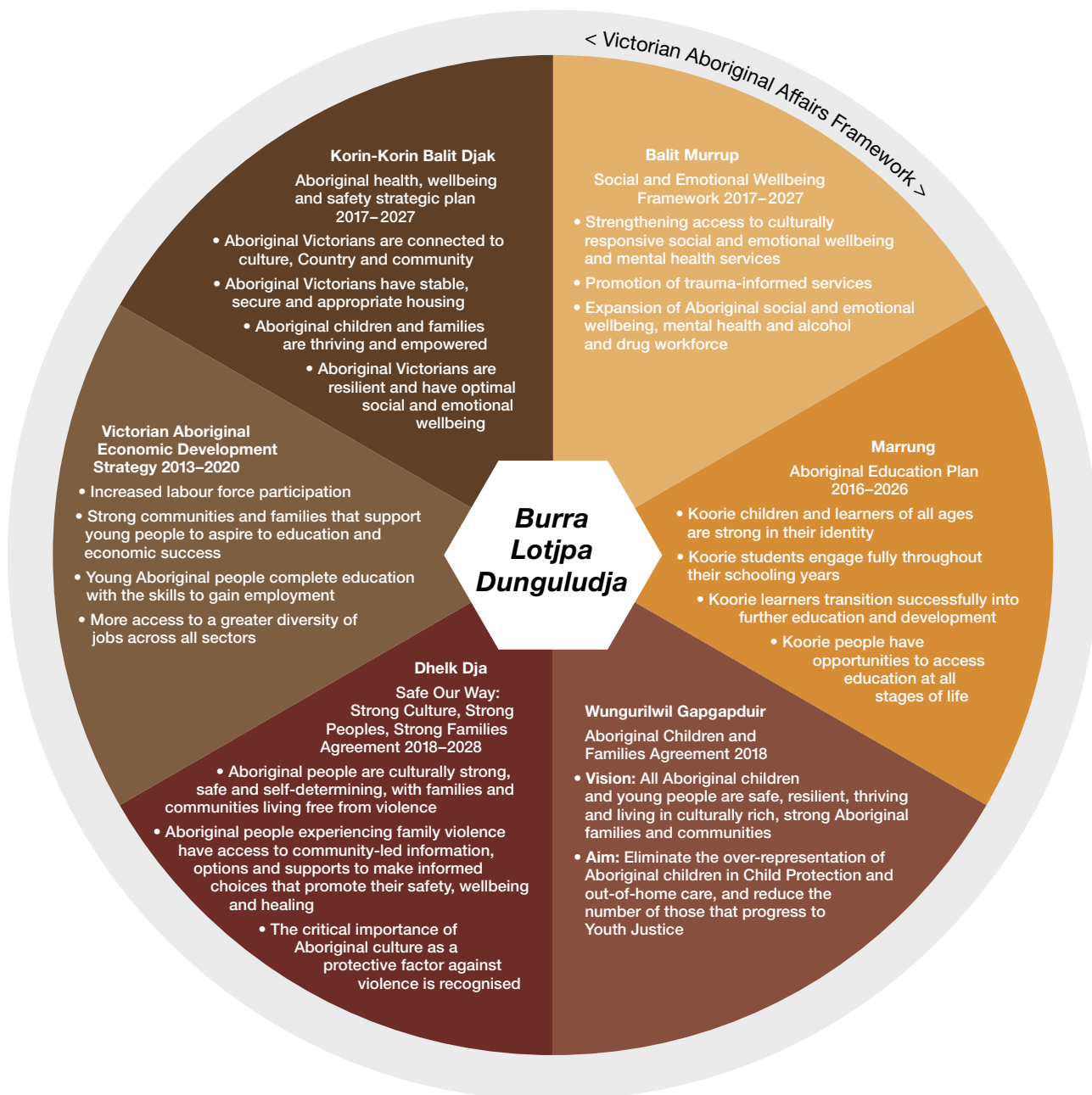
### Out-of-home care reforms

The current policy context has also been shaped by *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement*.<sup>169</sup> This 2018 agreement arose out of significant and sustained advocacy from the Aboriginal community to reduce the number of Aboriginal children in out-of-home care in Victoria. The agreement paves the way for a new approach to working with the Victorian Aboriginal community, including the transfer of responsibility from government for the care of Aboriginal children and young people.

The Commission’s *In our own words* inquiry in 2019, and the *Taskforce 1000* project in 2014 that culminated in the Commission’s 2016 report *Always was, always will be Koorie children*, have also focused attention on the continued harm inflicted on Aboriginal children and young people by the state.<sup>170</sup>

<sup>169</sup> Department of Health and Human Services (DHHS), *Wungurilwil Gaggapduir: Aboriginal Children and Families Agreement*, DHHS, Victorian Government, 2018.

<sup>170</sup> Commission for Children and Young People, *‘Always was, always will be Koorie children’: systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, Commission for Children and Young People, Melbourne, 2016, accessed 7 September 2020.



**Figure 3.4** Victorian Aboriginal Affairs Framework and related policy initiatives

Source: Adapted from State of Victoria, *Burra Lotjpa Dunguludja* (Victorian Aboriginal Justice Agreement Phase 4), p 22.

### 3. Overview of the Victorian youth justice system

The *In our own words* inquiry found that around 25% of children and young people in out-of-home care in Victoria were Aboriginal, and that despite some progress having been made, Child Protection was still failing to comply with the Aboriginal Child Placement Principle and to provide a caring home and act as a good parent would for many of these children and young people.<sup>171</sup> *In our own words* made 17 recommendations to improve out-of-home care for all children and young people. At the time of writing, the Victorian Government is still yet to develop an implementation plan for these recommendations.<sup>172</sup>

As the findings from this report show, too many Aboriginal children and young people are still being harmed by government policies that forcibly remove them from their communities – whether into care or the youth justice system – and fail to adequately recognise and support their cultural identity and needs once there. The impact of out-of-home-care policies on Aboriginal children and young people in contact with the youth justice system is discussed further in Chapter 8 ‘A caring & stable home’.

#### National policy context

The disproportionate criminalisation of Aboriginal children and young people has also received heightened national attention in recent years. In 2016, the Royal Commission into the Detention and Protection of Children in the Northern Territory (Northern Territory Royal Commission) was established following media reports on inhumane treatment of children detained in detention facilities there.<sup>173</sup> Queensland also commissioned an independent review of its youth detention centres in 2016.<sup>174</sup>

In 2018 the Australian Law Reform Commission published *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait*

*Islander peoples*,<sup>175</sup> and the Law Council of Australia’s *Justice Project* considered issues specific to youth justice and Aboriginal over-representation in the criminal justice system in its report released in August 2018.<sup>176</sup> In July 2020, the National Agreement on Closing the Gap was entered into between the Coalition of Aboriginal and Torres Strait Islander Peak Organisations and all Australian governments. For the first time, youth justice has been identified as a priority area and a target has been set to ‘reduce the rate of Aboriginal and Torres Strait Islander young people (10–17 years) in detention by at least 30 per cent’ by 2031.<sup>177</sup>

Across Australia, a responsive community sector is well connected to social and justice issues and increasingly using its platforms to amplify the voices of Aboriginal children and young people to drive change. Campaigns to improve justice outcomes spurred by advocacy groups including Change the Record and Raise the Age have gained momentum in recent years. Alternative evidence-based initiatives such as justice reinvestment are also taking hold with promising results (see Chapter 4.1 ‘Advancing self-determination’ and Chapter 5.1 ‘Early intervention’ for further discussion of these).<sup>178</sup>

#### Shifting priorities in the Victorian youth justice system

Historically, Victoria’s youth justice system has been well regarded for its comparatively low incarceration rates and effective diversion and rehabilitation programs.<sup>179</sup> However, neglect of the system by successive governments over many years culminated in a significant shift from 2016 towards policy and practices that promoted security over diversion and rehabilitation.<sup>180</sup> These included attempts to use a

<sup>171</sup> Commission for Children and Young People, *In our own words*, p 79.

<sup>172</sup> In response to this, DFFH advised the Commission that it has been required to focus on the state’s response to the COVID-19 pandemic.

<sup>173</sup> Northern Territory, *Royal Commission into the protection and detention of children in the Northern Territory: final report*, Darwin, 2017, accessed 7 September 2020.

<sup>174</sup> K McMillan and M Davis, *Independent review of youth detention: report* [PDF], Queensland Government, Brisbane, 2016. This was followed by the Atkinson report on youth justice in 2018: B Atkinson, *Report on youth justice*, Department of Child Safety, Youth and Women, Queensland Government, 2018.

<sup>175</sup> Australian Law Reform Commission (ALRC), *Pathways to justice – an inquiry into the incarceration rate of Aboriginal and Torres Strait Islander peoples: final report*, ALRC report 133, Australian Government, 2018, accessed 7 September 2020.

<sup>176</sup> Law Council of Australia, *The Justice Project: final report*, Law Council of Australia, 2018, accessed 20 September 2020.

<sup>177</sup> Closing the Gap in Partnership, *National Agreement on Closing the Gap*, 2020, pp 28–29.

<sup>178</sup> See Justice Reinvestment Network Australia (JRNA), *Justice Reinvestment in Australia*, JRNA website, accessed 7 September 2020.

<sup>179</sup> Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 3.

<sup>180</sup> See also Victorian Auditor-General’s Office, *Managing rehabilitation services in youth detention*, p 10; Victorian



gazetted unit at Barwon Prison to house children and young people following disturbances at Parkville youth justice centre in late 2016, authorising adult corrections officers to work in youth justice centres and use OC spray and other weapons against children and young people, and legislative amendments to limit the jurisdiction of the Children's Court and the operation of the dual track system, among other changes.<sup>181</sup> These responses exacerbated the impact of the disproportionate criminalisation of Aboriginal children and young people, despite decreasing crime trends.

As noted above, in 2017, the Commission tabled its systemic inquiry into the use of isolation, separation and lockdowns in youth justice centres, *The same four walls*. This report identified unacceptable custodial operating practices, including extensive use of isolations in inappropriate facilities, often without the required authorisations; extensive lockdowns across both youth justice centres, prohibiting access to fresh air, sunlight, programs and education for days at a time; and a raft of other operational shortfalls. The inquiry found that at Malmsbury youth justice centre, Aboriginal children and young people were being disproportionately placed in isolation, making up 30% of all children and young people isolated, despite accounting for only 16% of the total custodial population.<sup>182</sup>

Since 2016, Youth Justice has continued to be challenged to resolve significant and competing issues, including providing rehabilitative and educational opportunities for children and young people, and safe environments for staff and children. Youth Justice's efforts to address these issues have varied widely and, in the view of the Commission, have not always been in the best interests of children and young people.

More recent developments in Youth Justice following the Youth Justice Review demonstrate a greater emphasis on evidence-based policies and age-

appropriate responses that emphasise rehabilitation and reflect modern youth justice standards and human rights. Promising reforms include (as noted above) a new strategic vision captured in the Youth Justice Strategic Plan, Case Management Framework, practice guidelines and custodial operating philosophy. The development of a new Youth Justice Act, as recommended by the Youth Justice Review, presents opportunities to build on this work.

Nevertheless, financial investment in custodial supervision, and in strengthening the security-based infrastructure of youth justice centres, has continued to far outweigh resources directed towards diverting children and young people from the youth justice system. According to the Victorian Ombudsman in 2019:

*The [Youth Justice Review] observed that as at approximately July 2017, investment in youth custodial supervision was approximately 20 times greater than the combined funds allocated to early intervention, diversion and restorative justice processes... Since that review, according to DJCS's 'Corporate Plan 2018–22', further funds have been allocated to expanding Malmsbury's secure bed capacity and fortifying the facility's security infrastructure. Work is also currently underway on a new, 224 bed high security youth justice centre, to open in 2021, at an allocated cost of \$288.7 million.*<sup>183</sup>

During its investigation into solitary confinement in the Malmsbury youth justice centre, the Victorian Ombudsman observed 'a genuine commitment at many levels to the welfare of young people and their rehabilitation', but was also 'disturbed by a culture that appeared to prioritise security'.<sup>184</sup>

These observations reflect findings made by the Victorian Auditor-General that operational decisions in youth justice centres prioritising immediate risks to safety and security at times inhibited the provision of education, rehabilitation and health services.<sup>185</sup> The social and economic costs of policies that prioritise incarceration over rehabilitation are discussed further in

Ombudsman, *OPCAT in Victoria*, p 7.

<sup>181</sup> Other punitive legislative changes included the introduction of a presumption in favour of minimum custodial sentences for young people aged 18 to 20 years in respect of assaults against youth justice custodial workers on duty, and a presumption that custodial sentences for children and young people found guilty of multiple offences including assault of a youth justice custodial worker, property damage in a youth justice centre or escape from a youth justice centre, must be served cumulatively rather than concurrently: see Sentencing Act and CYFA, as amended by the Children and Justice Legislation Amendment (Youth Justice Reform) Act.

<sup>182</sup> Commission for Children and Young People, *The same four walls*, p 14.

<sup>183</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 7. Cherry Creek has since been rescoped to 140 beds and is expected to be completed in mid-2022, ahead of receiving children and young people in late 2022.

<sup>184</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 7.

<sup>185</sup> Victorian Auditor-General's Office, *Managing rehabilitation services in youth detention*, p 10.

### 3. Overview of the Victorian youth justice system

Chapter 5 'A just & age-appropriate system' and Chapter 13 'Safe custody'.

The change in priorities between 2016 and 2018 also coincided with a gradual shift in bail policy away from a traditional focus on securing attendance at court hearings towards an emphasis on providing community protection.<sup>186</sup> Legislative amendments to bail laws introduced in 2017 and 2018 in response to concerns about community safety have made it considerably more difficult for decision-makers to grant bail, including to Aboriginal children and young people.<sup>187</sup> This has led to increased interventions and exposure to custodial environments, with a criminalising effect for Aboriginal children and young people. This is discussed further in Chapter 12.2 'Bail and remand'.

#### Impact of media reporting

The media plays a pivotal role in informing and shaping public perceptions about children and young people's involvement in crime in society,<sup>188</sup> as well as community perceptions of safety.<sup>189</sup> Research conducted by Dr Faith Gordon has demonstrated that sensationalist and pejorative media representations of young people in conflict with the law can also amplify social tensions and perpetuate detrimental social constructions of childhood, leading to poor policy outcomes and reactionary justice policies.<sup>190</sup>

The impact of the media can be particularly damaging for Aboriginal children and young people. Negative media coverage can affect the wellbeing of Aboriginal young people, as well as shape and dominate societal attitudes and beliefs about Aboriginal 'disadvantage'. For example, researchers from Curtin University analysing 335 news articles about Aboriginal health

found that 74% were negative, 11% were neutral and 15% were positive.<sup>191</sup> More recently, researchers from the University of Technology Sydney analysed 45 years of print coverage of key initiatives for Aboriginal self-determination and found that Aboriginal perspectives were rarely presented as legitimate.<sup>192</sup> These studies demonstrate the powerful capacity of media representations to create and sustain negative narratives that undermine the agency and strength of Aboriginal young people.

In the Victorian context, commentators have observed that sensationalised media coverage about 'youth gangs', high-profile offending and incidents at the Parkville and Malmsbury youth justice centres in 2016 and 2017 influenced community perceptions and assumptions that Victoria was in the grip of a 'youth crime wave', despite statistical evidence to the contrary.<sup>193</sup> This ultimately created a pressurised policy environment that enabled legislative changes and the unprecedented situation of young people being detained in an adult correctional facility in contravention of the Charter of Human Rights and Responsibilities.<sup>194</sup>

As articulated by the former Executive Director of Criminal Law Services at Victoria Legal Aid:

*One of the main vices of sensationalised media narratives on complex social issues, such as youth offending, is that they invariably lead to short-term problem solving. They create pressured environments that militate against the making of good policy. In recent years, this kind of media has proven potently successful in influencing politicians of all persuasions – resulting in reactionary justice policies that add unnecessary complexity to judicial and administrative decision-making processes. In some instances, punitive changes to the law appear to be contributing to increased recidivism, disproportionate rates of*

<sup>186</sup> M McMahon, *No bail, more jail? Breaking the nexus between community protection and escalating pre-trial detention* [PDF], Research Paper No. 3, Parliament of Victoria, 2019, accessed 7 September 2020, p 2.

<sup>187</sup> The number of supervised bail orders made in relation to Aboriginal young people has increased by 532% in the last 10 years, from 31 in 2010 to 196 in 2019. The number of remand orders made in relation to Aboriginal young people doubled between 2010 and 2019 from 262 to 524: see Chapter 12.2 'Bail and remand'.

<sup>188</sup> F Gordon, 'Media regulation: strategies to mitigate violence against children who are publicly "named and shamed"' in W O'Brien and C Foussard (eds), *Violence against children in the criminal justice system: global perspectives on prevention*, Routledge, London, 2020, p 39.

<sup>189</sup> F Gordon, *Children, young people and the press in a transitioning society: representations, reactions and criminalisation*, Palgrave Socio-Legal Series, UK, 2019, p 62.

<sup>190</sup> Gordon, 'Media regulation', p 1.

<sup>191</sup> P Brescia, *Media portrayal of Indigenous people overwhelmingly negative*, The Wire website, 14 July 2015, accessed 7 September 2020.

<sup>192</sup> A Thomas, A Jakubowicz and H Norman, *Condescending and disempowering. Australia's media have systematically thwarted Aboriginal aspirations*, The Guardian, 15 March 2020, accessed 7 September 2020.

<sup>193</sup> See especially H Fatouros, *Is our youth justice system really broken?* [PDF] Castan Centre for Human Rights Law Conference, 22 July 2016, accessed 7 September 2020. It is nevertheless important to acknowledge that there was an increase in serious offending among a small group of young people over this period – see for example, C Grover, *Youth justice in Victoria*, Research Paper No. 3, Parliament of Victoria, 2017, p 1.

<sup>194</sup> *Certain Children v Minister for Families and Children & Ors* (No 2) [2017] VSC 251 (11 May 2017).

*imprisonment when one considers population and crime rates, and perverse outcomes that erode rights and entrench disadvantage and inequality.*<sup>195</sup>

While the media continues to saturate everyday life, it is incumbent on the Victorian Government and its agencies to challenge these harmful narratives, help to shape more accurate representations and preference the pursuit of evidenced-based youth justice policies over reactionary responses.

## Impact of COVID-19

COVID-19 poses serious risks to the Aboriginal community.<sup>196</sup> In response to these risks, DJCS implemented a number of initiatives to deliver support for Aboriginal children and young people under Youth Justice supervision and safeguard against the transmission of COVID-19 in youth justice centres. DJCS advised the Commission that, at the same time, it focused efforts on reducing Aboriginal over-representation in the youth justice system. The Commission commends these efforts, but notes that some of these supports should be provided to Aboriginal children and young people in the youth justice system as a matter of course.

## Community supervision

To support Aboriginal children and young people during COVID-19, Youth Justice:

- provided additional brokerage funding of \$11,000 each to 28 ACCOs and community service organisations to enable them to deliver care packages, purchase equipment and games for children, arrange ‘driveway yarns’, support virtual youth groups and provide peer-to-peer support
- worked to prioritise the provision of laptops to children and young people in the community
- actively supported COVID-positive children and young people under community supervision to minimise their risk of breaching public health orders or conditions of court orders (including the provision of practical support for families, such as groceries)

<sup>195</sup> Fatouros, *Is our youth justice system really broken?*

<sup>196</sup> Department of Justice and Community Safety (DJCS), *COVID-19: support being provided to Aboriginal young people in the youth justice system*, AJF 56 Agenda paper, Aboriginal Justice Forum, 2020, unpublished, p 1.

- distributed COVID-19 factsheets to funded organisations, providing advice about working with Aboriginal children and young people
- provided funding of \$151,880 for the delivery of COVID-19 care packages in partnership with Aboriginal organisations and Aboriginal-owned businesses.<sup>197</sup>

At the height of community transmission of COVID-19, community-based Youth Justice supervision was modified to mitigate the risk of transmission, and was conducted remotely in most cases. Youth Justice advised that it supported the use of technology during this period, including by sourcing appropriate devices for children and young people, to enable remote supervision and court attendances, and the continuation of care team meetings.<sup>198</sup>

## Custody

Aboriginal children and young people in custody and residential care facilities are particularly vulnerable to infection, given the close proximity of living conditions in these facilities. Youth Justice introduced safety measures, based on health advice, to minimise the risk of COVID-19 spread in youth justice centres. These include the suspension of non-essential contact visitors through peak times of risk, the introduction of virtual personal visits, requirements for staff and visitors to wear personal protective equipment onsite and increased health screening for staff and detainees.<sup>199</sup>

At the time of writing, a small number of positive cases had been linked to Victoria’s youth justice system. This includes young people at Parkville youth justice centre and a cluster of cases connected to an education coordinator at Malmsbury youth justice centre.<sup>200</sup> However, it is noteworthy that no children or young people have to date become infected in a youth justice

<sup>197</sup> The ‘Stay deadly in challenging times’ care packages included Aboriginal-themed, accessible COVID-19 information for young people (delivered in partnership with the Koorie Youth Council), hand sanitisers and culturally themed face masks, and additional cultural programs, including online yarnning circles.

<sup>198</sup> DJCS, *COVID-19: support being provided to Aboriginal young people in the youth justice system*, p 2.

<sup>199</sup> Department of Justice and Community Safety (DJCS), *COVID-19 related activity and impacts across the justice system*, AJF 56 Agenda paper, Aboriginal Justice Forum, 2020, unpublished, pp 3–4.

<sup>200</sup> Department of Health and Human Services, *Coronavirus update for Victoria – 4 August 2020*, Media hub – coronavirus (COVID-19) website, 2020, accessed 8 September 2020.

### 3. Overview of the Victorian youth justice system

centre, despite a number testing positive on admission to custody. The Commission commends the work of DJCS in this respect.

DJCS advised the Commission that Youth Justice also implemented measures to alleviate pressure on the custodial system in response to COVID-19, by supporting children and young people to receive timely access to bail and parole. These measures included:

- closely monitoring court dates and working with the Children's Court to prioritise the flow of children and young people held on remand or those in the community through the youth justice system
- working with other agencies and partners to ensure that appropriate supports were in place to enable children and young people to adhere to bail and parole conditions and reduce the time spent in custody.

Through the Commission's routine monitoring work, we observed a 17% drop in the overall youth justice custodial population between the end of March 2020 and the end of December 2020.<sup>201</sup>

Youth Justice advised that, in response to COVID-19, young people in youth justice centres have been given additional phone calls, and visits from family and community members have been facilitated through video link.<sup>202</sup> In-person visits resumed in December 2020, ceased in January 2021, and resumed again in late January.

Some Aboriginal children and young people have been provided with resources to keep cultural connection and promote feelings of safety, including possum skins, jigsaw puzzles, journals and seedlings to plant in the garden; however, these have not been provided consistently. Aboriginal Liaison Officers are continuing to work in both the Parkville and Malmsbury youth justice centres.<sup>203</sup> The supports provided to Aboriginal children and young people in custody during COVID-19 are discussed further in Chapter 13 'Safe custody'.

In April 2020, the Victorian Government amended the CYFA to allow youth justice centres to isolate a young person to detect, prevent or mitigate the transmission of COVID-19.<sup>204</sup> Youth Justice introduced procedures in 2020 to isolate all new admissions to youth justice centres, the period of which has varied. Children and young people with a potential suspected close contact or confirmed case have also been subject to isolation.<sup>205</sup>

DJCS advised the Commission that children and young people in COVID-19 isolation:

- are offered a daily wellbeing check, in addition to being regularly observed and receiving supports to meet their health, rehabilitation and developmental needs
- receive education and case management services through secure devices
- receive virtual visits with family and significant others and access to cultural supports through secure devices
- have access to movies, music, games and entertainment through secure devices.

The impact of isolation on Aboriginal children and young people is discussed in Chapter 13.2 'Conditions in youth justice custody'.

<sup>201</sup> Compiled from DJCS data provided regularly to the Commission.

<sup>202</sup> DJCS, *COVID-19: support being provided to Aboriginal young people in the youth justice system*, p 2.

<sup>203</sup> DJCS, *COVID-19: support being provided to Aboriginal young people in the youth justice system*, p 2. DJCS also advised the Commission that Aboriginal children and young people in custody are participating in a Sports Academy, involving access to sporting mentors (see also Chapter 13.1 'Cultural safety and support in custody').

<sup>204</sup> *COVID-19 Omnibus (Emergency Measures) Act 2020* (Vic). These amendments to the CYFA also enabled the Youth Parole Board to establish remote operations and continue decision-making.

<sup>205</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 3.13: COVID-19 isolations*, DJCS, Victorian Government, unpublished, accessed 7 September 2020.

# A self-determined youth justice system

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*The stars are our ancestors, who give us guidance. The symbol of women is included as we've got a lot of amazing women and they always support us. The people lifting us up and supporting us is for our family, as that's one thing we're so lucky to have, when they could have given up on us. The shield represents our need for protection, while the kangaroo tracks are to show we're moving forward, not back.*  
– Young people of the Western Metropolitan region, Wurundjeri & Wathaurong Country

## Our way

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*Self-determination is the only strategy that has generated sustainable cultural, physical, spiritual, economic, social and emotional wellbeing for Aboriginal and Torres Strait Islander communities. Furthering the self-determination model with systemic change is required to reduce youth justice involvement for Aboriginal young people in Victoria. – Aboriginal Justice Caucus<sup>206</sup>*

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Self-determination means Aboriginal communities having the ability to decide how their children and young people are engaged with and treated in the youth justice system. It means using Aboriginal methods to support vulnerable children and young people to stay in their communities and out of the youth justice system, and adopting community-designed and led solutions based in Aboriginal ways of *knowing, being and doing*. Aboriginal communities desire a system that operates, as they told the Commission, ‘our way’.

The Aboriginal Justice Caucus advocates for an Aboriginal ‘end-to-end’ youth justice system that adopts a holistic and restorative approach.<sup>207</sup> A better way is possible, by shifting away from punitive and harmful youth justice practices towards more holistic, restorative and therapeutic ways of supporting children and young people, and responding to challenging behaviours.

After many years of tireless work by Aboriginal communities, Aboriginal self-determination is now a policy priority of the Victorian Government. This means that greater self-determination in the youth justice system is within grasp. A self-determined youth justice system will empower Aboriginal communities to achieve better outcomes and long-term generational change for Aboriginal children and young people.

<sup>206</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, 2019.

<sup>207</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry.

## Bobby, Nikita and Richard's story

Bobby, Nikita and Richard, 3 young teenagers, live with their mum and dad.<sup>208</sup> Bobby is a keen artist, Nikita loves singing and Richard has a passion for sport. They miss their eldest sister, who is in prison.

A couple of years ago their mum and dad were struggling with drug misuse, and it was chaotic at home. It was often a struggle for the children to get to school, and they didn't always make it. They were falling behind with their learning. There weren't many opportunities for the children to get involved in activities outside school.

The constant arrival of visitors and people staying at their house was stressful for the family. Sometimes there was violence at home.

When they were referred to *Barrang Moorop* – an early intervention program run by the Victorian Aboriginal Child Care Agency (VACCA) – a caseworker created a case plan for each of the children, where they set their own goals across education, wellbeing, cultural connections and physical health. The caseworker helped the family to establish a morning routine to get the children to school, including drawing up a timetable, making school lunches and printing out a bus schedule.

The caseworker also started talking to their mum and dad about communication and house rules were established.

The caseworker organised cooking classes for the family, which helped nurture and develop their relationships with each other. It also helped with budgeting and taught important life skills.

Richard joined a didgeridoo-making program, which ran for 8 weeks and was mentored by an Elder. The program connected him to other Aboriginal boys from the community and positive male role models who guided the process.

Richard was really keen to play football, so the caseworker helped his mum and dad register him with the local football club. For the first few weeks, the caseworker supported them to take Richard to training

once a week. When the games first started, the whole family went along. In his first game, Richard scored his first goal and everyone was so proud. His mum now takes Richard to training twice a week and gets him to his games and a positive relationship has developed between them.

Bobby and Nikita showed an interest in cultural programs. Bobby joined an art mentoring program, which culminated in the young people creating a body of work to showcase at an end-of-program exhibition. Nikita joined a choir, where they learn songs in traditional languages and have opportunities for performances. Through the program, they are mentored by Aboriginal artists, singers and songwriters, and Elders support them to translate their songs into language.

Their mum participated in a rehabilitation program and completed it successfully. She identified ways to support the family, and started to feel more involved in raising the kids and decision-making.

The caseworker also assisted the family to set boundaries for family time and time for visitors, and helped develop a timetable with chores and day-to-day duties for each family member. The children started commenting that their parents were doing really well.

VACCA continues to work with the family and has seen them become each other's greatest supports, thriving with the new boundaries in place that best support their needs.

<sup>208</sup> This story was provided to the Commission by the Victorian Aboriginal Child Care Agency.



## Chapter at a glance

- Services designed, controlled and delivered by the Aboriginal community have the greatest potential to produce the best outcomes for Aboriginal children and young people in contact with the youth justice system.
- Self-determination in the youth justice system cannot be achieved without strengthening the role of Aboriginal organisations. This must include sustainable resourcing and improved support to build the sector's organisational and workforce capacity.
- Current collection and reporting of data on the experiences of Aboriginal children and young people in the youth justice system is lacking. Without adequate data, the youth justice system lacks transparency.
- Despite the willingness of agencies to provide their data for the inquiry, the Commission identified situations where important data was not captured, was unable to be provided, or was unusable because of gaps and inconsistencies in collection.

## Current context

As a key priority for the Victorian Government, advancing Aboriginal self-determination underpins several policy frameworks, including the *Victorian Aboriginal Affairs Framework 2018–2023*, the Aboriginal Justice Agreement (*Burra Lotjpa Dunguludja – The Aboriginal Justice Agreement Phase 4*), and the Youth Justice Strategic Plan (see Figure 3.4). These initiatives aim to create the conditions necessary to transfer decision-making control, power and resources to Aboriginal people and community on the matters that affect their lives.<sup>209</sup>

As articulated in the Victorian Aboriginal Affairs Framework, Aboriginal self-determination is what community wants, it works, and it is a human right.<sup>210</sup> Advancing a self-determined youth justice system means supporting Aboriginal children and young people, their families and communities to take control over the structure, design and delivery of the system in practice.<sup>211</sup> As envisioned by the Aboriginal Justice Caucus, this requires the progressive transfer of authority, decision-making, resources and responsibilities to an Aboriginal-controlled youth justice system.<sup>212</sup>

### Aboriginal Justice Caucus – Principles guiding self-determination in youth justice<sup>213</sup>

- Strengths-based, therapeutic, restorative, holistic, family-based approaches to justice
- Culturally based, community-led solutions
- Increased decision-making
- The importance of caring for young people and hearing their voices
- Data sovereignty and Aboriginal perspectives in analysing and interpreting data
- A rights-based approach – human rights and cultural rights at the centre of what we do, cultural integrity at its core, true valuing of Aboriginal expertise, working in genuine partnership, empowered decision-making and a high level of accountability by government
- Address structural racism in policy and laws
- Early Aboriginal involvement in justice policy and legislation
- Strengthened role of ACCOs in provision of justice-related responses and services

In recognition of the Victorian Government's commitment to furthering self-determination in the youth justice system, Youth Justice is currently working in partnership with the Aboriginal Justice Caucus to develop the Aboriginal Youth Justice Strategy. This has involved:

- analysis of the experiences of Aboriginal children and young people in contact with the youth justice system (discussed further in Chapter 4.2 'Data on Aboriginal children and young people in the youth justice system')

<sup>209</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, pp 22–27.

<sup>210</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 22.

<sup>211</sup> C Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, Research report, 2019, p 6.

<sup>212</sup> The vision of the Aboriginal Justice Caucus is for an end-to-end Aboriginal community-controlled youth justice system.

<sup>213</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, p 2, Appendix 1.

- the development of 2 business cases for the 2020–21 and 2021–22 budget processes, related to addressing the over-representation of Aboriginal children and young people in the youth justice system
- working with the Koorie Youth Council to focus on the voices of Aboriginal children and young people.

*Burra Lotjpa Dunguludja* also calls for increased Aboriginal ownership of, and access to, data.<sup>214</sup> This is a policy priority. Strategies to achieve this include establishing independent mechanisms to oversee, monitor and report to Parliament on the achievement of improved justice outcomes for Aboriginal people in Victoria, and improving the quality of program data to provide a clearer and more accurate description of program use and effectiveness for Aboriginal people. A further strategy is to enable full participation of Aboriginal people in evaluation work under *Burra Lotjpa Dunguludja*.<sup>215</sup>

Generating data outcomes conceptualised through Aboriginal methodological frameworks has the potential to challenge accepted narratives about the experiences of Aboriginal children and young people in the youth justice system and to reshape policy directions to improve these. A sufficient understanding of systemic data is a vital precondition for developing adequate policy responses to address the over-representation of Aboriginal children and young people in the youth justice system. High-quality data can expose inequalities in youth justice system outcomes, as well as the effectiveness (or ineffectiveness) of interventions designed to improve outcomes.

This chapter is divided into 2 parts:

- 4.1 ‘Advancing self-determination’ considers the changes necessary to achieve greater Aboriginal control over the structure, design and delivery of the youth justice system.
- 4.2 ‘Data on Aboriginal children and young people in the youth justice system’ examines gaps in data on Aboriginal children and young people in the youth justice system.

<sup>214</sup> Outcome 4.1.1: State of Victoria, *Burra Lotjpa Dunguludja*, p 33.

<sup>215</sup> Goal 4.1: State of Victoria, *Burra Lotjpa Dunguludja*.

# 4.1 Advancing self-determination

## Finding 1

Services designed, controlled and delivered by the Aboriginal community have the greatest potential to produce the best outcomes for Aboriginal children and young people.

*Self-determination is doing business our way. Things work better if we implement community-led solutions. If it's our vision we will work towards, then our kids will grow up strong.*  
– Aboriginal Justice Caucus<sup>216</sup>

Aboriginal children and young people and their families and communities must be at the heart of decision-making on matters that affect their lives. This requires their active involvement in determining appropriate responses, interventions and programs at key decision-making points of the youth justice system, in order to reflect the specific needs and experiences of communities. It also requires Aboriginal control over the nature, scope and objectives of youth justice policies and programs, and over their design and delivery. Local, national and international evidence has consistently demonstrated that advancing Aboriginal self-determination and self-governance leads to improved outcomes for Aboriginal people.<sup>217</sup>

The Commission found that services and programs designed, controlled and delivered by the Aboriginal

community have the greatest potential to produce the best outcomes for Aboriginal children and young people in contact with the youth justice system, or at risk of coming into contact with it. This is consistent with research indicating that culturally specific responses generate better outcomes for Aboriginal children and young people.<sup>218</sup>

Research by Professor Chris Cunneen demonstrates that best-practice initiatives are place-based, delivered on Country, and driven by Aboriginal people with decision-making control and authority over program design and delivery.<sup>219</sup> There is scope in Victoria to learn from current initiatives, design and deliver new services, better support Aboriginal workers and organisations, and further enable the transfer of power and decision-making control to Aboriginal people and community to achieve positive outcomes for Aboriginal children and young people. This requires legislative recognition of Aboriginal decision-making power and control, and an expanded role for ACCOs to operationalise this.

<sup>216</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, Appendix 1.

<sup>217</sup> See especially L Behrendt, A Porter and A Vivian, *Indigenous self-determination within the justice context: literature review*, UTS, Jumbunna Indigenous House of Learning, 2017, p 20.

<sup>218</sup> Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*, p 119.

<sup>219</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 97.

## What the Commission heard from children and young people

*If I had a dream and it all came true there would be no DHHS, there would be no youth justice system, and none of us kids would have got taken away. Even the Stolen Generations wouldn't have got taken away. I would bring more things to help us – more Elders to sit down and talk to us, more things to do for us blackfellas. I want us to have a better life. – Peyton, 16*

The Commission spoke to 93 children and young people, most of whom were involved in, or had previously been in contact with, the youth justice system. Connection to culture was a source of pride and strength for many of the young people the Commission spoke to. During consultations, many children and young people conveyed that they yearned for greater connection with and education about their culture, and expressed a desire for more meaningful engagement with support programs that are run by Aboriginal people and organisations, on Country and close to family.

*Healing on Country could have fishing programs, camping, going out bush for weeks away from drugs and alcohol. Just have all the Elders take all the younger boys out and stay out there for a couple weeks. They know us and they know what's best. – Jasper, 17*

Some children and young people preferred engaging with Aboriginal organisations and workers because they felt better understood by them. This can be attributed to similar life experiences among Aboriginal workers and children and young people, which create a shared understanding and recognition of the very real institutional and systemic barriers that can affect the prospects of Aboriginal people. Aboriginal organisations and workers adopt a strengths-based approach and focus on building the young person's sense of self-worth, respect and dignity.

*I've had Aboriginal workers. That makes a difference. They can relate to what's going on. – Macy, 23*

*I'd rather have a blackfella organisation support me. – Watjpa, 21*

Trusted relationships between Aboriginal children and young people and Aboriginal workers are examined further in Chapter 6.2 'Relationships with workers'.

The Commission heard that engagement with Elders, Aboriginal mentors and programs, at the right time and in the right place, was pivotal for many children and young people who had access to it (see Chapter 9 'Wellbeing'). The Commission also heard that strengthening connection to culture and community enables Aboriginal young people to cultivate courage, resilience and determination in the face of severe adversity (see also Chapter 7 'Family, community & culture' and Chapter 9 'Wellbeing').

*I love doing cook-up every Wednesday – first time I had possum, wombat, damper. I've been doing alright, been getting better at didge, learning off other people. It doesn't feel like a program – we come up with ideas, it's fluid. We're in control, which I don't normally feel. – Bailey, 18*

*[Dardi Munwurro] doesn't put all of us in one category.<sup>220</sup> They spiritually connect with us and help us heal... it gets us connected to Elders, otherwise I wouldn't have that. Dardi brings it all together in a safe meeting place. – Corei, 17*

Many children and young people also spoke about benefiting from services that incorporated a holistic approach to wellbeing.

<sup>220</sup> Dardi Munwurro is an Aboriginal organisation that is discussed later in this chapter.

## 4.1 Advancing self-determination

*Even this place [Bunjilwarra] is a really good alternative. Places like this change people, or not 'change' people, it brings out the good in people. They bring out the better person.*  
– Hayleigh, 21

Bunjilwarra and healing centres are discussed in detail in Chapter 9.2 'Substance use'.

### What the Commission heard from Aboriginal organisations

*We carry a spirit of optimism and conviction that we can drive the change needed on the ground to improve the lives of Aboriginal youth and reduce their over-representation within Youth Justice... we believe we have the relationships and expertise to lead self-determination in Youth Justice through the care and case management of Aboriginal children and young people who come in contact, or are at risk of coming in contact, with Youth Justice, and ultimately transform outcomes for Aboriginal children and young people.*  
– Victorian Aboriginal Children and Young People's Alliance<sup>221</sup>

The Taskforce conducted 13 regional forums and held a further 69 individual case planning sessions with service providers across the state. The Commission also received 5 submissions from Aboriginal organisations. These organisations are committed to, and passionate about, improving outcomes for Aboriginal children and young people.

The Commission found that many Aboriginal organisations had deep community connections and incorporated a holistic approach to wellbeing when supporting young people and their families.

<sup>221</sup> Victorian Aboriginal Children and Young People's Alliance, Submission to *Our youth, our way* inquiry, 2019, p 5.

*We care for our community; we seriously care about our community. We genuinely don't want to see young people out there not doing anything. These are our kids.* – Bert Williams  
Aboriginal Youth Services (BWAYS)

Aboriginal organisations identified cultural connection as a source of safety and protection for Aboriginal children and young people: connecting young people to culture, Country and community improves their sense of belonging and social and emotional wellbeing.<sup>222</sup> This is also reflected in the Koorie Youth Council's *Ngaga-dji* report, which highlights 'the healing power of culture, family, Elders and communities'.<sup>223</sup> The importance of culture for Aboriginal children and young people is highlighted throughout this report. It is discussed further below and in Chapter 7.4 'Connection with culture'.

The Commission heard that Aboriginal organisations are best equipped to provide culturally safe services.<sup>224</sup> The cultural strengths of Aboriginal organisations were also emphasised at the Taskforce regional forums.

*Culture isn't what we do, it's who we are.*  
– Loddon Mallee (Mildura) regional forum

Professor Cunneen has identified a list of guiding principles which underpin the work of ACCOs (summarised below).<sup>225</sup> This list includes many of the characteristics highlighted by Aboriginal organisations and observed by the Commission throughout the Taskforce and the inquiry.

<sup>222</sup> See also Armytage and Ogloff, *Youth justice review and strategy*; VEOHRC and Commission for Children and Young People, *Aboriginal cultural rights in youth justice centres*; Commission for Children and Young People, *Lost, not forgotten: inquiry into children who died by suicide and were known to Child Protection*, Commission for Children and Young People, Melbourne, 2019, accessed 7 September 2020.

<sup>223</sup> Koorie Youth Council, *Ngaga-dji*, p 40.

<sup>224</sup> For example, VALS, Submission to *Our youth, our way* inquiry, p 17.

<sup>225</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, pp 93–94.

### Guiding principles that underpin the work of ACCOs

ACCOs:

- operate within a framework that respects Aboriginal sovereignty and shared jurisdiction
- can partner and collaborate with local organisations, collectives and co-operatives to activate local agency
- are 'on Country' or place-based
- deliver programs and services in a culturally appropriate way
- use strengths-based approaches
- adopt whole-of-community approaches
- have the capacity to provide mentoring, conferencing and healing plans.<sup>226</sup>

Aboriginal-driven projects, which often take a holistic approach to working with young people, are well-placed to increase protective factors for children and young people, including a sense of belonging and positive self-identity and self-esteem in participants, as well as generating an increase in young people taking responsibility for their actions.<sup>227</sup>

The Commission heard that a number of Aboriginal-led initiatives have achieved positive outcomes for Aboriginal young people in Victoria. These include early intervention, mentoring and diversion programs, as well as residential drug and alcohol programs. Some of these are highlighted below. Others are discussed throughout this report.

### Bramung Jaarn

*We sit down and look at these kids for who they truly are and who they can be. Rather than a kid who has experienced trauma, what does he want for his future? We don't look at them and see a label. We don't care about how bad the circumstances. When they talk we listen.*  
– Dardi Munwurro

Dardi Munwurro's *Bramung Jaarn* program seeks to empower young Aboriginal men aged 10 to 17 years by nurturing leadership potential, promoting help-seeking behaviour, building protective factors and providing connections to culture.<sup>228</sup> The program provides one-on-one mentoring, fortnightly groups, access to Elders and positive support networks within their peer group and the broader community.<sup>229</sup> It receives funding from DJCS through the Aboriginal Youth Support Service (discussed in Chapter 10.1 'Engagement in education') and the Koori Justice Unit. The program assists approximately 30 children and young people each year.

<sup>226</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, pp 93–94.

<sup>227</sup> Koori Justice Unit, Department of Justice and Community Safety (DJCS), *Community-based crime prevention programs for Aboriginal young people: final evaluation report*, DJCS, Victorian Government, 2019, unpublished, accessed 7 September 2020, p viii; Koori Justice Unit, Department of Justice and Regulation (DJR), *Crime prevention and early intervention programs for Aboriginal young people*, DJR, Victorian Government, 2017, unpublished, accessed 7 September 2020.

<sup>228</sup> Dardi Munwurro, *Dardi Munwurro Bramung Jaarn program*, Dardi Munwurro website, 2017, accessed 10 October 2020.

<sup>229</sup> Dardi Munwurro, *Dardi Munwurro Bramung Jaarn program*.

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Frankie's story illustrates the strengths of this program.

### Frankie – proud and strong in his culture

Frankie found out he was Aboriginal when he came into care with his Aunty, who is an Elder. This was his first connection with culture.

He was about to be expelled from school when the Koorie Engagement Support Officer there referred him to Dardi Munwurro's *Bramung Jaarn* program. Frankie worked with Elders and mentors in the program, who encouraged him to talk to his Aunty and listen to her stories. Frankie started treating his Aunty with more respect and so she started telling him more.

Helping Frankie to connect with his culture had a huge ripple effect for the whole family. Frankie's grandad started opening up about how hard it was being Koori as a young guy. Frankie's family members started working in community as well.

Frankie's family and school can't believe the changes they've seen in him since his involvement with Dardi Munwurro. He is so proud and strong in his culture, and he now has a senior leadership role in his school.

risk of becoming involved in the youth justice system.<sup>231</sup> Recognising family, community and culture as protective factors, the program aims to provide a culturally responsive and trauma-informed service to divert young Aboriginal people away from the youth justice system.<sup>232</sup> Bobby, Nikita and Richard's story at the beginning of this chapter illustrates the strengths and effectiveness of this program.

*Barreng Moorop* develops holistic responses by bringing together the young person, their family (including parents, siblings, carers and Elders) and service providers to provide wraparound support. Case plans are created for each young person and practice is determined by goals that are set by the young person and their family. Through the program, young people and their families identify the support they require, access relevant welfare, housing, family and education services, and are supported to engage in cultural practices and attend community events. *Barreng Moorop* is designed and led by Aboriginal people and creates a culturally safe space.

As of September 2019, the program had assisted 35 families since its inception in 2015, with results indicating that 76% of participants had improved connection with family and 65% of participants had improved their involvement with education.<sup>233</sup>

The importance of working with the families of Aboriginal children and young people in the youth justice system is discussed in Chapter 7 'Family, community & culture'. Early intervention programs are examined in Chapter 5.1 'Early intervention'.

## Barreng Moorop

*Having a model that is Aboriginal-led creates a culturally safe service that is reflective of the right to self-determination. – VACCA<sup>230</sup>*

*Barreng Moorop* is an early intervention program run by VACCA that provides integrated and intensive case management support to Aboriginal children and young people aged 10 to 15 years who are vulnerable, or at

<sup>230</sup> Victorian Aboriginal Child Care Agency (VACCA), Submission to *Our youth, our way* inquiry, 2019, pp 7–8.

<sup>231</sup> VACCA, Submission to *Our youth, our way* inquiry.

<sup>232</sup> Jesuit Social Services, Submission to *Our youth, our way* inquiry, 2019, p 4.

<sup>233</sup> Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*.



## Balit Ngulu (Strong Voice)

*Too often we tell children what's right for them and we rarely listen and reflect on what they say to us. Balit Ngulu was really about giving kids the self-determination to pave their own way and their own destiny. If we don't listen, they're going to end up another lost generation. We won't be able to claw them back. – CEO, Victorian Aboriginal Legal Service*

The Commission heard strong community support to re-fund and re-establish the Victorian Aboriginal Legal Service's (VALS) *Balit Ngulu*.<sup>234</sup> *Balit Ngulu* provided a culturally safe service to Aboriginal children and young people across Victoria through a combined service model of lawyers and client service officers. *Balit Ngulu* focused on strengthening cultural connection and identity, while also assisting young people to access education, employment and leadership opportunities.<sup>235</sup> According to VALS:

*Balit Ngulu was founded on the right of self-determination of all Aboriginal peoples, and as such, we ensured that our governing, management and service delivery frameworks were informed by our Aboriginal communities.*<sup>236</sup>

The Commission heard from VALS that the service was successful in diverting Aboriginal young people from the youth justice system and prioritising and facilitating placement of children within a kinship network.<sup>237</sup> An independent evaluation also identified major strengths of the service, namely that it was community-led and holistic in its approach.<sup>238</sup> In March 2021, the Victorian Government announced funding of \$3.4 million to

support VALS to re-establish *Balit Ngulu*.<sup>239</sup> This is discussed further in Chapter 12.4 'Legal assistance'.

## Koori Justice Support Program (intensive case management model)

In 2018, Goolum Goolum Aboriginal Co-operative Ltd (GGAC) piloted an intensive case management program to support Aboriginal children and young people aged 14 to 20 years at the highest risk of chronic offending and incarceration in the Wimmera to engage with cultural and community services, and to form stronger links with their local Aboriginal organisations. Case managers worked with local young people to address their needs. Young people were involved in all decisions and supported to achieve identified goals.

GGAC reported that over a 12-month period, the program worked with 36 young people.<sup>240</sup> Prior to the pilot, 16 Aboriginal children and young people in the region were subject to a combined total of 36 Youth Justice statutory orders. Within 12 months this had decreased to 2 Aboriginal young people on 2 orders, and the proportion of Aboriginal children and young people under supervision by Youth Justice in the Wimmera region decreased from 50% to 12.5%. In 2021, GGAC reported that there were no Aboriginal children and young people on Youth Justice orders in the region.<sup>241</sup> GGAC also reported that over the first 12 months of the pilot, recidivism rates drastically decreased, completion of orders increased and there was a significant increase in attendance at detoxification and rehabilitation facilities and alternative education programs.

These examples demonstrate the deep commitment, passion and expertise of Aboriginal-led programs in responding to the needs of children and young people in contact, or at risk of coming into contact, with the youth justice system in Victoria. They also demonstrate the benefits of Aboriginal-designed and controlled services that recognise the unique experiences of

<sup>234</sup> Jumbunna Institute for Indigenous Education and Research, *Furthering Aboriginal self-determination in the youth justice system: report*, Joint workshop with the Aboriginal Justice Caucus, Aboriginal Youth Justice Strategy Steering Committee/Youth Collaborative Working Group and Youth Justice Division, Department of Justice and Community Safety, Melbourne, 2019, unpublished, pp 12–13.

<sup>235</sup> VALS, Submission to *Our youth, our way* inquiry, p 7.

<sup>236</sup> VALS, Submission to *Our youth, our way* inquiry, p 7.

<sup>237</sup> VALS, Submission to *Our youth, our way* inquiry, p 7.

<sup>238</sup> Nous Group, *Evaluation of Balit Ngulu*, Report prepared for Victorian Aboriginal Legal Service, 2020, unpublished.

<sup>239</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people*.

<sup>240</sup> Goolum Goolum Aboriginal Co-Operative Ltd (GGAC), *GGAC Koori Justice Support Program (Intensive Case Management-ICM model)*, Presentation provided to the Commission, 2018, unpublished.

<sup>241</sup> Information provided to the Commission by Goolum Goolum Aboriginal Co-operative Ltd on 31 March 2021.

## 4.1 Advancing self-determination

Aboriginal children and young people and support them through holistic programs embedded in culture.

### Barriers and challenges

Despite these excellent initiatives, the Commission heard that there was, overall, a lack of culturally appropriate programs for Aboriginal children and young people across the state. The absence of programs on Country and close to family, or inadequate access due to waiting lists, were barriers to children and young people being able to seize opportunities when they needed them.

The Commission also observed that there was often a gap in funding for monitoring and evaluation of programs to reflect their impact.<sup>242</sup> This is discussed further below.

In addition, there is scope to strengthen formal referral pathways to programs led by Aboriginal organisations in order to increase protective factors for children and young people at risk of becoming involved in the youth justice system.<sup>243</sup> A 2019 evaluation of youth crime prevention programs for Aboriginal young people noted that several funded projects had attempted to establish formal referral pathways from courts, Victoria Police and other justice agencies; however, very few had managed to do so.<sup>244</sup>

The Commission also understands that outcomes reporting frameworks under some funding arrangements are based on risk–need–responsivity principles,<sup>245</sup> which may be culturally inappropriate<sup>246</sup> and require Aboriginal organisations to report to DJCS on Aboriginal children and young people through a

‘deficit’ lens (see Chapter 1 ‘About this report’ and Chapter 6.2 ‘Relationships with workers’ for a discussion of ‘deficit discourse’). This is at odds with the approach taken by many Aboriginal organisations working with children and young people, which is to focus on strengths rather than deficits. There is thus also potential for Aboriginal organisations working with children and young people in contact with the youth justice system to have greater input into reporting, outcomes and evaluation frameworks. This is discussed further below in relation to data.

### What the Commission learned from other jurisdictions

The Commission conducted a jurisdictional scan to gain insight into alternative ways to deliver an effective and culturally safe youth justice system. The Commissioner for Aboriginal Children and Young People also visited New Zealand in 2020. This section considers self-determined initiatives improving justice outcomes for children and young people in New South Wales, Western Australia, New Zealand and Canada. There is scope to adopt elements of these approaches in Victoria.

#### Bourke, NSW – Maranguka ‘caring for others’ Justice Reinvestment Project

The Maranguka Justice Reinvestment Project in Bourke, New South Wales, is the first of its kind in Australia. Maranguka means ‘caring for others’ in the Ngemba language. Bourke is situated on the boundary of the traditional lands of the Ngemba, Murrawarri, Budgiti and Barkinji clans.

Bourke is home to approximately 2,600 people, of whom about 31.5% are Aboriginal (compared to the NSW average of 2.9%). Australian governments’ historical relocation of Aboriginal peoples means that members of 27 different tribal groups now live in Bourke and the surrounding region. Representatives of each group make up the Bourke Tribal Council.

The Maranguka project was developed in response to community concerns about youth offending, a lack of detailed, outcome-driven evaluations of the numerous programs delivering services in Bourke, and the short-term nature of the funding allocated by government for these programs.<sup>247</sup> The project grew

<sup>242</sup> See also Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*, p 39.

<sup>243</sup> Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*, p 39.

<sup>244</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*, p 17.

<sup>245</sup> The ‘Risk-Need-Responsivity model’ is described in the *Youth Justice Case Management Framework* (at p 13) as follows: ‘evidence-based assessment procedures identify who will benefit from interventions (Risk Principle), what interventions will reduce reoffending in different young people (Need Principle), and how to deliver successful interventions (Responsivity Principle).’

<sup>246</sup> There is little research to confirm the appropriateness of risk, need and responsivity principles to Aboriginal people. These principles may be relevant, but ‘particular care needs to be paid to developing culturally appropriate and ethical services and to issues of power, marginalisation, disadvantage and frustration’: A Macklin and R Gilbert, *Working with Indigenous offenders to end violence*, Indigenous Justice Clearinghouse Brief 11, Indigenous Justice Clearinghouse, 2011, accessed 20 October 2020, p 1.

<sup>247</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*.

from a coalition of local Aboriginal people formed in 2012 who wanted to bring community leadership to services and move away from the traditional service delivery models that had not been working for Bourke's young people and families.<sup>248</sup>

The project was launched in 2013 through a partnership between the Bourke Tribal Council and Just Reinvest NSW, an independent not-for-profit organisation aimed at developing, promoting and securing funding for justice reinvestment. The partnership secured significant funding from a range of non-government partners, formed working groups to bring government agencies and local leaders together, and developed a set of proposed key actions in 2014.

The Maranguka project provides a model of Aboriginal self-governance – employing a community-led, collaborative approach to justice reinvestment to reduce the rate of contact of children and young people in Bourke with the youth justice system.

A 2018 impact evaluation of Maranguka by KPMG concluded that the project had resulted in gross impact savings of \$3.1 million in 2017 alone – about 5 times more than its operational costs.<sup>249</sup> KPMG found that if just half of the results achieved in 2017 were sustained, the project would deliver additional gross impact savings of \$7 million over the following 5 years.<sup>250</sup> In March 2019, the Commonwealth Government announced \$1.5 million in funding for the Maranguka project over the following 5 years, and the NSW government committed \$300,000 to support the project's 2019 work.<sup>251</sup>

### Western Australia – Aboriginal community supervision agreements

In Western Australia, the *Young Offenders Act 1994* (WA) authorises the chief executive officer of the Department of Corrective Services to enter into an agreement with the council of an Aboriginal community for the council to supervise a young person on a community-based sentencing order.<sup>252</sup> Aboriginal

community supervision agreements were introduced in order to discourage courts from imprisoning young people from remote communities on the basis that any other penalty would not be enforced.<sup>253</sup>

Under community supervision agreements, Aboriginal community councils provide services to young people in their own communities, including:

- monitoring, support and guidance for young people on community-based orders
- identifying placement options for sentenced young people in communities that are not their usual place of residence, or for young people who may be considered suitable for supervised bail
- enabling community members to assist in developing and/or facilitating programs.<sup>254</sup>

The department provides 'training and ongoing support to community councils so they can undertake services to an acceptable standard'.<sup>255</sup>

### New Zealand – partnering with Māori communities and organisations

New Zealand has initiated responses to youth offending that are holistic, strengths- and community-based, family-focused and embedded in Māori culture. Legislative direction, a specialised police workforce and alternative, restorative justice processes seek to redirect children and young people away from escalation through the justice system.

Efforts to partner with Māori communities appear throughout the New Zealand youth justice system. Recent reforms have also created a legislative obligation for the Chief Executive of Oranga Tamariki (Ministry for Children) to recognise and provide a practical commitment to the principles of the Treaty of Waitangi (*te Tiriti o Waitangi*),<sup>256</sup> including by ensuring that:

- the policies, practices and services of the department have regard to *mana tamaiti (tamariki)*<sup>257</sup>

<sup>248</sup> Just Reinvest NSW, *Justice reinvestment in Bourke*, Just Reinvest NSW website, accessed 13 Dec 2019.

<sup>249</sup> KPMG, *Maranguka Justice Reinvestment Project: impact assessment*, KPMG, 2018, accessed 5 October 2020, p 24.

<sup>250</sup> KPMG, *Maranguka Justice Reinvestment Project*, p 24.

<sup>251</sup> Just Reinvest NSW, *Federal & NSW Governments to fund first community-led justice reinvestment site in Australia* [media release], Just Reinvest NSW, 12 March 2019, accessed 13 December 2019.

<sup>252</sup> Section 17B.

<sup>253</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 75

<sup>254</sup> Government of Western Australia, *Community supervision agreements fact sheet*, Department of Corrective Services, WA Government, 2010, accessed 16 October 2020.

<sup>255</sup> Government of Western Australia, *Community supervision agreements fact sheet*.

<sup>256</sup> *Oranga Tamariki Act 1989* (NZ), s 7AA(1).

<sup>257</sup> *Mana tamaiti (tamariki)* is the intrinsic value and inherent dignity derived from a child's or young person's *whakapapa* (genealogy) and their belonging to a *whānau* (extended

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and the *whakapapa*<sup>258</sup> of Māori children and young persons, and the *whanaungatanga*<sup>259</sup> responsibilities of *whānau*, *hapū* and *iwi*<sup>260</sup>

- the department seeks to develop strategic partnerships with *iwi* and Māori organisations, including *iwi* authorities.<sup>261</sup>

This includes an obligation to provide opportunities for the Chief Executive to delegate functions to those organisations.<sup>262</sup>

These legislative obligations have prompted Oranga Tamariki and Tāhū o te Ture (Ministry of Justice) to develop new ways of working with Māori. An example of this is Mahuru, a new youth remand service developed by Ngāpuhi Iwi Social Services with the support of Oranga Tamariki (see Chapter 12.2 ‘Bail and remand’ for further discussion).

*Iwi*-led family group conferences (FGCs) provide another example of a promising initiative designed to improve outcomes for Māori young people, by increasing engagement of *iwi*, *hapū*, *whānau* and family in responding to young people’s offending behaviour (see Chapter 7.2 ‘Youth Justice practices and family involvement’). Within this model, Ngāti Porou youth and *whānau* referred to FGCs can choose between participating in an *iwi*-led FGC or an Oranga Tamariki FGC.<sup>263</sup> This is the first *iwi*-led FGC program.

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family), *hapū* (clan), *iwi* (tribe), or family group, in accordance with *tikanga* Māori (Māori customary law and practices), or its equivalent in the culture of the child or young person: Oranga Tamariki Act, s 2(1).

**258** *Whakapapa*, in relation to a person, means the multi-generational kinship relationships that help to describe who the person is in terms of their *mātua* (parents), and *tūpuna* (ancestors), from whom they descend: Oranga Tamariki Act, s 2(1).

**259** *Whanaungatanga*, in relation to a person, means the purposeful carrying out of responsibilities based on obligations to *whakapapa*, the kinship that provides the foundations for reciprocal obligations and responsibilities to be met, and the wider kinship ties that need to be protected and maintained to ensure the maintenance and protection of the person’s sense of belonging, identity, and connection: Oranga Tamariki Act, s 2(1).

**260** Section 7AA(2)(b). The *iwi* (tribe) is the largest of the groups that form Māori society. Each *iwi* is made up of various *hapū* (clans or descent groups), which might have up to several hundred members. Each *hapū* is made up of *whānau* (extended families): Te Ara – The encyclopedia of New Zealand, [Story: tribal organisation](#), Te Ara website, 2005, accessed 19 October 2020.

**261** Section 7AA(2)(c).

**262** Section 7AA(2)(c)(iv).

**263** K Pipi, C Kerehoma and R Smith, [Summary report: formative evaluation of the iwi-led family group conference pilot](#) [PDF], Report prepared for Oranga Tamariki, 2018, section 1.1.

The introduction of legislation to promote more meaningful ways of partnering with Māori, and to enable the transfer of decision-making power and control to *iwi* and Māori organisations, provides a useful model for Victoria to consider. A legislative approach formally embeds the policy commitment to implement self-determined responses to youth justice issues.

### Canada – Aboriginal-led justice processes

The Canadian Aboriginal Justice Strategy supports the development of Aboriginal community-based alternatives to mainstream justice processes. It provides a federal system for First Nations organisations or representatives to apply to the government for funding to develop, improve, evaluate or expand justice initiatives in their local community. Although it is a national strategy, it allows for the development of local, place-based initiatives to be driven by community.

The programs supported by the Canadian Aboriginal Justice Strategy are based on justice-related priorities and designed to reflect the culture and values of the communities in which they are situated. Although the primary focus for most community-based justice programs is diversion of offenders from the mainstream justice system, the Canadian Aboriginal Justice Strategy programs also provide a range of other justice-related services from prevention to reintegration.<sup>264</sup> There is scope to adopt elements of this model in the Victorian context to facilitate self-determined initiatives that are developed locally and driven by community.<sup>265</sup>

### Achieving self-determination in the Victorian youth justice system

The Commission considers that Aboriginal community control is required at all levels of youth justice service design and delivery to achieve the best outcomes for Aboriginal children and young people. This means interventions being developed, managed, delivered and

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**264** For more information and case studies on specific programs see Cunneen, *Self-determination and the Aboriginal Justice Strategy*, p 63.

**265** For a detailed case study of the Canadian Aboriginal Justice Strategy and the potential for Victoria to learn from this approach see Cunneen, *Self-determination and the Aboriginal Justice Strategy*, pp 63–64, 76–78.

evaluated by Aboriginal organisations in partnership with Aboriginal communities.<sup>266</sup>

In this report, the Commission recommends the establishment of new services, including youth hubs (see Chapter 5.1 'Early intervention'), residential healing centres (see Chapter 9.2 'Substance use') and family group conferencing (see Chapter 7.2 'Youth Justice practices and family involvement'), and the expansion of existing programs (see, for example, Chapter 10.1 'Engagement in education'). There is potential for Aboriginal organisations to design and deliver these new and expanded services and programs.<sup>267</sup>

Self-determination in the youth justice system requires a legislative basis, sustainable resourcing for Aboriginal organisations, and a commitment to strengthen workforce capacity. These features are discussed below.

### **A legislative mechanism to support self-determination**

The transfer to Aboriginal organisations of legal jurisdiction in relation to youth justice was a recommendation of the Australian Human Rights Commission's 1997 *Bringing them home* inquiry.<sup>268</sup> As discussed above, a legislative obligation has been adopted in New Zealand and Canada to facilitate the transfer of responsibility and control to First Nations people over key aspects of the justice system. Community supervision agreements in Western Australia also have a legislative basis.

A similar approach has been taken in child protection legislation in Victoria. Section 18 of the CYFA provides for the delegation of authority for most of the functions of the Secretary, Department of Families, Fairness and Housing (DFFH) to the 'principal officer' of a recognised Aboriginal agency, to make decisions on the care and custody of Aboriginal children. This includes transferring legal guardianship of Aboriginal children and young people in out-of-home care to ACCOs. On 30 September 2020, 157 Aboriginal children and young people were under the guardianship of an ACCO following a transfer under section 18.<sup>269</sup>

<sup>266</sup> Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation: final report*, p 16.

<sup>267</sup> See also Cunneen, *Self-determination and the Aboriginal Justice Strategy*, p 72.

<sup>268</sup> Human Rights and Equal Opportunity Commission, *Bringing them home*, recommendation 43c.

<sup>269</sup> Department of Health and Human Services (DHHS), *Aboriginal Children's Forum: data pack December 2020*

In 2018, the *Wungurilwil Gaggapduir* (Strong families) agreement formalised this commitment, enabling the transfer of care of Aboriginal children and young people from government and mainstream community service organisations to ACCOs.<sup>270</sup> This was a significant step in operationalising the government's commitment to self-determination for Aboriginal people. While there is more work to be done, early indicators are positive.

The Commission therefore recommends that the Victorian Government introduce a legislative mechanism into the CYFA or its replacement to authorise Aboriginal communities and Elders to design, administer and supervise key elements of the justice system. This could enable Aboriginal communities to:

- deliver cautions and alternatives to proceedings, including diversionary options
- deliver family group conferencing
- determine the location and delivery of hearings (including Koori Court hearings) – this could include developing practice directions on the engagement of Elders in the sentencing process and the inclusion of culturally strengthening case management
- deliver restorative justice group conferencing
- determine the conditions of community-based youth justice orders
- design and administer community-based youth justice options, including alternatives to custody.

Introducing a legislative mechanism of this nature would embed the policy imperative to transfer decision-making, responsibility and control of key aspects of the youth justice system, while also enabling communities to determine and initiate their level of involvement in accordance with their own readiness, capacity and capability.

To complement this change, there should be a positive duty on the Secretary of DJCS to develop strategic partnerships with Aboriginal communities, similar to section 7AA of the *Oranga Tamariki Act 1989*, as well as an obligation to report on measures taken to improve outcomes for Aboriginal children and young people.

<sup>270</sup> *Forum*, DHHS, Victorian Government, 2020.

<sup>270</sup> DHHS, *Wungurilwil Gaggapduir*.

### Resourcing Aboriginal communities

*In strengthening the role of ACCOs we have to look at how government must reform its relationship with ACCOs, rather than the other way around. Government gives us funding but puts so many conditions around how we can spend it. Government must ask ACCOs what they want to do in their communities and then fund them to do that work. – Aboriginal Justice Caucus<sup>271</sup>*

*To respect the right of self-determination, governments should confine their roles largely to providing financial and resource support for the implementation of Indigenous programs and policies.<sup>272</sup>*

ACCOs and other Aboriginal organisations must be empowered and resourced sustainably to enable genuine capacity building, and to ensure longevity, reliability and community trust in their programs. Achieving this requires deference to Aboriginal organisations to determine and define program outcomes, together with co-design of funding and reporting requirements.<sup>273</sup>

A 2019 evaluation of community-based crime prevention programs for Aboriginal young people undertaken by the Koori Justice Unit found that the short-term and usually finite nature of grants funding limited the ability of community organisations to address the complex issues underlying contact with the youth justice system.<sup>274</sup> The evaluation recommended that a new funding model be developed, led by the

Aboriginal Justice Caucus, to accommodate longer-term funding for crime prevention and early intervention initiatives.<sup>275</sup> The Commission understands that this recommendation has been accepted and is currently being implemented.

An evaluation of programs funded under the Victorian Aboriginal Justice Agreement Phase 3 also found that program delivery was 'seriously impeded by resourcing constraints'.<sup>276</sup>

*Funding arrangements for programs implemented under the third phase of the Agreement have typically been short-term and fragmented. Funding shortfalls for the employment of program staff are especially acute. Many of the evaluations conclude that current resourcing arrangements are inadequate given the complexity and long-term nature of the issues being addressed...<sup>277</sup>*

The Commission heard from Aboriginal organisations that funding must be long-term, and administered as flexible block funding through single funding agreements,<sup>278</sup> with inclusion of a monitoring and evaluation loading.<sup>279</sup>

*ACCOs... need flexible funding agreements to transform the provision of care to one that is informed by Aboriginal knowledge and accommodates for the provision of holistic supports to prevent, intervene and heal the complex needs of at risk Aboriginal communities. There is no one size fits all approach, and true self-determination will allow for Aboriginal communities to decide what supports are needed within the community. – Victorian Aboriginal Children and Young People's Alliance<sup>280</sup>*

<sup>271</sup> Jumbunna Institute for Indigenous Education and Research, *Furthering Aboriginal self-determination in the youth justice system*, p 14.

<sup>272</sup> Human Rights and Equal Opportunity Commission, *Bringing them home*, p 277.

<sup>273</sup> The 2020–21 Budget includes a \$40 million fund to expand the Aboriginal community, health and family violence workforce: Minister for Aboriginal Affairs, *A fairer future for Aboriginal Victorians* [media release], Victorian Government, 24 November 2020, accessed 8 January 2021.

<sup>274</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*, p v.

<sup>275</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*, p 11.

<sup>276</sup> Koori Justice Unit, Department of Justice and Community Safety (DJCS), *The Victorian Aboriginal Justice Agreement Phase 3: synthesis of program evaluations*, DJCS, Victorian Government, 2017, unpublished, accessed 11 February 2021, p 12.

<sup>277</sup> Koori Justice Unit, DJCS, *The Victorian Aboriginal Justice Agreement Phase 3*, p 12.

<sup>278</sup> Victorian Aboriginal Children and Young People's Alliance, Submission to *Our youth, our way* inquiry, pp 15–16. See also Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody*, National Reports, 1991, recommendation 190.

<sup>279</sup> Victorian Aboriginal Children and Young People's Alliance, Submission to *Our youth, our way* inquiry, p 13.

<sup>280</sup> Victorian Aboriginal Children and Young People's Alliance, Submission to *Our youth, our way* inquiry, p 16.

*The perception is that Aboriginal services will do everything for everybody but they're not funded for that. If ACCOs are to have more responsibilities their funding needs to be comparable to or better than that of mainstream funding. ACCOs will have sufficient capacity to lead work in the youth justice area with increased resourcing... It is also important to recognize that self-determination can save money through improved outcomes achieved by better funded ACCOs. – Aboriginal Justice Caucus<sup>281</sup>*

### Strengthening the role of Aboriginal organisations

Strengthening the role of Aboriginal organisations in the youth justice system involves a corresponding obligation to better support and build the sector's organisational and workforce capacity. Aboriginal organisations must be able to recruit suitably qualified staff and build multi-disciplinary teams to meet the complex needs of Aboriginal children and young people and deliver appropriate therapeutic interventions and supports. Staff must be properly remunerated and retained. This means resourcing the sector to invest in staff, support their development and build sustainable career pathways.

There is also scope for more collaboration and coordination between Aboriginal organisations to improve staff retention opportunities, for example, through secondments. Better coordination would also improve data collection, sharing of best practice and the provision of appropriate services to children and young people, for example, through a central referral and intake system across services. It would also create opportunities for more effective advocacy.

DJCS has noted 'the lack of opportunities, at both the regional and state levels, for project workers from funded organisations to meet regularly to share information and network'.<sup>282</sup> The 2019 evaluation of youth crime prevention grants recommended the development of a community of practice to enable

regular information-sharing and networking among staff at funded organisations.<sup>283</sup>

The Commission supports this recommendation and recommends that a peak body or bodies be resourced to:

- develop a community of practice to further support Aboriginal workers and organisations in the youth sector
- develop initiatives to support staff retention and career progression
- ensure consistent training for staff across the sector
- advocate as a united voice (for example, in relation to funding allocation and sharing, to reduce competition)
- facilitate research, monitoring and evaluation<sup>284</sup>
- determine best practice and sharing
- embed youth participation
- ensure inclusivity for Aboriginal girls and young women, Aboriginal children and young people with disability and Aboriginal LGBTQI+ young people
- develop a central referral, intake and planning system.

<sup>281</sup> Jumbunna Institute for Indigenous Education and Research, *Furthering Aboriginal self-determination in the youth justice system*, p 5.

<sup>282</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*, p vi.

<sup>283</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*, p vi.

<sup>284</sup> The Commission notes the work being undertaken under the *Wungurilwil Gaggapduir Strategic Action Plan* to establish a centre for Aboriginal child and family welfare knowledge and culturally based practice: Department of Health and Human Services (DHHS), *Wungurilwil Gaggapduir Year 2 (July 2019–June 2020) Action Plan*, DHHS, Victorian Government, unpublished. There may be scope to expand this initiative to include research/evaluation in Youth Justice.

### Recommendation 1

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That the new Youth Justice Act:

- a) enable the Secretary of DJCS to authorise Aboriginal communities to design, administer and supervise elements of the youth justice system, including:
  - delivering cautions and alternatives to proceedings, including diversionary options
  - delivering family group conferencing and restorative justice group conferencing
  - determining the location and delivery of hearings (including Koori Court hearings)
  - determining the conditions of community-based youth justice orders
  - designing and administering community-based youth justice options, including alternatives to custody
- b) place a positive duty on the Secretary of DJCS to develop strategic partnerships with Aboriginal communities, and report regularly on measures taken to improve outcomes for Aboriginal children and young people.

### Recommendation 2

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That the Victorian Government resource and develop the capacity of Aboriginal organisations to design, coordinate and deliver youth supports, including through a peak body or bodies for Aboriginal youth sector workers and organisations.



## 4.2 Data on Aboriginal children and young people in the youth justice system

### Finding 2

**Current collection and reporting of data on the experiences of, and outcomes for, Aboriginal children and young people in the youth justice system are inadequate.**

Throughout the Taskforce and the inquiry, the Commission found that current reporting of the experiences of Aboriginal young people in the youth justice system is lacking. Despite the willingness of agencies to provide their data for the inquiry, the Commission identified many instances in which important data was not captured, was unable to be provided, or was unusable because of gaps and inconsistencies in collection. Where data is captured, it is often deficit-based with little reporting on strengths-based achievements. Overall, there is a lack of investment in producing ongoing, high-quality data on Aboriginal children and young people in the youth justice system.

#### **Inadequate data collection and usability**

The Commission was unable to obtain all of the relevant data and information necessary to support a robust analysis of all of the systemic issues affecting Aboriginal children and young people in the youth justice system. In some instances, relevant data was captured by different agencies, which manage and categorise data differently. This impeded the Commission's capacity to undertake an accurate assessment of all of the issues in a timely manner.

A prevailing issue stems from a longstanding failure of Victoria Police records to accurately reflect whether alleged offenders identify as Aboriginal. Aboriginal identity is recorded in response to the 'Standard Indigenous Question' (SIQ). The SIQ responses that

Victoria Police collect have historically contained many records with an 'unknown' response.<sup>285</sup> This has affected the integrity of the police dataset, including data on the length of time Aboriginal children and young people spend in police custody. Victoria Police and the Crime Statistics Agency (CSA) have recently taken steps to address this issue (see discussion below).

This issue also affects the Children's Court dataset, which relies on police data, and creates issues with accurately assessing rates of bail refusals and other preliminary court outcomes for Aboriginal children and young people. It also contributes to difficulties in accurately assessing children and young people's trajectories through the youth justice system.

Other issues the Commission encountered are described below.

#### **Identifying the 'crossover' cohort between Youth Justice and Child Protection**

Data on children and young people involved in both Youth Justice and Child Protection is spread across departments and not readily accessible in CRIS (the Client Relationship Information System). Although the annual Youth Justice survey does report on the crossover cohort, it is not possible to obtain point-in-time information. Youth Justice has stated an intention to resolve this issue; however, at the time of writing, this had not occurred. Given that CRIS is managed by DFFH, this is an issue that DJCS and DFFH must work jointly to resolve.

The Sentencing Advisory Council has reported on a segment of the crossover cohort (see discussion in Chapter 8.1 'Child Protection involvement'), but more regular reporting is desirable. The Victorian Social

<sup>285</sup> Crime Statistics Agency (CSA), *The re-release of Aboriginal and Torres Strait Islander alleged offender data and the release of family incident data*, CSA website, 2020, accessed 14 February 2021.

## 4.2 Data on Aboriginal children and young people in the youth justice system

Investment Integrated Data Resource has access to Youth Justice and Child Protection datasets; however, it is not intended to provide regular, proactive reporting on the crossover population.

### Integrity of Children's Court data

The proportion of Children's Court data with an unknown indicator for Aboriginal status (unknown, not provided or missing) was over 90% for datasets for 'outcomes', 'bail refusal' and 'criminal initiations'. This made the data unusable for broader analysis.

### Access to Children's Court diversion

The Commission obtained data from Youth Justice on the number of Aboriginal children and young people who received diversion under the CYFA. However, the Commission was unable to determine the rate at which Aboriginal children and young people are refused access to Children's Court diversion compared to non-Aboriginal children and young people (see Chapter 12.1 'Diversion').

### Non-supervised bail data

Youth Justice captures information about supervised bail, but not about non-supervised bail. This data is held by Court Services Victoria. The fact that all bail data is not held by a single entity is problematic, as the separate datasets have not been linked to create a complete understanding of bail decisions in respect of children and young people. Bail data is discussed in Chapter 12.2 'Bail and remand'.

### Length of time in remand

The length of time spent on remand by Aboriginal children and young people was also not readily accessible, as this requires a highly complex and lengthy analysis of Youth Justice data for each individual, which the Commission was unable to undertake.

The Sentencing Advisory Council's 2020 report on children held on remand in Victoria describes the 'complex tasks' of collecting and analysing the data necessary to complete the report.<sup>286</sup> This involved extracting relevant remand data from Youth Justice and court data from Court Services Victoria for each individual child, and manually identifying their course

<sup>286</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 73.

from remand to court to match relevant remand episodes with associated court outcomes.<sup>287</sup> Remand data is discussed in Chapter 12.2 'Bail and remand'.

### Regional sentencing outcomes

There is a lack of monitoring of comparative sentencing outcomes for Aboriginal children and young people in different regions across the state. Youth Justice records the location of an offence; however, this may be recorded as the location where the charge was heard, or where the child or young person resides. The Commission has concerns about the quality of recording of residential addresses for children and young people, as the addresses on record tend to be at custodial facilities. This weakens the dataset.

### Custodial visits

There is no Aboriginal identifier in Youth Justice's visits database. This meant that the Commission was required to match its own data with Youth Justice visits data in order to properly identify and analyse visits for Aboriginal children and young people in custody (see Chapter 7.2 'Youth Justice practices and family involvement' for an analysis of visits data).

### Current data initiatives

Developments are underway to improve data quality and availability across the youth justice system. In October 2019, Victoria Police and the CSA took actions to address the integrity of police datasets<sup>288</sup> and, in 2020, Victoria Police implemented a system fix to improve the quality and usability of the data provided to the CSA.<sup>289</sup> The CSA has also taken steps to reduce 'unknown' values in the police dataset.<sup>290</sup> As police data informs court data, these improvements would be expected to flow to the Children's Court dataset.

In November 2019, Youth Justice commenced a new internal monthly operational report that monitors delivery of services and core indicators. Youth Justice has advised that this report has enabled monitoring, analysis and reporting on whole-of-system (local/

<sup>287</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 73.

<sup>288</sup> Information provided to the Commission by Victoria Police on 12 April 2021.

<sup>289</sup> Crime Statistics Agency (CSA), *Explanatory notes: changes to Aboriginal and Torres Strait Islander data*, CSA website, 2020, accessed 14 February 2021.

<sup>290</sup> CSA, *Explanatory notes: changes to Aboriginal and Torres Strait Islander data*.

regional and statewide) issues, including trends on demographics, offence types, types of orders and order completion rates.

Aboriginal Youth Justice data is provided to stakeholders connected to the Aboriginal Justice Agreement. At the time of writing, Youth Justice was also developing an Aboriginal Youth Justice data dashboard, to be made available to Aboriginal stakeholders.<sup>291</sup> The dashboard aims to make the available data more accessible. The dashboard offers a high-level snapshot of Aboriginal children and young people in the youth justice system; however, it does not provide a complete picture.

In September 2020, DJCS commenced the Data Safari: Data Insights and Analysis Project. The project is working with the Aboriginal Justice Caucus and other key stakeholders to explore Aboriginal young people's patterns of contact with the youth justice system, analyse geographic variation in contact throughout Victoria, identify key risk points and opportunities for maximum impact, and develop a high-level outcomes framework for the Aboriginal Justice Strategy.

Youth Justice has also advised that current research priorities are being reviewed to ensure alignment with the Youth Justice Strategic Plan and other relevant bodies. This includes developing partnerships in order to identify areas for further research, such as longitudinal outcomes research.

In addition to these new initiatives, Youth Justice continues to provide data to the Productivity Commission (to support delivery of the annual Report on Government Services), the Australian Institute of Health and Welfare, the CSA and, more recently, the Centre for Victorian Data Linkage. In 2016, the Centre for Victorian Data Linkage developed the Victorian Linkage Map, which is a system of linked records that are identified as belonging to the same person across 30 different Victorian health and human services datasets, including Youth Justice and Child Protection.<sup>292</sup>

In 2019, the Victorian Social Investment Integrated Data Resource (VSIIDR) was established. VSIIDR is a

secure and enduring linked data resource combining information on Victorian health care, community care, education, crime and safety. It is to be used for health and social policy research and analysis in the public interest.<sup>293</sup> VSIIDR's key objective is to improve the evidence base upon which health and social policy is designed. Findings and outputs of research and analysis conducted using VSIIDR can be used to inform the planning and design of government functions and activities, and to inform government policymaking. This project builds on the Victorian Linkage Map and includes datasets from DET and Victoria Police. However, it does not include data from Court Services Victoria.

These initiatives are positive; however, none of them directly addresses the absence of centralised, regular reporting of whole-of-system data on Aboriginal children and young people in the youth justice system.

## Monitoring and evaluation of Aboriginal programs

Monitoring and evaluating Aboriginal-led programs is imperative to track outcomes and improve practice. This has been recognised as a priority for the Aboriginal Justice Caucus.<sup>294</sup> Many community-based diversionary programs do not have adequate mechanisms in place to collect data to allow thorough evaluation of program outcomes.<sup>295</sup>

The Commission was able to review data from some programs discussed earlier in this chapter, which tended to show positive outcomes.<sup>296</sup> A synthesis of program evaluations produced under the Victorian Aboriginal Justice Agreement Phase 3 also found that several evaluations showed improvements in Aboriginal justice outcomes as a result of the programs' delivery.<sup>297</sup> However, a challenge identified was that systems and processes for monitoring and evaluation were lacking or required strengthening.<sup>298</sup>

<sup>291</sup> Department of Justice and Community Safety (DJCS), *Data dashboard – information paper*, Agenda item 6, Aboriginal Youth Justice Strategy Steering Committee, 6 August 2020, unpublished.

<sup>292</sup> Department of Health and Human Services (DHHS), *The Centre for Victorian Data Linkage*, DHHS website, 2020, accessed 22 October 2020.

<sup>293</sup> DHHS, *The Centre for Victorian Data Linkage*.

<sup>294</sup> State of Victoria, *Burra Lotjpa Dungaludja*, outcome 4.1.2, pp 56–57.

<sup>295</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*.

<sup>296</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*.

<sup>297</sup> Koori Justice Unit, DJCS, *The Victorian Aboriginal Justice Agreement Phase 3*.

<sup>298</sup> Koori Justice Unit, DJCS, *The Victorian Aboriginal Justice Agreement Phase 3*.

## 4.2 Data on Aboriginal children and young people in the youth justice system

Further, as noted earlier, a DJCS evaluation of community-based crime prevention programs for Aboriginal young people found that the short-term and finite nature of funding through the grant programs limits the ability of community organisations to make far-reaching inroads into addressing the complex issues underlying contact with the youth justice system.<sup>299</sup> It also noted the limitations inherent in evaluating projects funded through small size and short-term grant funding arrangements, and that, at most, projects may be able to demonstrate outputs and some evidence of short-term outcomes.<sup>300</sup>

There has been some progress towards improving data collection for Aboriginal programs led by Youth Justice. In January 2020, the Aboriginal Youth Justice unit implemented a new reporting template for 2 of their programs: the Community-Based Koori Youth Justice Program and the Aboriginal Early School Leavers program. Although data from the new templates was not available to review at the time of writing, this a welcome improvement.

There is clearly a need to adequately resource and strengthen the monitoring and evaluation capacity of non-government Aboriginal-led service providers working with children and young people involved in the youth justice system. Kapiti Youth Support's Outcomes Measurement Model, discussed in the following section, provides an example of an evidenced-based approach to reporting on interventions that could be developed in Victoria.

### Kapiti Youth Support – Outcomes Measurement Model (New Zealand)

In February 2020, the Commission and DJCS visited Kapiti Youth Support (KYS) in New Zealand, which offers a 'one stop shop' model for children and young people aged 10 to 24 years.<sup>301</sup> KYS offers a range of services in-house, including medical and nursing services, sexual health, clinical psychology, counselling, alcohol and drug services, social work, mentoring, parenting, peer support, transition to work, youth development, education programs and therapeutic

groups.<sup>302</sup> KYS is discussed further in Chapter 5.1 'Early intervention'.

KYS has developed an Outcomes Measurement Model (OMM) to track progress made by the children and young people it works with (see Figure 4.1). OMM monitors outcomes across 8 'domains' developed in consultation with young people, carers and leading academics specialising in pathways to resilience.<sup>303</sup> The model and measures were designed to take account of 'positive choices, markers of resilience and indicators of wellbeing... associated with long term positive outcomes' for young people.<sup>304</sup> OMM offers holistic reporting on young people's progress, which was previously not possible.

The software is currently being used by a number of community organisations connected to the justice system in New Zealand. This enables organisations to provide and report on interventions designed to address children and young people's needs. The platform enables simultaneous reporting to multiple organisations. It also has capability for graphic visualisation of a young person's experience of the service – from when the young person first presents, to the number of interventions they have had and how these have affected their wellbeing over time. OMM tracks the completion of assessments and provides a way to monitor service provision. It also enables the young person's voice and goals to be captured in the reporting process.

There is potential to develop similar software for ACCOs and other non-government youth service providers working with children and young people connected to the youth justice system in Victoria. A platform like OMM would enable organisations to design indicators and capture outcomes that are relevant to the experiences of Aboriginal children and young people. It would also enable a holistic, evidence-based approach to reporting on the impact of Aboriginal-led interventions. This would address the concerns of Aboriginal organisations (discussed in Chapter 4.1 'Advancing self-determination' and in the following section) about deficit-based reporting frameworks.

<sup>299</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*.

<sup>300</sup> Koori Justice Unit, DJCS, *Community-based crime prevention programs for Aboriginal young people*.

<sup>301</sup> 'One stop shop' refers to a service delivery model that aims to create a single access point for information and service transactions: PwC, *Transforming the citizen experience: one stop shop for public services* [PDF], PwC, 2012, p 5.

<sup>302</sup> Kapiti Youth Support, *About us*, Kapiti Youth Support website, accessed 18 August 2020.

<sup>303</sup> R Bailey, R Torrie and R Osborne, *How we know what we're doing works: measuring youth outcomes at Kapiti Youth Support, impact evaluation – summary report 2013*, Kapiti Youth Support and Evaluationworks, 2013, p 17.

<sup>304</sup> New Zealand Ministry of Health, *Evaluation of youth one stop shops*, Final report, Ministry of Health, New Zealand Government, 2009, p 17.



**Figure 4.1** Outcomes Measurement Model

Source: Adapted from infographic provided to the Commission by Kapiti Youth Support on 12 April 2021.

## 4.2 Data on Aboriginal children and young people in the youth justice system

### Aboriginal ownership of data

*Burra Lotjpa Dungaludja* calls for increased Aboriginal ownership of and access to data.<sup>305</sup> Advancing this priority provides an opportunity to reconfigure current approaches to data, including embedding good governance of Aboriginal data that supports self-determination and wellbeing for Aboriginal children and young people.<sup>306</sup>

Data is necessary to analyse the drivers of over-representation and inequality of outcomes faced by Aboriginal children and young people in contact with the youth justice system. However, if unchecked, seemingly 'neutral' and 'objective' data is primarily used to portray a picture of Aboriginal deficit. Maggie Walter refers to this data about Aboriginal people as '5D data', portraying disparity, deprivation, disadvantage, dysfunction and difference.<sup>307</sup> Walter's work on Aboriginal representation in Australian statistics suggests that this deficit discourse is not neutral, but rather arises from a raced reality that is perpetuated and normalised through dominant social norms, values and racial understandings that determine statistical construction and interpretations.<sup>308</sup>

In the absence of Aboriginal-determined strengths-based indicators, a set of narratives relying on 5D data will continue to fuel this deficit discourse. Generating data conceptualised through Aboriginal methodological frameworks has the potential to interrogate and alter these narratives, and ultimately reshape policy directions for Aboriginal children and young people in contact with the youth justice system.<sup>309</sup> At the same time, it would also be important to ensure that data on Aboriginal children and young people in the youth justice system remained comparable to data on non-Aboriginal children and young people.

<sup>305</sup> Outcome 4.1.2: State of Victoria, *Burra Lotjpa Dungaludja*, p 33.

<sup>306</sup> R Lovett et al., 'Good data practices for Indigenous data sovereignty and governance' in A Daly, SK Devitt and M Mann (eds), *Good data*, Theory on Demand No. 29, Institute of Network Cultures, 2019, p 34.

<sup>307</sup> M Walter, 'Data politics and Indigenous representation in Australian statistics' in T Kukutai and J Taylor (eds), *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra, 2016, p 90.

<sup>308</sup> M Walter, 'Data politics and Indigenous representation in Australian statistics', pp 79–80.

<sup>309</sup> M Walter, 'Data politics and Indigenous representation in Australian statistics', p 80.

### Improving youth justice system data management

Without adequate data, the youth justice system lacks transparency. According to the Northern Territory Royal Commission:

*Collecting and analysing quantitative and qualitative data can provide an evidence base for developing government programs, monitoring their implementation and evaluating their effectiveness. It helps ensure successful programs are supported and unsuccessful programs are modified or abandoned. An empirical evidence base provides confidence that taxpayers' dollars are being used in a way that produces the best return for society and, particularly in the context of child protection and youth justice, for the individual child and his or her family.*<sup>310</sup>

Reform is needed to capture and regularly publish accurate, up-to-date information on the ways in which Aboriginal children and young people enter the youth justice system, what happens to them once they do, and the extent to which identification as Aboriginal or not influences their trajectory through the system and their outcomes.

At a minimum this should include:

- data on reasons for refusal to caution Aboriginal children and young people (including age, gender and charge)
- comparative bail decision-making outcomes for Aboriginal and non-Aboriginal children and young people across Victoria (including age and gender)
- data on length of time on remand and subsequent outcomes for Aboriginal and non-Aboriginal children and young people (including age and gender)
- Children's Court diversion data to enable a comparative analysis of referrals to diversion, withholding of prosecutorial consent, and reasons for refusal of diversion for Aboriginal and non-Aboriginal children and young people (including age, gender and charge)
- comparative sentencing outcomes from Children's Courts across Victoria for Aboriginal and non-Aboriginal children and young people (including age and gender)

<sup>310</sup> Northern Territory Royal Commission Final Report, Volume 4, p 36.

- youth justice system trajectories for Aboriginal and non-Aboriginal children and young people
- data on Aboriginal and non-Aboriginal 'crossover' children and young people
- data on disability and other health needs experienced by Aboriginal children and young people in the youth justice system
- data on housing and homelessness among Aboriginal children and young people in the youth justice system
- data to enable monitoring of the impact of custodial operating policies on Aboriginal children and young people.

Accurate data is also required on how resources are deployed. Advances in data collection and analysis hold the promise of increasing transparency and accountability. However, indicators must be determined by Aboriginal stakeholders to guide effective justice reform, and to move beyond a primarily deficits-based narrative. *Burra Lotjpa Dunguludja* envisages independent oversight and reporting of legal outcomes as a way of ensuring accountability.<sup>311</sup> This could occur through an existing agency such as the CSA, or through a new agency. *Burra Lotjpa Dunguludja* contains an action to consider creating an independent Aboriginal Justice Commission, which could support this function.

### Recommendation 3

That the Victorian Government ensure that relevant agencies record data on Aboriginal and non-Aboriginal children and young people at each point in their journey through the youth justice system, using indicators developed and approved in partnership with the Aboriginal community.

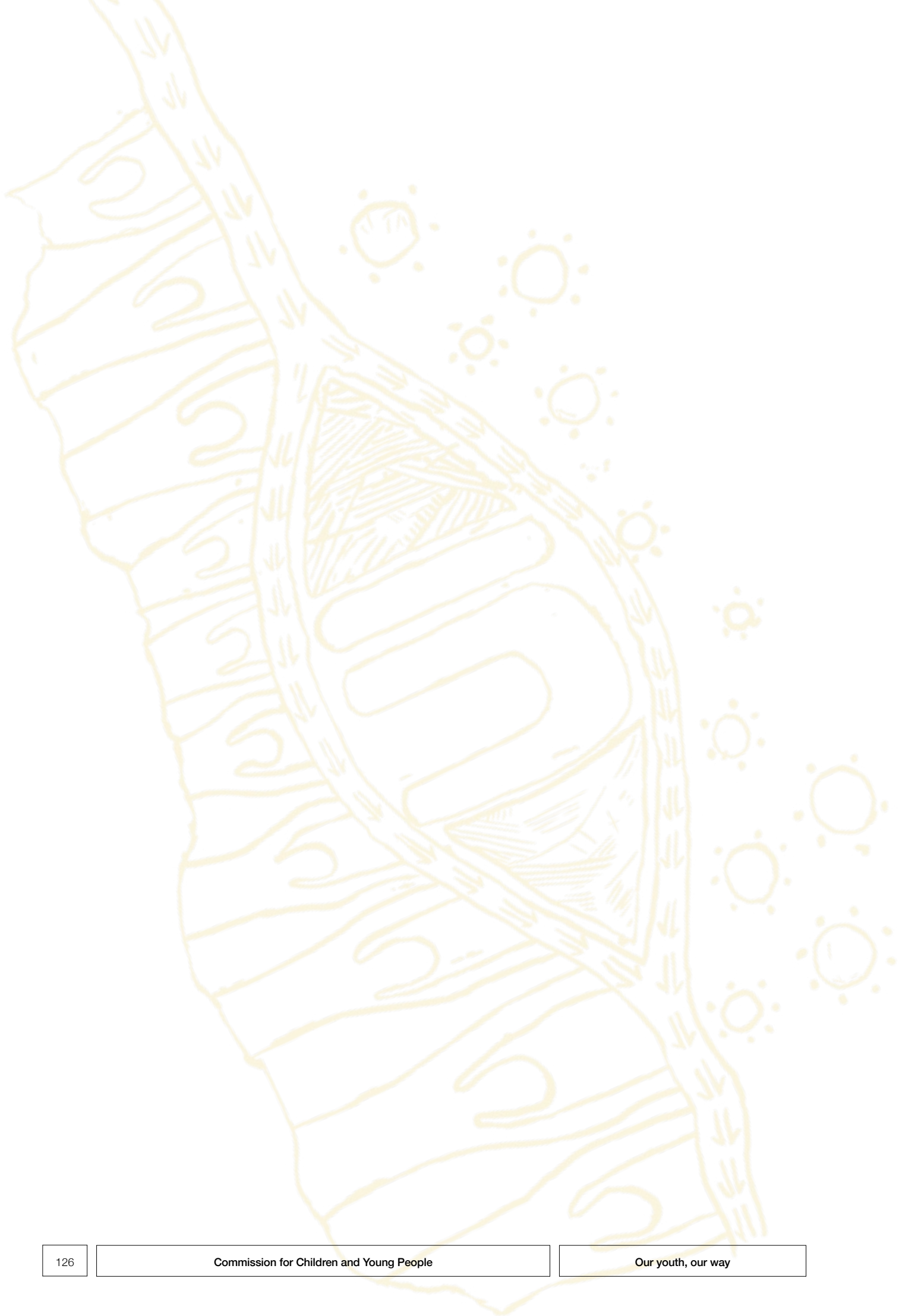
### Recommendation 4

That DJCS, in partnership with the Aboriginal community, establish a centralised mechanism for the regular publishing of accurate, cross-agency, linked data to provide a single, authoritative source of information on Aboriginal children and young people in the youth justice system and their outcomes.

### Recommendation 5

That DJCS partner with an Aboriginal organisation to pilot Kapiti Youth Support's Outcomes Measurement Model used in New Zealand.

<sup>311</sup> State of Victoria, *Burra Lotjpa Dunguludja*, p 51.





# A just & age-appropriate system

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*The people lifting and raising people up represent the first step. Some young people don't have many people they can speak to about what they're going through. The gathering circle is about having a place to go to and talk to people, as talking makes us feel better. The kangaroo tracks represent the desire to change and move forward. – Young people of Bairnsdale, Gunaikurnai Country*

## Our way

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*We must listen to our children so that all Aboriginal children in Victoria are nurtured and supported to thrive. We must listen to the experts, who are the children and young people themselves, when making key decisions that affect the lives of our children. – Executive Officer, Koorie Youth Council*

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*As best practice we must respond to young people's contact with the justice system as welfare issues requiring support. We might be a lucky country, but for many of our Aboriginal children this is not the case. – Aboriginal Justice Caucus*

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Resolving the issue of the over-representation of Aboriginal children and young people in the youth justice system requires a fundamental shift in approach. This means refocusing the system away from late, crisis-driven and harmful responses to early, individualised and effective ones. We must not allow Aboriginal children and young people to become entrenched in the youth justice system. We must take every measure to keep them in the community, close to school, family, culture and recreation, where supports are most effective.

Aboriginal advocates and communities maintain that holistic, effective service delivery and early intervention for vulnerable Aboriginal children and young people is key to reducing youth justice system involvement. Such services are most effective when they are accessible and localised, and culturally based. These methods provide a way of addressing difficult behaviours without the negative consequences of contact with the youth justice system.

Aboriginal children and young people told the Commission about the absence of effective, early services and supports throughout their childhood. We also heard the stories of children who were criminalised

and incarcerated at a young age, and the deeply harmful impact this had on them, compounding their disadvantage and trauma. This indicates a system that is failing Aboriginal children and young people.

Criminalising children as young as 10 is cruel and unjust. Children who have been exposed to violence, abuse, neglect and challenging home environments should receive care, love and support rather than being criminalised for untreated trauma and difficult behaviour. Custody is no place for children. Aboriginal communities want to see their children thriving in their families and communities, not locked behind bars.

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*It is a travesty that 11, 12, 13 year olds are getting locked up. These kids are currently referred to as statistics, as numbers. When we're normalising this view of our kids as just numbers in the justice system, not as Elders of the future or as children, there's something really wrong. – Aboriginal Justice Caucus*

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Following the lead of Aboriginal communities, the Commission believes that legislative change to raise the minimum age of criminal responsibility to 14 years and the minimum age of incarceration to 16 years is necessary to ensure that Victoria's most vulnerable children and young people are not unnecessarily criminalised or subjected to harm. This, in turn, means introducing more restorative and therapeutic responses to anti-social behaviour in children. It also means providing more alternatives to custody.

## Djiran's story

Djiran<sup>312</sup> loves art and is a brilliant footballer. During his early childhood, Djiran and his family needed support but did not receive it. Family involvement with the criminal justice system meant that Djiran was known to police and unnecessarily labelled from a young age.

*In my childhood there was a lot of abuse towards my step-mum and my dad was in and out of custody. I used to get in trouble just for being cheeky to the coppers because they knew who my dad was, and the coppers all hate my dad. Every time they'd catch my dad, they'd bash him. They would say to me, 'He's your dad so you're not going to be a good kid.' I started smoking weed when I was 9 and moved on to harder stuff pretty quick.*

Services did not identify or respond to the individual needs of Djiran and his family, and failed to provide necessary supports. Djiran was exposed to serious traumatic events and experienced cumulative harm. At the same time, he lost crucial family connections at a formative time in his development.

*When my dad went to jail, I had nowhere to go. [A relative] ended up taking me in and then I just kept getting into trouble because my dad wasn't there, and I wasn't used to not having my dad there. My dad kept going in and out of jail, and my sister died and then [the relative] was getting too sick... she died and I really miss her.*

*I ended up living with my mum. We had nothing. Back then I thought, 'My mum only gets on the alcohol because she doesn't care about me.' Now I know she loves me, but she doesn't show that love to me. I only trust certain people. I push lots of people away.*

Djiran was charged and locked up at the age of 10. This compounded his childhood trauma, reinforced the

factors driving his offending behaviour, and led to more serious behaviour. Being removed from his community and escalated through the youth justice system meant that Djiran was denied access to potentially beneficial and culturally strengthening holistic programs run by Aboriginal organisations which would have been responsive to his needs.

*I was in and out of strife since I was 10 – I was sent to juvie at that age. That's when I started getting more charges. My peers were getting into trouble and I just thought it was cool. It started off with something so small and it got into things that were so big.*

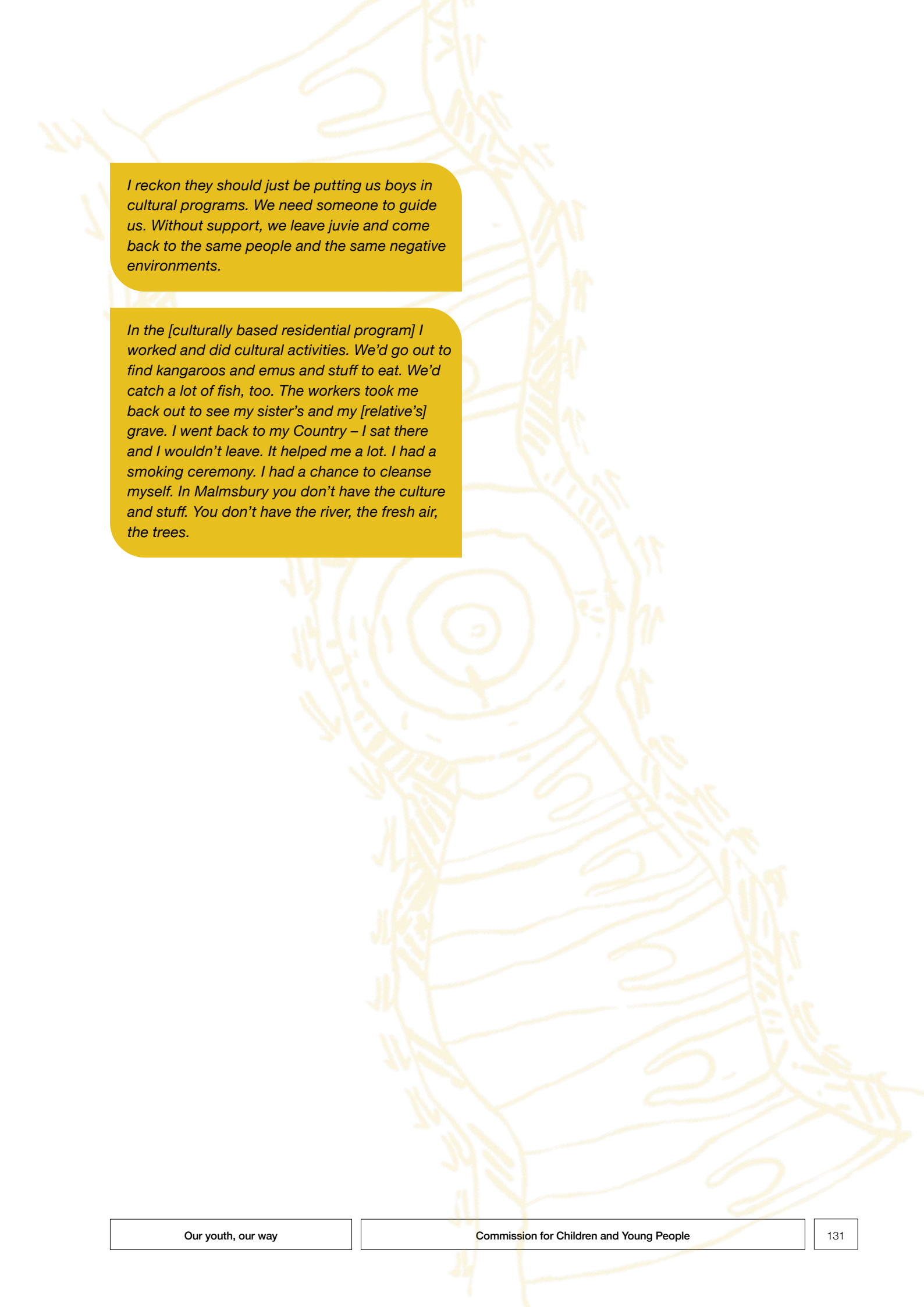
Djiran spent a large part of his childhood in custody. Custody led to a deterioration of his mental health and wellbeing while also removing access to healing opportunities and protective factors, including connections to family and culture. Djiran was trapped in a cycle of unresponsive and inadequate service delivery, which in turn drove further offending and ongoing incarceration.

*Inside, I didn't trust most of the workers. I would get upset all the time, then I'd get restrained and stuff. I [self-harmed] in there and the psych was no help – they didn't get what I was going through.*

*If some of the boys got kids, they can't see their kids. They can't see their mums. That's why they go off.*

After being subjected to multiple periods of custody which failed to address his needs, Djiran finally received culturally responsive, holistic support through an Aboriginal organisation. This support helped Djiran to begin healing by addressing trauma, disconnection and the causal factors underlying his offending behaviour.

<sup>312</sup> Djiran is a pseudonym meaning 'black cockatoo' in Djab Wurrung.



*I reckon they should just be putting us boys in cultural programs. We need someone to guide us. Without support, we leave juvie and come back to the same people and the same negative environments.*

*In the [culturally based residential program] I worked and did cultural activities. We'd go out to find kangaroos and emus and stuff to eat. We'd catch a lot of fish, too. The workers took me back out to see my sister's and my [relative's] grave. I went back to my Country – I sat there and I wouldn't leave. It helped me a lot. I had a smoking ceremony. I had a chance to cleanse myself. In Malmesbury you don't have the culture and stuff. You don't have the river, the fresh air, the trees.*

## Chapter at a glance

- The youth justice system is disproportionately focused on late, crisis-driven, punitive responses to offending behavior, at the expense of effective early interventions and supports that meet the individual needs and reflect the unique experiences of Aboriginal children and young people.
- There are clear links between the failure of the youth justice and child protection systems to support Aboriginal children and young people through intervention in areas such as housing, family violence, health and trauma, and their continued involvement in the youth justice system.
- Victoria's low minimum age of criminal responsibility allows children as young as 10 to be held in youth justice custody. This disproportionately harms Aboriginal children.
- Any period in custody can be harmful to a child, and can impair healthy development and exacerbate trauma and mental illness. Custody removes Aboriginal children from their families, communities, Country and culture and dislocates them from their protective factors.

### Key data

- In 2019–20, Aboriginal children and young people accounted for 15% of all children and young people aged 10 to 17 years under Youth Justice community supervision on an average day in Victoria.
- Aboriginal children are likely to be younger at first sentence or diversion than non-Aboriginal children. From 2010 to 2019, Aboriginal children made up 30% of children aged 10 to 13 years who received a court order that placed them under the supervision of Youth Justice.
- From 2010 to 2019, 98% of all custodial orders made in respect of children aged 10 to 13 years were remand orders.
- 96% of children and young people for whom a Taskforce case planning session was held did not receive supports and services to address health, welfare and cultural needs prior to their entry into the youth justice system.

## Current context

Most children and young people in the community do not offend.<sup>313</sup> Those who do, often engage in low-level anti-social behaviours, and grow out of them naturally as they mature, without the need for criminal justice intervention.<sup>314</sup> Typically, these children and young people do not go on to offend as adults.<sup>315</sup> However, a small proportion of children and young people continue to engage in offending behaviour.<sup>316</sup> The younger a person is at the time of their first offence, the higher the likelihood of them becoming a 'life course persistent' offender.<sup>317</sup> Disproportionate criminal justice interventions in the early years increase the risk that a young person will become entrenched in the criminal justice system.<sup>318</sup>

Prevention and early intervention efforts are recognised by Aboriginal and non-Aboriginal advocates as being the solution to keeping children and young people from entering or becoming entrenched in the youth justice system.<sup>319</sup> There is also growing recognition of the

gains early intervention provides in economic efficiency.<sup>320</sup>

According to the Aboriginal Justice Caucus:

*The most effective youth justice systems and programs invest in comprehensive interventions from prevention to early intervention in order to divert young people away from the justice system.*<sup>321</sup>

Early intervention requires a comprehensive understanding of the factors contributing to offending behaviour, and tailored interventions to address them. However, despite indications of promising outcomes, there is a lack of rigorous research and evaluation evidence to show that prevention and early intervention programs are accessible to those who need them the most, and when accessed, are working to reduce the over-representation of Aboriginal children and young people in the youth justice system.<sup>322</sup> Nevertheless, the 2017 Youth Justice Review recognised that 'whole-of-continuum programs and responses are required to address the issue of over-representation from early intervention through to post-release'.<sup>323</sup>

One of the 10 principles underpinning the approach to youth justice in Victoria is that Youth Justice 'understands that prevention, diversion and early intervention are the most effective and fiscally responsible ways of reducing youth crime in the long term'.<sup>324</sup> One of the 4 reform directions of the Youth Justice Strategic Plan is to improve diversion and support early intervention and crime prevention, through 'coordination between police and the broader service system to address developmental needs and factors such as childhood trauma, family violence,

<sup>313</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 8.

<sup>314</sup> K Richards, 'What makes juvenile offenders different from adult offenders?', *Australian Institute of Criminology trends & issues in crime and criminal justice*, number 409, 2011, p 2.

<sup>315</sup> Richards, 'What makes juvenile offenders different from adult offenders?'

<sup>316</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, pp 144–145.

<sup>317</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 8.

<sup>318</sup> 'The risk that a period of detention will be counter-productive for an offender – and hence for the community – is never higher than in relation to a young offender who has not previously been in custody. Research to which the Chief Scientist of New Zealand has recently drawn attention has highlighted the potential for the immature brain to respond to punitive punishments in such a way as to make recidivism more rather than less likely.': Victorian Court of Appeal in *CNK v The Queen* [2011] VSCA 228 at [77] per Maxwell P, Harper JA & Lasry AJA citing L Steinberg, 'Adolescent development and juvenile justice', *Annual Review of Clinical Psychology*, 2009, 5(1):459–485, cited in Chief Scientific Advisor, *Improving the transition: reducing social and psychological morbidity during adolescence*, A report from the Prime Minister's Chief Scientific Advisor, New Zealand Government, 2011, p 28.

<sup>319</sup> Change the Record Coalition, *Blueprint for change: changing the record on the disproportionate imprisonment rates, and rates of violence experienced by Aboriginal and Torres Strait Islander people* [PDF], The Change the Record Steering Committee, 2015, pp 7–9, 12. Change the Record is Australia's national Aboriginal-led justice coalition of Aboriginal peak bodies and non-Aboriginal allies.

<sup>320</sup> Northern Territory Royal Commission Final Report, Volume 3B, pp 174–175, quoting Professor Frank Oberklaid, Transcript, 29 May 2017.

<sup>321</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry.

<sup>322</sup> D Higgins and K Davis, *Law and justice: prevention and early intervention programs for Indigenous youth*, Closing the Gap Clearinghouse resource sheet no. 34, Closing the Gap Clearinghouse, Australian Government, 2014.

<sup>323</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 96.

<sup>324</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 16.

health issues, housing insecurity and other forms of disadvantage'.<sup>325</sup>

Critical to the concept of early intervention is the way various systems with the potential to influence and impact on children and young people, including the youth justice system, respond to children in early adolescence. Currently in all Australian jurisdictions, children as young as 10 can be exposed to the potentially harmful and stigmatising aspects of the formal criminal legal process, including being arrested, charged with an offence, prosecuted, convicted, sentenced and incarcerated.<sup>326</sup> Many have argued that this disproportionately impacts Aboriginal children.<sup>327</sup>

Children aged 10 to 13 years have not yet developed the emotional, mental and intellectual maturity of adults. Research shows that the brains of adolescents are still developing well into their 20s, and, as a consequence, they are more vulnerable to poor decision-making and risk-taking behaviour.<sup>328</sup> Children in grades 4, 5 and 6 are not at a cognitive level of development where they are able to fully appreciate the criminal nature of their actions or the lifelong consequences of criminalisation.

Criminalising the behaviour of young children perpetuates a cycle of disadvantage that can entrench children and young people in the criminal justice system.<sup>329</sup> The Victorian Sentencing Advisory Council

found that with each one year increase in a child's age at first sentence, there is an 18% reduction in the likelihood of reoffending.<sup>330</sup>

A key action of the Youth Justice Strategic Plan is to participate in the national review of the age of criminal responsibility through the Council of Attorneys-General, and investigate alternatives to custody for children aged 10 to 14 years.<sup>331</sup> In July 2020, the Council of Attorneys-General deferred a decision to raise the minimum age of criminal responsibility, noting 'the need for further work to occur regarding the need for adequate processes and services for children who exhibit offending behaviour'.<sup>332</sup>

Victoria's current minimum age of criminal responsibility is in breach of international human rights standards which Australia has been urged to meet.<sup>333</sup> Most similar jurisdictions around the world have set a minimum age of at least 14 years.<sup>334</sup> The age at which a child can be incarcerated in Victoria is also inconsistent with international human rights standards.<sup>335</sup>

Studies have shown that incarceration is no more effective than community-based sanctions in reducing criminality.<sup>336</sup> According to the President of the Children's Court of NSW:

<sup>325</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 18.

<sup>326</sup> CYFA, s 344; *Children (Criminal Proceedings) Act 1987* (NSW), s 5; *Criminal Code 2002 (ACT)*, s 25; *Criminal Code 1899 (Qld)*, s 29(1); *Young Offenders Act 1993 (SA)*, s 5; *Northern Territory Criminal Code*, ss 38(1) & 43AP; *Criminal Code Act 1913 (WA)*, s 29; *Criminal Code Act 1924 (Tas)*, s 18(1); *Crimes Act 1914 (Cth)*, s 4M; *Criminal Code Act 1995 (Cth)*, s 7.1.

<sup>327</sup> See for example, Law Council of Australia, *Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group Review*, Law Council of Australia, 2020, accessed 26 October 2020, p 16.

<sup>328</sup> Chief Scientific Advisor, *Improving the transition*, p 24. According to this report "'maturity of judgement" measures such as responsibility, perspective (ability to assess short and long term consequences) and temperance are, on average, fully attained at about the age of 20 years' (p 25). See also Richards, 'What makes juvenile offenders different from adult offenders?', p 4; L Steinberg 'Risk taking in adolescence: new perspectives from brain and behavioral science', *Current Directions in Psychological Science*, 2007, 16(2):55–59, p 56.

<sup>329</sup> AIHW, *Young people returning to sentenced youth justice supervision 2018–19*, p 6: 'The younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision before the age of 18.' The AIHW found that, within 12 months, 69% of children aged 10 to 13 years when released from community-based supervision had returned to sentenced supervision, compared with 51% for those aged 16 at the time of release (p 15).

<sup>330</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, Sentencing Advisory Council, Melbourne, 2016, accessed 20 November 2020, p 26.

<sup>331</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 19.

<sup>332</sup> Attorney-General's Department, *Council of Attorneys-General (CAG) communiqué*, Attorney-General's Department website, 27 July 2020, accessed 10 November 2020.

<sup>333</sup> See for example, Human Rights Committee, *Concluding observations on the sixth periodic report of Australia*, UN Doc CCPR/C/AUS/CO/6, 2017, paragraph 44; Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Australia*, UN Doc CERD/C/AUS/CO/18–20, 2017, paragraphs 25–26.

<sup>334</sup> N Hazel, *Cross-national comparison of youth justice* [PDF], Youth Justice Board for England and Wales, United Kingdom, 2008.

<sup>335</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, 2019, paragraph 89: 'The Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age.'

<sup>336</sup> Richards, 'What makes juvenile offenders different from adult offenders?'



*No experience is more predictive of future adult difficulty than confinement in a juvenile facility... Children who have been incarcerated achieve less educationally, work less and for lower wages, fail more frequently to form enduring families, experience more chronic health problems (including addiction), than those who have not been confined. Confinement all but precludes healthy psychological and social development. Detention, therefore, is not the best answer to the multiple, complex and traumatic problems experienced by, and caused by young offenders.*<sup>337</sup>

International jurisdictions demonstrate that there are effective ways to address anti-social or harmful behaviour using welfare-based interventions as the primary response for children in trouble.

This chapter is divided into 3 parts:

- 5.1 'Early intervention' examines the youth justice system's current primary focus on late, crisis-driven responses to offending behaviour by Aboriginal children and young people at the expense of effective prevention, early intervention and support.
- 5.2 'Age-appropriate responses to Aboriginal children and young people' identifies the disproportionate impact on Aboriginal children and young people of the current minimum age at which children can be held criminally responsible and incarcerated in Victoria.
- 5.3 'Recommended model' summarises the Commission's recommended model for just and age-appropriate responses to Aboriginal children and young people in Victoria.

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<sup>337</sup> Judge P Johnstone, *Early intervention, diversion and rehabilitation from the perspective of the Children's Court of NSW*, Children's Court of NSW Resource Handbook, 6th Annual Juvenile Justice Summit, 5 May 2017, Sydney, accessed 20 November 2020, [94]–[98], citing E Mulvey, *Highlights from pathways to desistance: a longitudinal study of serious adolescent offenders* [PDF], Juvenile Justice Fact Sheet, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, 2011, and M Wald and T Martinez, *Connected by 25: improving the life chances of 14–24 year olds* [PDF], Stanford University, 2003.

## 5.1 Early intervention

### Finding 3

The youth justice system is disproportionately focused on late, crisis-driven, punitive responses to offending behaviour, at the expense of effective early interventions and supports that meet the individual needs and reflect the unique experiences of Aboriginal children and young people, and keep them in the community and out of the system.

The descriptor 'early intervention' can be applied to a wide range of interventions and supports delivered at various points in a young person's life. In a broad sense, early intervention can refer to any initiative or service aimed at reducing risk factors and increasing protective factors to prevent problems in a child's life.<sup>338</sup> This could include, for example, programs to support vulnerable parents when a child is an infant, or programs for primary-school aged children aimed at fostering mental wellbeing and resilience.

Early intervention in the context of the youth justice system tends to have a narrower focus, sitting on a 'continuum' of intervention programs designed to prevent and reduce offending behaviour by children and young people.<sup>339</sup> These range from prevention (preventing offending behaviour before it begins), through early intervention (targeted at 'identified at-risk people') and diversion (diverting from court processes), to tertiary intervention.<sup>340</sup>

In this report, 'early interventions' or 'early supports' are those services and programs targeted at Aboriginal children and young people who have begun engaging in behaviour which puts them at risk of entering the youth justice system, or who have become involved with the youth justice system, but whose offending behaviour is still considered to be 'minor' or 'low-level'. Early intervention programs are aimed at preventing a young person's entry into, or long-term involvement in, the youth justice system.

This is consistent with the approach of the Northern Territory Royal Commission:

*The term 'early intervention' when considering the youth justice system describes the variety of activities, programs and initiatives designed to address problem behaviours in children and young people who may have reached a difficult point in their lives and have started exhibiting early signs that they are heading down a negative path. The goal of early intervention is to reduce risk factors, strengthen protective factors and provide children and young people with life skills and family and community support.*<sup>341</sup>

In this respect, there is some overlap between the notions of 'early intervention' and 'diversion'. Children's Court diversion is discussed in Chapter 12.1 'Diversion'. Police cautioning, which 'diverts' children and young people from charges and court proceedings, and is thus an earlier form of 'diversion', is discussed in Chapter 11 'Entering the youth justice system'. The following discussion focuses on programs and services that are delivered at an earlier point on the intervention continuum.

<sup>338</sup> For this reason, it is often referred to as 'early intervention and prevention'.

<sup>339</sup> Higgins and Davis, *Law and justice: prevention and early intervention programs for Indigenous youth*, p 5.

<sup>340</sup> Higgins and Davis, *Law and justice: prevention and early intervention programs for Indigenous youth*, p 5.

<sup>341</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 411.

## The absence of early intervention and support for Aboriginal children and young people

Throughout the Taskforce and inquiry, Aboriginal children and young people, communities and workers consistently referred to the absence in communities of effective early intervention and support across a range of needs, which could have addressed causal factors driving offending behaviour and prevented young people's entry into the youth justice system. In some cases, there were no early supports available at all, while in others, services were at capacity or inaccessible due to geographical distance. Some services, particularly substance misuse support services, were restricted to older children and young people, meaning that younger age groups could not access the interventions and supports they needed.

Very few of the children and young people consulted for the inquiry felt that their needs had been met by early interventions and supports. Many referred to the inaccessibility of services and barriers to effective early intervention. Of the 72 children and young people who spoke to the Commission about this issue, 63 identified the need for additional supports and/or improved quality of services and programmatic responses. One young person from a small regional town referred to the barriers posed by services being at capacity and unable to support new clients in a timely manner:

*I needed [my local ACCO] as a support. I didn't hear back from them for ages. I needed more supports, like social workers. I wanted them earlier, before I went downhill. – Macy, 24*

Family members and Aboriginal workers also referred to the absence of timely supports and the need for a greater focus on early intervention.

*We need more supports for families earlier... they see these behaviours at age 7 at school. It's not all of a sudden they're in court. – Aunty*

*Create a program to rehabilitate young people from problems. There are no services for under 16s, which isn't good enough... Having an age restriction puts young people offside. – Aboriginal youth worker, Mallee District Aboriginal Services (MDAS)*

*This town doesn't have much to do – a small town an hour from anywhere. When our kids get in trouble, they have nothing here they can link to or get support from. – Aboriginal youth worker, MDAS*

*We need the investment back into the proactive preventative measures. – RAJAC Executive Officer*

The failure to address risk factors early through appropriate and timely interventions and supports can fast-track entry into and entrenchment within the youth justice system, as illustrated by Karl's experience:

*When I was 12 to 15, I really needed to be linked in to some support services, but there wasn't any for kids under 15. I started using drugs at 11 and started getting into trouble – just little stuff – and as soon as the police know you that's it. It doesn't take much – they see you on the street, pull over and harass you. I didn't have any support services until I was like 15, 16... You need somewhere that you can just drop in. Appointments are one thing, but you need a place that you can go with your friends and do something that isn't drugs, just go somewhere and have something to eat, where people actually enjoy going, with good workers. – Karl, 21*

The Taskforce case planning sessions also demonstrated that the youth justice and child protection systems did not always meet Aboriginal children and young people's needs in a timely manner. Of the 69 children and young people for whom a case planning session was held, 66 did not receive supports and services to address all of their health, welfare and cultural needs prior to their entry into and engagement

## 5.1 Early intervention

with the youth justice system. These needs were in most cases known to the youth justice and child protection systems, and in some cases had been known for many years. In most cases, these needs had compounded over time, becoming more complex the longer they went unaddressed. As a result, many Taskforce case plan actions sought to address health and wellbeing needs that could have been addressed when they first affected the young person – generally prior to involvement in the youth justice system. This is discussed in more detail in Chapter 6.1 ‘Collaboration’.

Throughout the Taskforce case planning sessions, the Commission observed clear links between the absence of support from the youth justice and child protection systems for Aboriginal children in areas such as

housing, family violence, health and trauma, and their continued involvement in the youth justice system. In many cases, these early systemic failures contributed to deterioration in the young person’s mental health and wellbeing, relationship breakdowns and compounded trauma, leading to increased and escalating offending behaviours. Such failures to address disadvantage, trauma and health needs contribute to adverse outcomes for too many Aboriginal children and young people and entrench them in custody.

Ruby’s case demonstrates the severe impacts on a young person’s health, wellbeing and relationships of the absence of timely supports to address longstanding issues in her life.

### Ruby

Ruby is a young woman who has loved basketball her whole life. She has strong connections with siblings and helps out with babysitting for her family.

Ruby has experienced significant trauma in her life. She first came to the attention of Child Protection as an infant due to concerns of family violence by her father. Ruby engaged with mental health services for anxiety for 3 years in her teens. She also has multiple physical health needs for which she has been hospitalised in the past.

As a teenager, Ruby was removed from her mother’s care due to concerns of neglect. Around this time, she stopped attending counselling, as she did not find it helpful. Ruby was placed in a family member’s care, where she was physically assaulted. She was also sexually assaulted in this period. At around the same time, Ruby came into contact with the youth justice system for minor offending behaviour.

Despite contact with the child protection and youth justice systems over a number of years, Ruby’s health, mental health and housing needs

had not been met. She did not receive support after significant traumas that Child Protection and Youth Justice were aware of. Her mental health declined and she attempted suicide multiple times. Psychologists were unable to engage her in treatment. Ruby completed a community-based sentencing order, yet continued engaging in low-level offending behaviour.

With no long-term accommodation, Ruby was placed in residential care. At 18 she left residential care and began living alone. She has expressed feeling unsafe in her house due to break-ins. At the time of the Taskforce case planning session, Ruby was living between other family members’ houses.

The Taskforce case planning session for Ruby noted the inadequate support provided to her following the significant traumas in her life. Further, many supports which had been offered had not been followed up, such as review of her mental health medication. The Taskforce identified actions in the areas of health, mental health, education and training, housing and family violence to address Ruby’s welfare needs, which existed long before the commencement of

her offending behaviour. Cultural support for Ruby was the only strong and consistent support already in place, and the Taskforce did not identify case plan actions in this area.

Despite having been known to Child Protection since infancy, and having been reviewed as a Taskforce 1000 participant, Ruby's needs had

been neglected by the state. Ruby's story demonstrates that when the needs of children and young people are not addressed in a timely and comprehensive way, they become more complex and lead to further harm, offending behaviour and involvement in the youth justice system.

Of the 69 children and young people for whom a Taskforce case planning session was held, the needs of only 3 were met relatively early. These children and young people were able to exit the youth justice system more quickly, as they had the supports to do so. In these 3 cases, the young people were living with families who were able to support them with low-level assistance from Youth Justice and other services.

Every Taskforce regional forum called for the youth justice system to shift its focus from criminalisation to early intervention programs and supports for children and young people. Participants at every forum agreed that supporting children and young people early enables them to address the underlying causes of offending behaviour and to avoid prolonged cycles of contact with the youth justice system.

### Limited funding for early intervention

The Youth Justice Review was particularly critical of Victoria's neglect of early intervention services. Analysis of 2016–17 data showed that only 1% of the youth justice budget was allocated to early intervention consisting of 2 programs: the Community-Based Koori Youth Justice Program and the Youth Support Service.<sup>342</sup> The Youth Justice Review highlighted the systemic focus on late, punitive interventions and missed opportunities to intervene early:

*The system is not balanced and focuses too heavily on the tertiary end, neglecting early intervention and step-down and transition support.*<sup>343</sup>

As noted above, the Youth Justice Review recommended the introduction of a dedicated focus on

early intervention.<sup>344</sup> DJCS reported to the Commission that implementation of this recommendation is complete. Actions included funding the programs set out in Table 5.1.

**Table 5.1** DJCS diversion and early intervention programs, 2018–19 funding

Program	2018–19 funding
Children's Court Youth Diversion	\$3,102,000
Youth Support Service	\$4,427,660
Aboriginal Youth Support Service	\$263,569
Group Conferencing	\$2,293,515
Koori Youth Justice Program	\$4,186,451
<b>Total</b>	<b>\$14,273,195</b>

Source: Information provided to the Commission by DJCS on 19 June 2020.

The Youth Justice Strategic Plan also refers to support for the following early intervention programs:

- Education Justice Initiative (delivered by DET)
- Victoria Police Embedded Youth Outreach Program
- Koori Youth Cautioning Program (delivered by Victoria Police).

These programs are valuable; however, they are not designed to meet the full range of early intervention needs identified by Aboriginal children and young people, communities and workers in the Taskforce and this inquiry. Not all of them constitute 'early intervention' in the sense used in this report.

Further, funding for these programs represents a very small fraction of youth justice investment. Youth Justice invested \$14.3 million in early intervention and diversion

<sup>342</sup> Armtage and Ogloff, *Youth justice review and strategy*, Executive summary, p 6.

<sup>343</sup> Armtage and Ogloff, *Youth justice review and strategy*, Executive summary, p 18.

<sup>344</sup> Recommendation 7.1: Armtage and Ogloff, *Youth justice review and strategy*, Executive summary, p 41.

## 5.1 Early intervention

in 2018–19 (Table 5.1). In contrast, far greater was spent on youth justice custodial services (\$160.8 million) and community-based services (\$63.8 million) in 2018–19.<sup>345</sup> In 2019–20, DJCS spent \$169.8 million on youth justice custodial services and \$70.3 million on youth justice community-based services.<sup>346</sup>

By these measures, the ‘dedicated focus on early intervention’ recommended by the Youth Justice Review has not yet been achieved and appears unlikely to be met.

### Justice reinvestment and early intervention

Justice reinvestment is a mechanism for shifting the focus of youth justice systems from tertiary responses to early intervention and prevention. It involves redirecting funds from custodial facilities to localised community services to keep people out of the criminal justice system.<sup>347</sup> Justice reinvestment emerged in the United States as a response to mass incarceration, in particular, concentrated incarceration among particular class, race and geographic groups.<sup>348</sup> In Texas, justice reinvestment policies reduced the growth in prison population by about 9,000 and resulted in savings of \$443 million between 2008 and 2009.<sup>349</sup>

Justice reinvestment projects are often led by local communities, and have received widespread support among Aboriginal justice advocates, local communities and state and territory governments.<sup>350</sup>

The Maranguka Justice Reinvestment Project in Bourke (NSW) – outlined in Chapter 4.1 ‘Advancing self-determination’ – is the first of its kind in Australia. This project seeks to reduce the rate of contact of children

and young people in Bourke with the youth justice system by employing a community-led, collaborative approach to justice reinvestment.

The project was launched in 2013 through a partnership between the Bourke Tribal Council and Just Reinvest NSW. In 2015, the Bourke Tribal Council released *Growing our kids up safe, smart and strong*, a strategy that underpins the programs and activities developed by the Maranguka project. In parallel, Just Reinvest NSW released a policy paper in 2017, written in collaboration with peak legal organisations in NSW and endorsed by Aboriginal organisations, proposing a range of sentencing and parole law reforms.<sup>351</sup> Several of these have been implemented, including the expansion of NSW’s Youth Koori Court.

A 2018 impact evaluation of Maranguka by KPMG concluded that the project’s activities can be classified as follows, with each type of activity crucial to the success of the project and forming a different ‘layer in the overall change cycle within Bourke’:

- movement-building – Aboriginal leaders building support for change within the community
- collaborative – building new relationships between services and Aboriginal organisations
- programmatic – designing new program models and service hubs based on justice reinvestment principles
- procedural – justice agencies changing procedures and operations to align with a justice reinvestment and prevention model.<sup>352</sup>

The evaluation also found that the local work of the project is complemented by a broader policy and support network across the NSW Government and non-government sectors, which is ‘seen as critical for creating the conditions for larger scale system change across the State’s justice system’.<sup>353</sup>

Justice reinvestment programs have the potential to address over-representation; however, they require substantial investment and collaboration across all levels of government with community and key stakeholders, as well as legislative and policy changes,

<sup>345</sup> Department of Justice and Community Safety (DJCS), *Annual report 2018–19*, DJCS, Victorian Government, 2019, accessed 20 November 2020, pp 121, 123. The 2020–21 Budget includes \$141 million to deliver ‘a more specialised Youth Justice facility at Cherry Creek’: The Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Preventing crime and building a safer Victoria*.

<sup>346</sup> Department of Justice and Community Safety (DJCS), *Annual report 2019–20*, DJCS, Victorian Government, 2020, accessed 20 February 2021, p 132.

<sup>347</sup> VACCA, Submission to *Our youth, our way* inquiry, p 15.

<sup>348</sup> M Schwartz, D Brown and C Cunneen, *Justice reinvestment*, Indigenous Justice Clearinghouse Brief 21, Indigenous Justice Clearinghouse, 2017, accessed 14 September 2020.

<sup>349</sup> Schwartz et al., *Justice reinvestment*.

<sup>350</sup> Justice Reinvestment Network Australia, *Justice reinvestment in Australia*, Justice Reinvestment Network Australia website, accessed 14 September 2020.

<sup>351</sup> Just Reinvest NSW, *Policy paper: key proposals #1 – smarter sentencing and parole law reform* [PDF], Just Reinvest NSW website, 2017, accessed 14 September 2020.

<sup>352</sup> KPMG, *Maranguka Justice Reinvestment Project*, p 16.

<sup>353</sup> KPMG, *Maranguka Justice Reinvestment Project*, p 10.

to see large decreases in incarceration rates.<sup>354</sup> The recommendations in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people' to change the scope and structure of Victoria's youth justice system are designed to work in conjunction with early intervention initiatives such as justice reinvestment.

### The need for local youth spaces

Early intervention supports for Aboriginal children and young people must be accessible. This requires localised services.<sup>355</sup> During the inquiry, children and young people identified the need for a range of community-based programs; however, a central youth space in their communities was the most frequently identified need. This would be a culturally and age-appropriate place where Aboriginal children and young people felt that they belonged.

*Get kids off the street. Have more programs and a space. Kids need more things to do rather than hanging out on the street doing crime, like a drop-in place where you can play pool and hang out and there's wifi. They need more things in [my home town]. There's less stuff to do in country towns. The only thing to do is play local footy. It's hard to get a job – it's only a small place. – Pakap, 16*

*I'd make a place for Aboriginal young people to relax and be together – good vibes. – Zaine, 19*

*I want a youth group for us black kids where we can come and be ourselves, where we can be kids again, because some of us had to grow up too quick. – Chelsea, 16*

*We need a gathering place, because there's nothing to do. It's about meeting up with lads and having people to hang around with that understand you. – Dean, 15*

<sup>354</sup> Schwartz et al., *Justice reinvestment*.

<sup>355</sup> VWW Lee and BP Murphy, 'Early intervention in the real world. Broadening the early intervention paradigm: a one-stop-shop for youth', *Early Intervention in Psychiatry*, 2013, 7:437–441, p 440.

Community members and workers also identified the need for a central space to provide wraparound services for local children and young people.

*There are no youth groups, discos and skating rinks – none of that here. Kids have nothing to do, so graffiti around the town, and keep being picked up by police. They need something they can rely on. [If we could create a service] we would have a space solely focused on youth. They could walk in the door and there would be people available there all the time, activities all the time, counsellors there, homework club, food. We could fill all their needs. Say a 12 or 13 year old kid who doesn't have a great family life, where do they go? At this service they can have a feed and talk to someone who knows what they are talking about. – Aboriginal youth worker, Gippsland & East Gippsland Aboriginal Co-operative (GEGAC)*

*Activities for young people to link into is mentoring, but even then, there isn't a lot that the pair [mentor and mentee] can do around town other than catch up for a feed. There is no youth hub, nothing. – Aboriginal youth worker, MDAS*

The Northern Metropolitan regional forum also identified the need to establish a drop-in centre for Aboriginal young people, especially after hours.

### Culturally based youth hubs

A culturally based youth hub model would meet the need for a central 'youth space', or 'gathering place', as identified above. In mainstream youth work and mental health practice, the youth hub model seeks to address issues of service accessibility and system fragmentation that are common failures of youth service delivery.<sup>356</sup>

*[Integrated community-based youth service hubs] are poised to address many of the most pressing youth mental health service concerns by uniting traditionally fragmented services into single, youth-friendly*

<sup>356</sup> C Settapani et al., 'Key attributes of integrated community-based youth service hubs for mental health: a scoping review', *International Journal of Mental Health Systems*, 2019, 13(52):1–26, p 2.

## 5.1 Early intervention

*settings, improving early access to evidence-informed interventions, engaging youth and families, and drawing on the strengths of cross-disciplinary and multi-sectorial collaborations.*<sup>357</sup>

While integrated youth hubs exist in Victoria, the Commission is aware of only 3 dedicated youth hubs run by Aboriginal organisations.<sup>358</sup> The Commission visited 2 of these youth hubs, run by MDAS in Mildura and Swan Hill, which support Aboriginal children and young people. These centres provide invaluable support for many children and young people and are often one of few – if not the only – spaces accessible to children and young people outside school in a particular area. They are typically under-resourced and led by passionate staff who often manage the complex needs of children and young people well beyond their work hours.

Importantly, no existing youth hub includes all of the ‘one stop shop’ features that communities identified as important to best support Aboriginal children and young people, namely:

- wraparound recreational and therapeutic services
- accessibility, especially after hours
- connection with culture, community and family
- a coordinated approach to support.

Each of these features is discussed below.

### Wraparound recreational and therapeutic services

Aboriginal children and young people and service providers expressed the importance of youth hubs being both a recreational and a therapeutic space. Children and young people connected the lack of a dedicated space for recreational and life-skills activities and programs in their local area with feeling isolated and engaging in early drug and alcohol use, and offending behaviour. Some children and young people also noted the potential for youth hubs to offer post-release support.

*What would help? Not sitting at home. I don't get out much anymore. In our whole community there is nothing to do. – Paul, 15*

<sup>357</sup> Settapani et al., ‘Key attributes of integrated community-based youth service hubs for mental health: a scoping review’, p 22.

<sup>358</sup> Mallee District Aboriginal Services in Mildura and Swan Hill, and K-Hub in Ballarat.

*Money doesn't solve it. I've had hundreds of thousands of dollars. You need more support in a physical way, like more programs. Where I come from there's fucking nothing, there's school and sports and nothing else. Kids grow up and become teenagers and they want stuff to do, so that's when shit hits the fan and gets real. I think more group activities, like boys between 18 and 25 meeting up once a week and going to the gym, going to the pool, kicking back. It sounds childish, but there's heaps of lads that love places like that. We need to occupy ourselves – people fuck up when they're not occupied. Like here [in custody] they make sure you got a day program. When you get out of here it's like they set you up on purpose to fail with all the restrictions [on attending programs]. So have a program for Kooris that's cultural and then once a month do a mixed one for everyone. – Karrwin, 20*

*Maybe something in the community would help people get on the right path. You need to have something going for you on the outside. Like, I'm getting my licence and a car and in 6 months I'll have my Ps and that's good for me. – Karl, 21*

Offering a range of opportunities, activities, services and programs enables children and young people to build trust and relationships in the youth hub, which means they are more likely to feel safe accessing new services in a familiar setting. This is especially important for many children and young people who have negative experiences of particular service providers or workers, and find trusting new people difficult due to trauma and feeling let down by frequent changes in workers (see Chapter 6.2 ‘Relationships with workers’ for further discussion). A child who becomes involved in a cultural program at a service may be more likely to seek support at the same service for other issues, such as family violence or mental health, rather than seek out a new service.

When asked what the ideal youth service would look like, youth workers noted the importance of meeting a range of needs and being holistic, rather than focusing solely on therapeutic services. A mix of recreational and therapeutic services would also reduce the stigma of accessing therapeutic services. One worker explained



how an 'open door' policy at their service (a multi-disciplinary services hub for adults and children) increased the uptake of services by reducing stigma.

*Stigma is so big, and if we can reduce it, that makes a big difference. The way we are – open door – you don't have to be a client to come in. There are so many programs in the building, other people aren't going to know why they are there. There used to be a stigma going to [our service]. Now the community know that you could be there for any reason, such as a fine or a health check. – Aboriginal youth worker, GEGAC*

Reducing the stigma associated with therapeutic treatment by incorporating recreational and life-skills programs means that children and young people are more inclined to access supports earlier, rather than having to wait until their situation reaches crisis point.

### Accessibility

Accessibility is key for the success of youth services. A lack of youth services in many rural and regional areas means that despite relevant referrals, Aboriginal children and young people may not be able to access the services they need.

*Nearly all our clients have substance use and family violence. They are not attending school and have nothing to do. They're isolated. The hardest thing is we are so isolated. We want to do all these things, but we are so removed from where everything is. It's a massive challenge. We will be working with a young person who might disclose self-harm – we give them a referral to [a youth mental health service] and they are put on a computer [due to distance] to talk to a counsellor but they really need to see someone and connect face to face. – Aboriginal youth worker, GEGAC*

Combining a range of supports in a hub model means that children and young people can access multiple services in one place, without having to travel to different locations. This is particularly important, as many Aboriginal children and young people rely on public transport to travel, which can be costly and is often limited in regional areas.

One worker described the importance of services being known by the local community, geographically accessible and open to any community member:

*We have an open door policy. We don't even really need to advertise, people just know that we are there if they need us. We are so central – near courts, lawyers, supermarket. They can even come in if they need to use the phone. – Aboriginal youth worker, GEGAC*

One of the most commonly identified issues in the Taskforce regional forums and in consultations during the inquiry was the need for after-hours support for Aboriginal children and young people.

*There was no youth service after hours... I just used to walk the streets and muck up... it's the same for this generation... there's not much for them... we need somewhere for kids to have a feed instead of stealing. We stole to get a feed... people would always look at us for the wrong reasons. – Nataya, 21*

After-hours support is a crucial feature of an accessible youth hub model. Workers noted that it is no coincidence that children and young people are more likely to engage in offending behaviours or come into contact with police after hours, when there are no spaces or services available to them.

*We are a 9 to 5 service.... We don't have people hanging around that can say, 'What's going on for you?' – that would be extremely valuable. When young people need help, they have nowhere to go. What is missing is engaging with someone that can help you navigate, providing a safe space – not just physical, but psychological. If you don't have that and are unbounded in this huge turmoil state, you don't go anywhere while something is in a swirl. – former CEO, Youth Junction Inc (Visy Cares Hub)*

Staff at Visy Cares Hub also remarked on the difference that implementing drop-in support and opening after hours had on children and young people and their behaviour:

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*Our youth hub introduced a ‘hangout at the hub’. The hub was open till 9 pm and there was opportunity to hang, watch movies, play Xbox... A couple of nights prior to the first hangout at the hub they had 15 major events [involving police]. But when hangout at the hub occurred they went from 15 major events to zero. The hub is not just somewhere to go [there are activities]... You feed them and then come 8 pm, they just go home – cool. If they have nothing to do, you’re in trouble. – former CEO, Youth Junction Inc (Visy Cares Hub)*

Workers and community members noted that though youth spaces are not open after hours, children and young people regularly contact them after hours, often in crisis. In one Taskforce case planning session, an Aboriginal worker explained that he was often called to the police station to assist a young child who was regularly missing from his residential care unit after hours. As the child could not be picked up by unit staff, he would remain in the police station, alone, and become increasingly distressed. When the worker reached the police station hours later, the child would be in crisis. The worker noted that if a youth space had been accessible overnight, the child would have had a safe space to go, and could have avoided the trauma of being held in a police cell.

Other workers and community members shared similar experiences:

*This is not a 9 to 5 job. I’ve got kids messaging me at 10 at night and I can never turn them down. I’ve got a lot of kids that have committed suicide because there’s no one to talk to. – Youth hub worker, MDAS*

*We need after-hours support. We can’t just rely on workers going above and beyond after hours to provide support, especially as young people get up to mischief in the evenings. – Hume (Shepparton) regional forum*

### Connection with culture, community and family

As for all services for Aboriginal children and young people, cultural safety is essential. An examination of the importance of services for Aboriginal children and young people being based in culture, and providing links to community and family can be found in Chapter 4.1 ‘Advancing self-determination’ and Chapter 7 ‘Family, community & culture’.

Workers who shared their experience of youth hubs similarly noted the importance of a cultural foundation for engaging young people and connecting them with community members, cultural values and each other.

*The best thing about [our youth hub] is kids connecting to culture and involving each other in it, kids coming together and interacting with each other and learning about their culture. I usually get a lot of kids turning up, but it’s just me. If I had another male worker, it would be easier to manage. – Aboriginal youth worker, MDAS*

*The youth hub in [regional town] is going really well. We run [education programs] out of there. It started for those kids involved in YJ [Youth Justice] who needed to get back into education. At the very least we connect them to community. – Director of Family and Community Services, MDAS*

Aboriginal organisations across the regions expressed widespread support for spaces for children and young people to have their needs met within a culturally based model. In the Northern Metropolitan region, the Victorian Traditional Owner Land Justice Group advised the Commission of a former Aboriginal school site in Glenroy it considered to be an ideal location for a youth hub within the proposed *Ballert Mooroop Project* multipurpose site. At the time of writing, the project was undergoing a business case and feasibility study to redevelop the site into a culturally based, Aboriginal-run service. The proposal would provide children and young people with programs in culture, the arts, sport, recreation, education, health and economics, and connect children and young people with legal, health and disability supports on site.

Involving community and family is another important feature of the youth hub model. Connection with family and community has many benefits – it helps strengthen children and young people’s support networks, assists workers to understand children and young people’s home situation, and can facilitate children and young people’s participation in programs. Workers at youth hubs and mentoring programs discussed the value of integrating family, community and culture in youth services.

*Involving family, kin and community is key and critical. You’re never dealing with a person in isolation... I need to know what the instances of family violence are. Young people live in a context with family and friends. You need an understanding of their social circumstances – are they living at home with mum and dad? With friends? Couch surfing? If we can involve a parent or carer, we will. We look at clients from a systems perspective. – former CEO, Youth Junction Inc (Visy Cares Hub)*

*Every second Saturday, young people come with a friend or relative. This is more focused on having fun, an introduction to doing the values and doing a check-in, role modelling. For some that have a little more complex needs, if one [family or community member] comes to the group, that might make it a less hard experience. – Program Manager, Dardi Munwurro*

*Forty-nine per cent of our Youth Justice clients have siblings incarcerated. That’s why we need to involve family and support them early on. Nine out of 10 times, if you give children and young people a tool kit for community support, they can get off what they are using [alcohol and other drugs]. – Aboriginal youth worker, GEGAC*

### **A coordinated approach to support**

The importance of coordination and collaboration among services involved in a young person’s life, and the frequent absence of such coordination and collaboration for Aboriginal children and young people in the youth justice system, are discussed in detail in

Chapter 6.1 ‘Collaboration’. Coordination and collaboration are equally crucial in early intervention.

Coordinated approaches to support and services involve understanding the various interconnected elements of a child or young person’s life – education, recreation, family, culture, health and wellbeing – and providing the specific services and supports they need across each of these areas. A coordinated approach enables workers to better meet children and young people’s needs. For example, a child may be experiencing homelessness and stop attending school. A youth hub that engages children and young people with wraparound supports is more likely than a standalone service to be aware of this, and to be able to offer housing support, as well as counselling and other programs, in one place. The youth hub may also be in contact with the child’s school and support it to re-engage the child.

A number of workers and managers of Aboriginal youth programs described the ways in which they coordinate responses to children and young people by working with schools and other services, and avoiding a piecemeal approach to services that leads to many children and young people ‘slipping through the gaps’ of supports.

*Our role is a case management role, regardless of whether you come into our youth program or our umbrella program. We have a case management model that is fundamentally the same – it’s wraparound services in the context of needs identification and the responses that need to be put in place to meet the specific need... We have Youth Learning Pathways (that you need to be referred to by court program with DET), where we give young people at risk of coming into contact with the justice system opportunities for training and skill development, to shift a lifestyle of anti-social to pro-social... If you don’t provide a system approach, it’s likely that person is going to end up at Port Phillip Prison. – former CEO, Youth Junction Inc (Visy Cares Hub)*

## 5.1 Early intervention

*We partnered with [an education provider] originally, delivering a VCAL [Victorian Certificate of Applied Learning] program with small groups of up to about 6 kids. It's run out of the youth hub. We are doing it independently now – we have our own teacher. We still refer to [other providers] but we have our own independence as well. Numbers started at 6, now they are at 10 or 12. We have really good results in reconnecting children and young people. For example, a couple of young girls who had just been couch surfing or homeless got into the education program, and then we got them housing. Lots of the work we do is in the schools, and through the Early School Leavers program.<sup>359</sup> We never have enough mentors.*  
– Director of Family and Community Services, MDAS

*[School] attendance [of youth hub clients] has been going up to 98%, and I applaud that. I make sure that they get in front of all the kids and get recognition, prizes and all that.*  
– Aboriginal youth worker, MDAS

Early intervention education supports for Aboriginal children and young people are discussed further in Chapter 10 'Education & learning'.

Workers at youth hubs that provide a range of services can build positive and trusting relationships with children and young people and gain insight into how they are progressing across different aspects of their lives.

*We might have someone on a YJ [Youth Justice] order... we grow relationships and trust, and look at all contributing factors [for contact with the justice system].* – Aboriginal youth worker, GEGAC

The importance of trusting relationships between Aboriginal children and young people and their workers

<sup>359</sup> The Aboriginal Early School Leavers program is funded by the Department of Justice and Community Safety and provided by 2 Aboriginal community-controlled organisations. It is discussed in Chapter 10.1 'Engagement in education'.

is also discussed in Chapter 6.2 'Relationships with workers'.

While many Aboriginal organisations provide a range of youth services, very few are funded to provide a dedicated youth space where children and young people can receive coordinated support across a range of different services and programs. Similarly, none of the existing youth hubs run by Aboriginal organisations is funded to provide coordinated support across a range of services. One youth hub worker described the challenges of meeting children and young people's holistic needs without adequate funding:

*I wish there were 10 of me, and we could take them to sport training, and make sure they got their gear. And we need someone on night patrol, and someone to talk about suicide and family violence. But one person can't do all that. It's hard to have enough time in a day. So much of it is the kids needing to chat one-on-one, and I can't be in all of those places at once. It took me a lot to get some of the kids to go down to [a youth mental health service] – now they're going down there to talk every couple of weeks. They're a lot less angry and feel like life is worth it.* – Aboriginal youth worker, MDAS

In order to minimise the risk of duplication or inconsistency arising from multiple service providers engaging with a young person and their family, there may be a need for one organisation to take the lead in ensuring that services are coordinated, potentially through a case management function. This lead agency should be an Aboriginal organisation. This is the model adopted by Kapiti Youth Support in New Zealand, which is discussed in the following section.

### Effective youth hub models in other jurisdictions

#### Kapiti Youth Support, New Zealand

Kapiti Youth Support (KYS) is a well-established youth hub for children and young people aged 10 to 24 years based in Kapiti, New Zealand. The centre describes itself as a 'one stop shop' for free youth supports, including medical and nursing services, sexual health support, clinical psychology, counselling, alcohol and drug services, social work, mentoring, parenting and peer support, transition to work, youth development,

education programs and therapeutic groups.<sup>360</sup> KYS notes that this approach increases accessibility, assisting children and young people to engage with more services.

*We intend to have one place where young people can access everything they need. Every time we do a referral outside this service, that's another chance for disengagement to occur. We try to offer everything. Doctors and nurses – all our services are free.*<sup>361</sup>

KYS has a holistic model of care that focuses on building strong relationships with children and young people across various services, and providing a coordinated approach to increase engagement with services and improve outcomes. KYS has significant reach in the local community, providing services to 5,200 children and young people, accounting for 78% of 10 to 24 year olds in Kapiti.<sup>362</sup>

KYS works closely with children and young people's family, *iwi* and community, as well as organising regular meetings with local schools and Oranga Tamariki (Ministry for Children), including Child Protection and Youth Justice.

KYS's supports for children and young people in contact (or at risk of contact) with the youth justice system include building young people's pro-social networks and opportunities, on the basis that 'if we can know that young people are most likely doing pro-social activities, there is less risk of offending'.<sup>363</sup>

As outlined in Chapter 4.2 'Data on Aboriginal children and young people in the youth justice system', KYS supports its service delivery with integrated case management software that enables workers to track children and young people's progress in programs, shifts in wellbeing and engagement over time. The tool helps track interventions and assessments, and enables workers to recognise that offending behaviour is a symptom of underlying wellbeing issues. This assists workers to identify risks for the child or young person, and to take appropriate action to address them. The child or young person's goals are also incorporated into the system.<sup>364</sup>

<sup>360</sup> Kapiti Youth Support, *About us*.

<sup>361</sup> Interview with Kapiti Youth Support on 10 February 2020.

<sup>362</sup> Kapiti Youth Support, *About us*.

<sup>363</sup> Interview with Kapiti Youth Support on 10 February 2020.

<sup>364</sup> Interview with Kapiti Youth Support on 10 February 2020.

## Urban Native Youth Association, Vancouver

The Urban Native Youth Association (UNYA) was founded in Vancouver in 1988 to address concerns about the welfare of Indigenous young people moving off reserve and into the city, arriving with minimal job-ready skills or education.<sup>365</sup> Now, UNYA offers a large range of services to Indigenous young people in Vancouver, including sports and recreation programs, a Native Youth Health and Wellness Centre, counselling services, mentoring, tutoring and an Elder support drop-in program to put young Indigenous people in touch with community Elders. UNYA also offers a residential facility – the Young Bears Lodge – for young people needing support to heal from alcohol and/or drug issues, as well as the Native Youth Learning Centre, where young people can come and use computer facilities while receiving tutoring and job-readiness support services.

UNYA is currently raising funds to open a Native Youth Centre in downtown Vancouver, where a youth hub, alternative school programs, recreation facilities, ceremonial spaces and a health and wellness clinic will be co-located with an affordable housing project prioritising Indigenous young people and their families.<sup>366</sup>

## Transitioning to a system focused on effective early intervention

*Early intervention and prevention are 'the cure' for over-representation. These areas need greater resourcing and more programs. – Aboriginal Justice Caucus*<sup>367</sup>

The *Our way* vision is for Aboriginal children and young people to be safe, happy and strong in their culture and communities, to be supported to reach their potential, and to thrive. To achieve this, a significant shift in focus and investment is required for the youth justice system, together with all inter-related systems that provide support to and have a direct impact on the lives of

<sup>365</sup> Urban Native Youth Association, *About UNYA*, Urban Native Youth Association website, accessed 14 September 2020.

<sup>366</sup> Urban Native Youth Association, *About UNYA*.

<sup>367</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, p 13.

## 5.1 Early intervention

children and young people in Victoria. A coordinated youth support system that focuses on effectively responding to children and young people's needs when they first arise, and addressing the drivers of any offending behaviour, will result in far fewer children and young people becoming entangled in the youth justice system. Such a shift is strongly supported by submissions to this inquiry<sup>368</sup> and youth justice experts.

Throughout this report, the Commission makes recommendations aimed at responding to the needs of Aboriginal children and young people who are at risk of becoming involved or entrenched in the youth justice system. These include recommendations to:

- expand mentoring programs for Aboriginal children and young people (see Chapter 9.3 'Mentoring')
- expand early intervention programs for Aboriginal children and young people who have been excluded or are disengaged from school, establish additional flexible schooling options embedded in culture for Aboriginal students, and improve direct support for Aboriginal students in classrooms (see Chapter 10 'Education & learning')
- establish healing centres for Aboriginal children and young people struggling with drug and alcohol misuse (see Chapter 9.2 'Substance use')
- improve housing supports for Aboriginal children and young people involved with Youth Justice (see Chapter 8.3 'Housing and homelessness')
- improve support for Aboriginal children and young people in out-of-home care (see Chapter 8.1 'Child Protection involvement' and Chapter 8.2 'The responsibilities of Child Protection').

In addition, in Chapter 6 'A child-centred system', we make a series of recommendations aimed at transforming the youth justice system and related systems into a coordinated, collaborative, child-centred system that addresses emerging risk factors and responds to Aboriginal children and young people's unique needs with flexible, individualised and strengths-based responses.

However, additional support is required for Aboriginal children and young people at a sufficiently early stage to protect them from involvement in the youth justice system. The Commission heard throughout the Taskforce and the inquiry from Aboriginal children and

young people and their families and communities that a central, accessible place for children and young people to drop in and access support and services was needed. There are currently very few services of this kind in Victoria.

Culturally based youth hubs that are accessible, especially after hours, and that offer wraparound recreational and therapeutic services, a connection with community, culture and family, and a coordinated approach to support are one practical solution to meet this need. A coordinated approach to supporting children and young people in youth hubs requires the involvement of local communities, Aboriginal organisations, education and health providers, Child Protection and other agencies. Locating these services in a single space provides strong opportunities for organisations to work together to meet the needs of Aboriginal children and young people as soon as they arise.

In April 2021, DJCS advised the Commission that \$3 million over 4 years has been allocated from the 2020–21 State Budget to develop a service model and establish one Aboriginal youth justice hub to provide Aboriginal-led early intervention and diversion services, and responses that address the complex needs of Aboriginal children and young people.<sup>369</sup> This is welcome; however, multiple hubs are needed.

In addition, justice reinvestment offers significant scope for strong, community-led early intervention projects, as evidenced by the Maranguka project in Bourke. Early intervention and justice reinvestment should be the focus of the forthcoming Aboriginal Youth Justice Strategy.

Early intervention, justice reinvestment and youth hubs are also central to the Commission's recommendations for alternative responses to Aboriginal children aged 10 to 13 years, discussed in Chapter 6.2 'Age-appropriate responses to Aboriginal children and young people'.

<sup>368</sup> Aboriginal Justice Caucus, Victorian Aboriginal Children and Young People's Alliance, Human Rights Law Centre, Victorian Aboriginal Legal Service, Victoria Legal Aid.

<sup>369</sup> Information provided to the Commission by DJCS on 30 April 2021.

## Recommendation 6

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That the Aboriginal Youth Justice Strategy prioritise early intervention and prevention strategies and justice reinvestment programs led by the Aboriginal community.

## Recommendation 7

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That the Victorian Government resource the establishment of a culturally based, multi-service, accessible youth hub in each region to coordinate and provide holistic supports for Aboriginal children and young people. Youth hubs should be designed and developed in partnership with, and managed by, Aboriginal communities and organisations.

## 5.2 Age-appropriate responses to Aboriginal children and young people

This chapter examines:

- the minimum age of criminal responsibility in Victoria and the impact of this on Aboriginal children aged 10 to 13 years
- the minimum age at which children and young people can be incarcerated in Victoria, with a particular focus on Aboriginal children aged 14 and 15 years.

### Minimum age of criminal responsibility

#### Finding 4

Victoria's low minimum age of criminal responsibility disproportionately harms Aboriginal children.

*My brother is 11 and he got remanded. No little kid should be arrested at that age. – Peyton, 16*

The minimum age of criminal responsibility in Victoria is 10 years.<sup>370</sup> This is unacceptably low by international standards, inconsistent with contemporary understandings of child development, and harmful to marginalised and vulnerable children. It is disproportionately harmful to Aboriginal children. The United Nations Committee on the Rights of the Child now recommends that all countries with a minimum

age of criminal responsibility under 14 years increase the minimum age to at least 14 years.<sup>371</sup>

Despite the resilience of Aboriginal communities, Aboriginal children are at increased risk of contact with the youth justice system due to a complex combination of factors, including a legacy of dispossession, intergenerational trauma and incarceration, marginalisation, systemic racism and inequality.<sup>372</sup> For many Aboriginal children, their experiences of trauma, family violence, placement in out-of-home care, mental illness, substance misuse and poverty – compounded by an ongoing failure by government to address their unmet needs in these areas – also make them vulnerable to contact with police and criminalisation at a young age.

Most of the Aboriginal children and young people consulted for this inquiry were under 14 years of age at the time of their first contact with police (see Chapter 11 'Entering the youth justice system'). Their experiences indicate that early contact with police frequently leads to repeated contact, arrest, criminal charges, conditional bail, remand and exposure to Children's Court criminal proceedings. Insufficient support to comply with the onerous conditions of supervised bail or community-based sentencing orders exposes Aboriginal children to the frequently harmful environment of youth justice custody (see Chapter 12.2 'Bail and remand', Chapter 12.5 'Community orders supervised by Youth Justice' and Chapter 13.2 'Conditions in youth justice custody'). A first experience of custody frequently leads to another. This cycle can be extremely difficult to break.

Given these factors, it is not surprising that Aboriginal children aged 10 to 13 years are over-represented in every category of Youth Justice court order, including

<sup>370</sup> CYFA, s 344: 'It is conclusively presumed that a child under the age of 10 years cannot commit an offence'.

<sup>371</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, paragraph 22.

<sup>372</sup> Human Rights and Equal Opportunity Commission, *Bringing them home*.



supervised bail, remand, community-based sentences and custodial sentences. Aboriginal children's early contact with the youth justice system increases the likelihood of their long-term involvement in the system and their eventual incarceration in an adult prison.<sup>373</sup>

Foundational systemic change is required to reverse this tragic cycle. There has been increasing momentum in the ongoing campaign to raise the age of criminal responsibility across Australia, despite deferral of a decision on the issue by the Council of Attorneys-General in July 2020. The development of a standalone Youth Justice Act, as recommended by the Youth Justice Review,<sup>374</sup> provides a critical opportunity for Victoria to reconsider the scope of its youth justice system and its approach to children under the age of 14 years.

Raising the minimum age of criminal responsibility in Victoria to 14 years would facilitate a vital systemic shift from criminalisation to community-based social service responses for children under the age of 14. The positive impacts of such a shift for Aboriginal children and their families, Aboriginal communities and society as a whole would be profound and enduring.

### Aboriginal children's early exposure to the youth justice system

*I got done stealing probably about 11 or 12 – chocolate and munchy food from Coles. We were hungry.*  
– Derryl, 16

### Life circumstances

Aboriginal children and young people in the youth justice system experience multiple forms of disadvantage, including trauma, abuse, neglect, family violence, mental illness, cognitive difficulties, disability, substance misuse and disrupted education.<sup>375</sup> Most have also experienced economic disadvantage. These factors frequently combine in complex ways and lead to problematic behaviours that expose Aboriginal children from an early age to contact with the youth

<sup>373</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*.

<sup>374</sup> Recommendation 6.1: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 29.

<sup>375</sup> DJCS, *Young people involved with Youth Justice in 2019*.

justice system. These issues are examined further in Chapter 7.3 'Challenges experienced by Aboriginal families', Chapter 8 'A caring & stable home' and Chapter 9 'Wellbeing'.

Every child and young person who was the subject of a Taskforce case planning session had experienced trauma, most commonly family violence, abuse or neglect. Many children and young people consulted for this inquiry shared their experiences of family violence growing up, and some told us that this led to contact with police at a young age.

*I've been walking my whole life with violence and that's all I've known.* – James, 18

*Dad is like an everyday drinker and cos he was like pretty much always drunk, and mum and dad would always argue, and dad would get abusive and all that, and mum would call the cops, and dad would act like nothing happened.*  
– Dean, 15

*A lot of family violence growing up. Hectic family violence, with mum and dad not just on the street, but in the house. Growing up was fucking chaos.* – Karrwin, 20

*I went to violence because of my history of family violence and racism.* – Pearl, 19

The experience of trauma is a key driver of offending behaviour in many children and young people in the youth justice system.<sup>376</sup> In its study on 'crossover children' (also discussed in Chapter 3 'Overview of the

<sup>376</sup> Aboriginal and Torres Strait Islander Healing Foundation, *Growing our children up strong and deadly: healing for children and young people* [PDF], Aboriginal and Torres Strait Islander Healing Foundation, Canberra, 2015, pp 2–3. See also C Bryant and M Willis, *Risk factors in Indigenous violent victimisation*, Technical and background paper number 30, Australian Institute of Criminology, Canberra, 2008, accessed 4 December 2020; J Wundersitz, *Indigenous perpetrators of violence: prevalence and risk factors for offending*, Research and public policy series number 105, Australian Institute of Criminology, Canberra, 2010, accessed 2 December 2020; T Allard, *Understanding and preventing Indigenous offending*, Indigenous Justice Clearinghouse Brief 9, Indigenous Justice Clearinghouse, 2010, accessed 2 December 2020.

## 5.2 Age-appropriate responses to Aboriginal children and young people

Victorian youth justice system'), the Sentencing Advisory Council examined the effects of trauma on children's brains and behaviours, and the ways in which these effects increase the likelihood of children coming into contact with the youth justice system.<sup>377</sup> These post-traumatic neurological and psychological changes include:

- emotional dysregulation – difficulty recognising and regulating emotions
- increased threat response – hypervigilance and reacting with panic
- altered reward sensitivity and attachment – isolation and damaged trust in others
- executive function difficulties – limitations in self-regulation and impulse control.<sup>378</sup>

Difficulties with executive functioning can make it more difficult for a child to follow instructions (for example from a carer, worker, teacher or police officer), and reduce the child's ability to deal with change and understand the consequences of decisions.<sup>379</sup>

Increased threat response can result in aggressive behaviour, increasing the risk of exposure to the youth justice system. For example, a child exposed to significant family violence in childhood may be 'primed' or 'sensitised' to potential threats, and may interpret other situations as being threatening more readily than children who have not experienced trauma.<sup>380</sup> This 'threat bias' can contribute to aggressive behaviour, as the child may believe that they need to act pre-emptively to respond to the perceived threat.<sup>381</sup> This is also discussed in Chapter 8.1 'Child Protection involvement'.

Exposure to trauma during childhood greatly increases the likelihood of mental illness.<sup>382</sup> Trauma is also linked to a range of neurodisabilities, most commonly fetal alcohol spectrum disorder, intellectual disability,

traumatic brain injury and communication deficits.<sup>383</sup>

This is evident among Victoria's youth justice custodial population, with the Youth Parole Board reporting that 42% of young people in youth justice custodial facilities on 31 December 2019 presented with cognitive difficulties that affected their daily functioning.<sup>384</sup>

Most Aboriginal children and young people under Youth Justice supervision have also experienced Child Protection involvement (see Chapter 8.1 'Child Protection involvement'). Many of these 'crossover children' have experienced out-of-home care, rather than less intensive forms of Child Protection involvement. The experience of care, and in particular, residential care, can exacerbate or compound existing trauma and behavioural difficulties, and drive offending behaviour, police contact and involvement in the youth justice system.<sup>385</sup> The criminalisation of Aboriginal children and young people in care is examined in Chapter 8.1 'Child Protection involvement'.

In its study on crossover children, the Sentencing Advisory Council found that the younger children were at their first sentence or diversion, the more likely they were to have a child protection background and to have experienced out-of-home care and, in particular, residential care.<sup>386</sup> Among children aged 10 to 13 years at their first sentence or diversion:

- one in 2 were the subject of at least one child protection report
- one in 3 experienced out-of-home care
- one in 4 experienced residential care.<sup>387</sup>

Children first sentenced or diverted at the age of 10 to 13 years 'generally had' more child protection involvement – early entry, more child protection orders, out-of-home care, residential care, more placements and more carers – than older children'.<sup>388</sup>

<sup>377</sup> Sentencing Advisory Council, '*Crossover kids: vulnerable children in the youth justice system. Report 3: sentencing children who have experienced trauma*', Sentencing Advisory Council, Melbourne, 2020, accessed 7 November 2020, p 12.

<sup>378</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p xii.

<sup>379</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 17.

<sup>380</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 14.

<sup>381</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 15.

<sup>382</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 18.

<sup>383</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 18.

<sup>384</sup> Youth Parole Board, *Annual Report 2019–20*, Youth Parole Board, Victorian Government, 2020, accessed 18 February 2021, p 29.

<sup>385</sup> Sentencing Advisory Council, '*Crossover kids: vulnerable children in the youth justice system. Report 2: children at the intersection of child protection and youth justice across Victoria*', Sentencing Advisory Council, Melbourne, 2020, accessed 7 November 2020; see also Chapter 8.1 'Child Protection involvement'.

<sup>386</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, pp 86–92, 94.

<sup>387</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxiv.

<sup>388</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 74. See also research by the Australian Institute of

The Sentencing Advisory Council found that Aboriginal children were more likely to be younger at first sentence or diversion than non-Aboriginal children.<sup>389</sup> Of all children in the study group known to Child Protection, Aboriginal girls aged 10 to 13 years at first sentence or diversion experienced the highest level of child protection involvement.<sup>390</sup> The Sentencing Advisory Council's findings are discussed in more detail in Chapter 8.1 'Child Protection involvement'.

These findings are supported by evidence from the Taskforce and this inquiry. For some Aboriginal children and young people consulted for the inquiry, their first contact with police was at a very young age and directly connected to their experience of residential care. These experiences are described in Chapter 8 'A caring & stable home'. They include a young person who told the Commission that his first contact with police was at the age of 9, when he smashed a window in a residential unit: 'I was angry – I just got taken away from dad.'

### Early contact with police

Chapter 11 'Entering the youth justice system' describes the experiences of Aboriginal children and young people with police. Most children and young people consulted for the inquiry were under 14 years of age at the time of their first contact with police. Most early contact involved minor alleged offences, such as theft from shops or cars, graffiti and property damage, driving without a licence and trespass.

For many Aboriginal children and young people, their first contact with police was for very minor matters, such as stealing a chocolate bar or soft drink – matters which could be, and often are, resolved in the community by parents, teachers or others, without police involvement.

Criminology which shows that children subject to child protection orders are 'about three times more likely than other Victorian children to be first sentenced under the age of 14': Baidawi and Sheehan, 'Crossover kids', pp 17, 19.

<sup>389</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 75.

<sup>390</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 29.

*There was the time when I was 6 or 7 and the school window was open, and I went into the school and robbed them. Me and my brother went over there and we went into the art room and grabbed heaps of balloons and that, and then the police rocked up and we were sent to our rooms. – Dion, 15*

*My first time with the police was because I stole something – I stole my cousin's toothbrush, so I thought that was pretty ridiculous. A young Indigenous girl – it's always at the back of their [the police officer's] mind that, 'Oh, we've got another one'. – Tiana, 25*

*My principal tried charging me for eating the jelly beans in her office when she locked me in her office, and I remember her in court saying I ate all the good ones and threw all the black ones around her office. Everyone came to court with me because they thought it was ridiculous that they were trying to charge me for eating jelly beans. Even the judge – he started laughing and just told us to go, and I didn't really understand what had happened. – Toby, 15*

*My first ever time was for graffiti, but I didn't do it. There was this fella I was with who stole some textas and graffitied the bathroom doors, and I didn't do it, but I had textas in my pockets, and I said I didn't do it, but they didn't believe me. I was probably like, 12. – Monica, 17*

Some children and young people who had their first contact with police under the age of 14 years indicated that, due to their age, police did not charge them, but detained, cautioned or warned them. These contacts often involved mistreatment.

*I was 12 and a bit. I stole something from a shop and the cops chased me like 10 seconds after. I was running and they tackled me to the ground, handcuffed me and put me in the back of the van. I got arrested, and I got out on a caution and went home. – Otis, 14*

## 5.2 Age-appropriate responses to Aboriginal children and young people

*What happened was my dad had court, and I was spitting over the rail, and security came up but I didn't want to leave the courthouse, so they dragged me down the stairs with my brother and sister and then we got taken to the police station. I was 10. – Will, 11*

*I was 10. Me and my mates lit a fire out in the bush cos we were cooking some kangaroo meat, and we got in trouble cos there was a fire. We got a warning. They treated me like shit. They just yell at you and tell you to fuck off and shit. – Daniel, 17*

*I would have been about 12. I was walking around with a toy gun. There were a couple of coppers, and they bashed my mate – he was only like 11. They put me in the car and said, 'If you'd pointed that gun at me I would have shot you.' They took me back to the police station. – Zeke, 18*

*I was 11 or 12. I got woken up and they surrounded me at mum's house and arrested me for a burglary that I didn't do. We went to the cop shop. They kept me there for ages and let me go. – Aiden, 17*

Several Aboriginal children and young people told the Commission that, once they were known to police, contact with police increased and the nature of their experiences worsened over time. Children and young people reported being harassed and targeted by police. Over 70% of the children and young people the Commission consulted for the inquiry spoke about racism, mistreatment or violence by police, including racial abuse, kicking and stomping, bashing with batons and tightening of handcuffs. These experiences are described in Chapter 11 'Entering the youth justice system'.

Chapter 11 also describes the experiences of Aboriginal children and young people in police custody, including detention in police cells. These experiences include being held for extended periods with little information and, in some cases, being denied a lawyer or support person. One young person described his

experience of being arrested for the first time at the age of 12, when police were called to his home in relation to family violence. He spent 4 hours in a police cell, which made him feel depressed. After being released, he was left to walk home by himself.

### Early contact leads to longer involvement

As noted above, research indicates that the younger a child is at their first contact with the youth justice system, the longer their involvement in the system is likely to be. The Sentencing Advisory Council's 2016 study *Reoffending by children and young people in Victoria* found that 'the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to imprisonment in an adult court before their 22nd birthday'.<sup>391</sup> Reoffending rates were highest among children aged 10 to 13 years at their first sentence. Children aged 10 to 12 years at their first sentence reoffended at a rate of 86%, and children aged 13 years at their first sentence reoffended at a rate of 84%.

The likelihood of reoffending decreased with each additional year in age at entry into the criminal courts,<sup>392</sup> and those aged 18 years at their first sentence reoffended at half the rate (42%) of children aged 10 to 13 years.<sup>393</sup> This study indicates that police and youth justice system responses to young children are extremely ineffective at preventing future offending.

During consultations for the inquiry, some children and young people described their experience of contact with police and the youth justice system for a minor matter at a very young age, and subsequently progressing to more serious offending behaviour when their needs remained unaddressed. These experiences are described in Chapter 11 'Entering the youth justice system'. In almost all cases, children aged 10 to 13 years were criminalised without attention to their underlying needs or the factors contributing to their anti-social behaviour.

Victoria's current minimum age of responsibility exposes Aboriginal children to contact with police and the youth justice system at a very young age. This

<sup>391</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, pp xiii, 52.

<sup>392</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, pp xiii, 52.

<sup>393</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, p 26.

harms marginalised children who are already experiencing trauma and other forms of disadvantage. It also fails to address their needs and the underlying causes of their problem behaviour. Aboriginal children's exposure to police and the youth justice system occurs despite the existence of the 'safeguard' of *doli incapax*, which is discussed in the following section.

## Ineffectiveness of *doli incapax* as a safeguard

In Victoria, children aged 10 to 13 years are subject to the legal presumption of *doli incapax* ('incapable of crime'), according to which children in this age group are presumed to lack sufficient intellectual and moral development to be held criminally responsible. In order to rebut the presumption, the prosecution must prove that, at the time of the alleged offence, the child knew that their actions were 'seriously wrong'.<sup>394</sup>

The Commission agrees with many legal and human rights experts<sup>395</sup> that *doli incapax* is not an effective safeguard for children aged 10 to 13 years. The presumption is inconsistent with a contemporary understanding of children's brain development, and is not supported by the United Nations Committee on the Rights of the Child.<sup>396</sup> It is described by the Law Council of Australia as 'complex, confusing and difficult to apply'.<sup>397</sup>

As *doli incapax* relies on the exercise of prosecutorial and/or judicial discretion, it may be inconsistently or unfairly applied.<sup>398</sup> Victorian research demonstrates that

the presumption is, in fact, applied inconsistently.<sup>399</sup> Further, its ability to protect children is weakened by the difficulties of obtaining psychological assessments, and the de facto reversal of the onus of proof which requires the defence to demonstrate psychological evidence of the child's incapacity to commit crime.<sup>400</sup>

However, perhaps the most significant failing of *doli incapax* is that it does not protect children from harmful aspects of the youth justice system's operation and administration.<sup>401</sup> In order to determine conclusively whether a child aged 10 to 13 years was *doli incapax* at the time of an alleged offence, a summary hearing or trial must be held. This can take weeks or months, depending on court lists, case management processes and the availability of experts and other relevant witnesses. In the meantime, the child will have experienced and been exposed to aspects of the youth justice system that can be 'psychologically and criminologically stigmatising'<sup>402</sup> and can lead to victimisation. For example, the child could be arrested and taken into custody, strip searched, subjected to forensic examinations including intimate procedures, interrogated, remanded in custody and/or subjected to conditional bail, exposed to multiple court appearances and identified or labelled as a criminal through media or social media reporting.<sup>403</sup> (See Finding 5 below for a discussion of the harmful impact of custody on Aboriginal children.)

Trevor's story illustrates the failure of *doli incapax* to operate as an effective safeguard for children under the age of 14 years.

<sup>394</sup> *RP v The Queen* [2016] HCA 53.

<sup>395</sup> Human Rights Law Centre (HRLC), Submission to *Our youth, our way* inquiry, 2019, p 10; Law Council of Australia, Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group Review, pp 20–26; National Legal Aid, [Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group review](#), National Legal Aid, 2020, accessed 8 September 2020, pp 21–31.

<sup>396</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, paragraphs 26, 27.

<sup>397</sup> Australian Medical Association and Law Council of Australia, [LCA and AMA call on Australian governments to raise the age of criminal responsibility to 14](#), Law Council of Australia website, 2019, accessed 16 September 2020; Law Council of Australia, [Commonwealth, states and territories must lift minimum age of criminal responsibility to 14 years, remove doli incapax](#), Law Council of Australia website, 2019, accessed 16 September 2020; A Moses, [Minimum age of criminal responsibility](#), Speech delivered at the Human Rights Forum, Canberra, 10 December 2019, Law Council of Australia website, accessed 16 September 2020.

<sup>398</sup> National Legal Aid, [Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group](#)

[review](#), p 22.

<sup>399</sup> K Fitz-Gibbon and W O'Brien, 'A child's capacity to commit crime: examining the operation of *doli incapax* in Victoria (Australia)', *International Journal for Crime, Justice and Social Democracy*, 2019, 8(1):18–33; W O'Brien and K Fitz-Gibbon, 'The minimum age of criminal responsibility in Victoria (Australia): examining stakeholders' views and the need for principled reform', *Youth Justice*, 2017, 17(2):134–152.

<sup>400</sup> National Legal Aid, [Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group review](#), p 22.

<sup>401</sup> National Legal Aid, [Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group review](#), pp 23–24.

<sup>402</sup> Fitz-Gibbon and O'Brien, 'A child's capacity to commit crime', p 26.

<sup>403</sup> However, we note that section 534 of the CYFA makes it an offence to publish (except with the permission of the court) a report of a Children's Court proceeding that contains particulars likely to lead to the identification of a child in the proceeding.

### Trevor

Trevor is a resilient young person, despite having experienced significant and complex trauma, and having a long history of involvement with Child Protection. He was placed on supervised bail and remanded several times under the age of 14; however, his charges were ultimately always dismissed due to the operation of *doli incapax*. Trevor was 14 at the time of his Taskforce case planning session and continued to be involved in the youth justice system.

This case demonstrates that, even when children are not ultimately charged or prosecuted, Victoria's low minimum age of criminal responsibility exposes them to experiences that are likely to be harmful to their wellbeing, relationships and future<sup>404</sup> and that 'each contact with the justice system exacerbates the risk of further contact, trapping children in the revolving door of youth justice'.<sup>405</sup> The impact of remand on children aged 10 to 13 years in Victoria is discussed in the following section.

### Harsh impact of remand on children aged 10 to 13 years

The vast majority of children aged under 14 years (Aboriginal or non-Aboriginal) who are held on remand in Victoria do not ultimately receive a custodial sentence. According to DJCS data, in 2019, 107 remand orders were made in respect of children aged 10 to 13 years (see Table 5.3 in the following section), but no custodial sentencing orders were made in respect of this age group. From 2010 to 2019, remand orders accounted for 98% of all custodial orders made in respect of children aged 10 to 13 years (1,075 remand orders out of a total of 1,096 custodial orders), raising serious questions as to why such young children needed to be incarcerated in the first place.

In 2020, the Sentencing Advisory Council published a report on 442 children held on remand in Victoria in

2017–18.<sup>406</sup> In this study, 5.4% of the index population (24 out of 442 children) were aged under 14 years when they first entered remand. While there were far fewer female than male children and young people in the index population overall (11% compared with 89%), female children were twice as likely as male children to be aged 14 years or under when they entered remand. This indicates that Victoria's minimum age of criminal responsibility has a particularly harsh impact on girls aged under 14 years.

Across all age groups, the Sentencing Advisory Council found that two-thirds of cases for which children were held on remand resulted in a non-custodial sentencing outcome. The DJCS data referred to above would suggest that this rate is far higher for children aged under 14 years.

The Sentencing Advisory Council also found that children aged under 14 years were considerably more likely to have all charges dismissed or withdrawn than older children – 35% of children under 14 (14 out of 40 cases) had their charges dismissed or withdrawn, compared with 2% of older children (13 out of 620 cases).<sup>407</sup> In 12 of the 14 cases involving children under the age of 14, the child spent less than one week on remand. One of the children under 14 years spent 28 days on remand.<sup>408</sup>

The Sentencing Advisory Council cautioned against generalising from such low numbers; however, it indicated that these cases where charges were dismissed or withdrawn may be attributable to successful arguments of *doli incapax*, or to withdrawal of charges following a review of the appropriateness of the decision to charge the child.<sup>409</sup>

In any event, it is difficult to avoid the conclusion that the remand of these children unnecessarily exposed them to custody and other harmful aspects of the formal youth justice process. The remand of Aboriginal children and young people is discussed further in Chapter 12.2 'Bail and remand', while the impact of youth justice custody on the wellbeing of Aboriginal children and young people is examined in detail in Chapter 13 'Safe custody' and below under Finding 5.

<sup>404</sup> National Legal Aid, *Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group review*, p 22.

<sup>405</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p xi.

<sup>406</sup> Sentencing Advisory Council, *Children held on remand in Victoria*.

<sup>407</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p xi.

<sup>408</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 46.

<sup>409</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 46.

## Over-representation of Aboriginal children aged 10 to 13 years in Youth Justice

As outlined in Chapter 3 ‘Overview of the Victorian youth justice system’, Aboriginal children and young people are vastly over-represented in the Victorian youth justice system. Productivity Commission data indicates that from 2015–16 to 2019–20, on average, Aboriginal children and young people aged 10 to 17 years made up approximately 17% of all children and young people under Youth Justice community or custodial supervision on an average day (see Table 3.1).<sup>410</sup> However, the rate of over-representation among the youngest age group in Youth Justice is substantially worse.

According to DJCS data, Aboriginal children made up 30% of children aged 10 to 13 years who received a court order from 2010 to 2019 that placed them under the supervision of Youth Justice<sup>411</sup> (169 out of 568 children aged 10 to 13 years).<sup>412</sup> In contrast, Aboriginal children make up only 2% of children in Victoria aged zero to 14 years.<sup>413</sup>

Of these 169 Aboriginal children:

- 74% (n = 125) were male and 26% (n = 44) were female
- most were aged 13 years (70%, n = 118)
- 23% (n = 39) were aged 12 years
- 7% (n = 11) were aged 11 years.<sup>414</sup>

While the numbers are relatively small, over-representation was particularly severe among Aboriginal children aged 11 years – 46% of all children aged 11 years who received Youth Justice-supervised court orders from 2010 to 2019 were Aboriginal (11 out of 24).

Aboriginal children aged 10 to 13 years are over-represented in every category of supervised court order. In 2019, Aboriginal children and young people aged 10 to 13 years accounted for:

- 44% of all supervised bail orders made in respect of children in this age group (29 out of 66 orders) (see Table 5.2)
- 35% of all remand orders made in respect of children in this age group (37 out of 107 orders) (see Table 5.3)
- 21% of all community-based sentencing orders made in respect of children in this age group (3 out of 14 orders) (see Table 5.4).

**Table 5.2** Supervised bail orders for children aged 10–13 by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2010	1	33%	2	67%
2011	2	15%	11	85%
2012	18	72%	7	28%
2013	10	67%	5	33%
2014	6	33%	12	67%
2015	9	39%	14	61%
2016	22	42%	30	58%
2017	21	39%	33	61%
2018	19	49%	20	51%
2019	29	44%	37	56%
<b>Average</b>	<b>14</b>	<b>43%</b>	<b>17</b>	<b>57%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

<sup>410</sup> As outlined in Chapter 3 ‘Overview of the Victorian youth justice system’, the Productivity Commission’s 2021 *Report on Government Services* indicates that the rate of over-representation of Aboriginal children and young people under Youth Justice supervision decreased slightly in 2019–20 to 15%.

<sup>411</sup> Supervised bail, remand, community-based sentence or custodial sentence.

<sup>412</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>413</sup> Australian Institute of Health and Welfare (AIHW), *Australia’s children*, catalogue number CWS 69, AIHW, Australian Government, 2020, accessed 13 October 2020, p 25.

<sup>414</sup> Only one child in this group was aged 10 years.

## 5.2 Age-appropriate responses to Aboriginal children and young people

**Table 5.3** Remand orders for children aged 10–13 by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2010	19	18%	85	82%
2011	3	5%	55	95%
2012	21	28%	53	72%
2013	47	42%	64	58%
2014	31	27%	82	73%
2015	47	33%	96	67%
2016	42	25%	126	75%
2017	40	33%	82	67%
2018	33	44%	42	56%
2019	37	35%	70	65%
<b>Average</b>	<b>32</b>	<b>29%</b>	<b>76</b>	<b>71%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

From 2010 to 2019, the number of remand orders made in respect of Aboriginal children aged 10 to 13 years almost doubled (from 19 to 37), compared to a decrease of 18% (from 85 to 70) for non-Aboriginal children in the same age group over the same period.

**Table 5.4** Supervised community sentencing orders for children aged 10–13 by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2010	25	27%	69	73%
2011	17	22%	60	78%
2012	16	22%	58	78%
2013	15	33%	31	67%
2014	16	43%	21	57%
2015	20	29%	49	71%
2016	11	31%	25	69%
2017	8	23%	27	77%
2018	2	15%	11	85%
2019	3	21%	11	79%
<b>Average</b>	<b>13</b>	<b>27%</b>	<b>36</b>	<b>73%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

In 2019, no custodial sentencing order was made in respect of any child (Aboriginal or non-Aboriginal) aged under 14 years. Between 2010 and 2018, 12 custodial sentencing orders were made in respect of Aboriginal children aged under 14 years, compared with a total of 9 for non-Aboriginal children in this age group. Although the small numbers should be read with caution, the fact that more custodial sentences were made in respect of Aboriginal children than non-Aboriginal children over this period is deeply concerning.

### International approaches

In 2019, the United Nations Committee on the Rights of the Child<sup>415</sup> updated General Comment No. 24 to ensure that it reflected current scientific knowledge and to comply with the Convention on the Rights of the Child.<sup>416</sup> The committee now recommends that all countries with a minimum age of criminal responsibility under 14 years raise the minimum age to at least 14 years,<sup>417</sup> and ‘commends States parties that have a higher minimum age, for instance 15 or 16 years of age’.<sup>418</sup>

The committee’s stance is heavily based in research into child brain development. At young ages, children generally do not have a fully formed ability to think through the consequences of their actions. Rapid brain development during adolescence influences risk-taking behaviours, emotional regulation, certain decision-making and impulse control.<sup>419</sup>

The most common minimum age of criminal responsibility internationally is 14 years and this is now regarded as the internationally accepted level.<sup>420</sup>

<sup>415</sup> A body of 18 independent child rights experts that monitors implementation of the United Nations Convention on the Rights of the Child by State parties.

<sup>416</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 22.

<sup>417</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 22; United Nations Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Australia*, UN Doc CRC/C/AUS/CO/5–6, 2019, paragraph 48.

<sup>418</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 22.

<sup>419</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 22.

<sup>420</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the*



Fourteen is the most common minimum age of criminal responsibility in Europe, adopted in Austria, Germany, Italy, Spain and numerous Central and Eastern European countries.<sup>421</sup> In other countries, the minimum age is higher – 15 years in Finland, Greece and Scandinavian countries and 16 years in Argentina and Cuba. It is also 16 years for certain offences in Russia and other Eastern European countries.<sup>422</sup>

In the following sections, we describe responses to children under the age of 14 years in New Zealand and Scotland.

## New Zealand

In New Zealand, family-based early intervention services are key responses to offending behaviour, especially for those under 13 years of age. While New Zealand's age of criminal responsibility – 10 years – is unacceptably low, effective early intervention supports mean that charges against children under 14, while possible for serious offences,<sup>423</sup> are rare.

New Zealand responds to children under 13 years of age who may be at risk of offending in adolescence and adulthood with a number of family-focused programs. These include:

- intensive home visiting programs for parents of babies and toddlers experiencing vulnerability, to promote healthy child development
- parenting skills programs for parents with children aged under 12 years
- programs in schools that teach children pro-social behaviour skills and provide teachers with behaviour management strategies that help create positive learning environments.<sup>424</sup>

*child justice system*, paragraph 21.

<sup>421</sup> F Dünkel, 'Juvenile justice in Europe' in A Păroşanu, I Pruin, J Grzywa-Holten and P Horsfield (eds), *Alternatives to custody for young offenders and the influence of foster care on European juvenile justice*, European Project 'Alternatives to Custody for Young Offenders – Developing Intensive and Remand Fostering Programmes', European Union, 2015, p 19.

<sup>422</sup> Northern Territory Royal Commission Final Report, Volume 2B, pp 418–419; Dünkel, 'Juvenile justice in Europe', p 19.

<sup>423</sup> Defined under the Oranga Tamariki Act as murder and manslaughter (s 272(1)(a)) or offences for which the maximum penalty available is life imprisonment or at least 14 years (s 272(1)(b)); see also section 272(1)(c). Children under 14 years cannot be convicted of an offence unless they knew the act or omission to be wrong or contrary to law: s 22.

<sup>424</sup> Ministry of Justice, *Early intervention for under-13s*, Evidence brief – July 2016, Ministry of Justice, New Zealand Government, 2016, pp 3–4.

Children may also access family group conferencing, which provides a space for children, their family and services to meet and plan supports for the child and their home environment. The family group conference may also involve a restorative justice component. A description of family group conferencing in New Zealand is provided in Chapter 7.2 'Youth Justice practices and family involvement'.

## Scotland

The minimum age of criminal responsibility in Scotland is 12 years (increased from 8 in 2018); however, there is no prison service for children under the age of 16 years.<sup>425</sup> Children aged 12 to 18 years exhibiting offending behaviours are managed entirely within the child welfare system. This response is characterised by a children's hearing system, which has almost completely replaced children and young people's involvement in the criminal court process. This system 'takes an integrated and holistic approach to care and justice, in which the child's best interests are the paramount consideration'.<sup>426</sup>

Hearings operate under the guiding principle of 'responding to needs not deeds'.<sup>427</sup> Hearings are still available to children aged 8 to 11 years; however, they are referred on the basis of welfare concerns rather than alleged criminal offences. For this younger age group, hearings provide a place where the child's needs can be met without criminalising them.<sup>428</sup>

<sup>425</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 364.

<sup>426</sup> Scottish Government, *Child protection: children's hearings*, Scottish Government website, accessed 29 October 2020.

<sup>427</sup> Scottish Government, *Progressing the human rights of children in Scotland: a report 2015–2018*, Scottish Government, 2018, accessed 29 October 2020, p 116.

<sup>428</sup> Jesuit Social Services (JSS), *Raising the age of criminal responsibility: there is a better way*, JSS, Melbourne, 2019, accessed 29 October 2020, p 3.

### Just and age-appropriate responses to Aboriginal children aged 10 to 13 years

*[[If a child can be kept out of the formal criminal justice system the prospects of staying out are considerably enhanced].*<sup>429</sup>

The preceding discussion highlights the urgent need for a fundamental shift in approach to younger Aboriginal children, and to younger children generally, in the Victorian youth justice system. It is not appropriate to simply seek to accommodate an alternative response for this age group *within* the youth justice system. Rather, they must be removed from the system altogether. At the same time, other parts of the social service system, including education and health, must collaborate to provide coordinated early intervention and prevention responses to this age group (discussed further below).

Victoria's current minimum age of criminal responsibility has devastating consequences for Aboriginal children and their families. It facilitates the criminalisation of vulnerable young children and places significant pressure on Youth Justice to respond to children with increasingly complex needs. The DJCS 10-year data referred to above indicates that, despite reductions in the number of supervised community-based sentencing orders made in respect of Aboriginal children aged 10 to 13 years, without significant change, the over-representation of Aboriginal children in this age group in the youth justice system is likely to continue over years to come.

DJCS data for the last 10 years indicates that, on average, each year 21 Aboriginal children aged 10 to 13 years received a court order placing them under the supervision of Youth Justice, compared with 48 non-Aboriginal children in this age group.<sup>430</sup> Raising the minimum age of criminal responsibility in Victoria would remove these 69 children from the youth justice system each year. While the numbers are reasonably small, the potential benefits for children and their families and communities are immense.

The broader community would also benefit, through increased community safety (noting, as outlined below, that community-based intervention to address anti-

social behaviours among this age group must accompany any raising of the age of criminal responsibility). In addition, the likely cost savings to the youth justice system and the adult criminal justice system as a result of reduced future contact for these children would be considerable.

Raising the age of criminal responsibility would also go some way to meeting milestone 2 in *Burra Lotjpa Dungaludja* – to reduce the average daily number of Aboriginal children aged 10 to 17 years under Youth Justice supervision by at least 43 by 2023.<sup>431</sup>

As noted above, in 2018, the Council of Attorneys-General convened a working group to review the age of criminal responsibility in Australia. When the matter returned to them for consideration in July 2020, the Attorneys-General noted the need for further work regarding 'adequate processes and services for children who exhibit offending behaviour'.<sup>432</sup>

Community-based early intervention must be the key feature of a just and age-appropriate response to Aboriginal children aged 10 to 13 years who are engaging in anti-social behaviour. The purpose of dedicated services for this age group must be to support their wellbeing and address any issues that may be contributing to such behaviour.

Recommendation 6 (early intervention and justice reinvestment) and Recommendation 7 (youth hubs), and the various specific early intervention recommendations made throughout this report (in Chapter 8 'A caring & stable home', Chapter 9 'Wellbeing' and Chapter 10 'Education & learning') should form part of the response to this age group.

In the following sections, the Commission outlines the recommended characteristics of additional appropriate responses to Aboriginal children aged 10 to 13 years who are at risk of, or are already, engaging in problematic behaviour. Responses should:

- be designed and led by the Aboriginal community
- provide culturally based services
- be coordinated across support systems, with a focus on families known to Child Protection

<sup>429</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 410.

<sup>430</sup> Compiled from DJCS data provided regularly to the Commission.

<sup>431</sup> Victorian Aboriginal Justice Agreement, *How will we know if we are on track?* Victorian Aboriginal Justice Agreement website, accessed 16 October 2020.

<sup>432</sup> Attorney-General's Department, *Council of Attorneys-General (CAG) communiqué*.

- incorporate restorative justice
- be child-centred.

### Community design and leadership

Designing supports for Aboriginal children aged 10 to 13 years who exhibit anti-social behaviours requires significant leadership and input from the communities and services that best understand their needs. Chapter 4.1 ‘Advancing self-determination’ describes the central importance of community-designed, led and delivered services for Aboriginal children and young people.

### Culturally based services

As set out in Chapter 4.1 ‘Advancing self-determination’, and above in relation to early intervention, all services for Aboriginal children should be based in culture. Culturally based services engage children and young people in their communities, providing an invaluable sense of belonging and healing by connecting with culture. This is particularly important for children and young people who are exploring their identities as they move through adolescence, seeking mentors and building a sense of self.

*Barreng Moorop*, an early intervention program delivered by VACCA (discussed in Chapter 4.1 ‘Advancing self-determination’), is an example of a culturally based service that supports Aboriginal children and young people and their families. Bobby, Nikita and Richard’s story in Chapter 4 ‘A self-determined youth justice system’ illustrates the strengths of this program. More detail on the importance of culture for Aboriginal children and young people is provided in Chapter 7.4 ‘Connection with culture’.

### Coordination across multiple support systems

Responses to Aboriginal children aged 10 to 13 years must address the often complex and intersecting nature of the issues they face. As the drivers of challenging and problematic behaviours in children often lie in issues related to welfare, health and wellbeing, education and poverty, a response to Aboriginal children aged 10 to 13 years ‘must involve

the full spectrum of services engaged with young people’.<sup>433</sup>

The importance of collaboration and coordination among support systems for Aboriginal children is examined in detail in Chapter 6.1 ‘Collaboration’. While recommendations in that chapter are targeted at improving responses to Aboriginal children and young people in the youth justice system, the principles of a child-centred system, including inter-agency collaboration, should apply equally to responses to children who have not yet reached the age of criminal responsibility.

The United Nations Committee on the Rights of the Child notes that effective early intervention responses for children below the age of criminal responsibility must be ‘multidisciplinary’ and build protective factors that strengthen resilience.<sup>434</sup> In addition:

*Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended.*<sup>435</sup>

According to the Northern Territory Royal Commission, there is strong evidence to indicate the effectiveness of family-based programs to reduce children’s anti-social behaviour.<sup>436</sup> This is reflected in New Zealand’s approach to children under the age of 14 years. Chapter 7 ‘Family, community & culture’ details the importance of working with the entire family unit to ensure meaningful outcomes for Aboriginal children and young people.

The over-representation of Aboriginal ‘crossover’ children aged 10 to 13 years in the youth justice system indicates that a special focus is required for children known to Child Protection. The Northern

<sup>433</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 412.

<sup>434</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 11.

<sup>435</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 9.

<sup>436</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 412. See also United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 9.

## 5.2 Age-appropriate responses to Aboriginal children and young people

Territory Royal Commission noted the 'obvious connection between early intervention aimed at child protection and youth offending improvement objectives' given the crossover between these groups.<sup>437</sup> Recommendations for improving support for Aboriginal children in the child protection and youth justice systems are contained in Chapter 8 'A caring & stable home'.

### Restorative justice

*Restorative justice could be applied at any or all points in the justice system: from the earliest contact with police right up to just before release. We need to take existing restorative justice practices, as good as they may be, and break them down at a community level to ensure that they are culturally appropriate. We need to ask individuals, community and families for their input into what restorative justice process is needed, where it should occur and who should facilitate it.*  
– Aboriginal Justice Caucus

For children demonstrating more serious anti-social behaviour, and in cases where there is a victim, community-based restorative justice approaches should form an integral part of a community-based response. In a global study of restorative justice practices for children, the United Nations Office of the Special Representative of the Secretary-General on Violence Against Children identified the following characteristics of effective restorative justice programs for children:

- meeting children's needs such as safety, housing, education and other basic needs
- involving the victim, offender, their families and/or community members
- ensuring the program is culturally based
- assessing and responding to the underlying causes of offending, for example poverty or racism

<sup>437</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 412.

- providing legal safeguards for children, for example, judicial oversight and legal advocacy (this is most relevant where children are above the age of criminal responsibility; however, effective oversight is also important to ensure consistency and fairness for children who have not yet reached the minimum age of criminal responsibility).<sup>438</sup>

Behaviour change following participation in restorative justice programs is well documented.<sup>439</sup> Children who take part in restorative justice programs are far less likely to reoffend than those who go through formal justice measures such as courts and incarceration.<sup>440</sup> An Australian study also demonstrated that children and victims were more likely to feel respected and heard in restorative programs than in court.<sup>441</sup> Research indicates that participants in restorative justice programs (the child, the victim, their families or community members) have high rates of satisfaction and feel that the programs are 'responsive to their needs and rights'.<sup>442</sup>

In Victoria, restorative justice programs are currently available to children and young people in the form of group conferencing under the CYFA; however, they are limited. None of these programs is run by an Aboriginal organisation, so there are no culturally safe programs available to Aboriginal children. Existing programs are also only available after a finding of guilt.

The Youth Justice Review recommended expansion of the use of restorative justice programs 'to address offender and victim needs, including restitution, group conferencing and family group conferencing, across the continuum of youth justice'.<sup>443</sup> For Aboriginal children and young people, the Youth Justice Review recommended working with Elders and community groups to identify areas where restorative justice could be used to address common issues, such as restoring

<sup>438</sup> Office of the Special Representative of the Secretary-General (SRSG) on Violence Against Children, *Promoting restorative justice for children*, Office of the SRSG on Violence Against Children, United Nations, 2013, accessed 16 September 2020, p 27.

<sup>439</sup> Office of the SRSG on Violence Against Children, *Promoting restorative justice for children*, p 28.

<sup>440</sup> Office of the SRSG on Violence Against Children, *Promoting restorative justice for children*, p 28.

<sup>441</sup> K Daly and H Hayes, 'Restorative justice and conferencing in Australia', *Australian Institute of Criminology trends & issues in crime and criminal justice*, number 186, 2013, pp 13–14.

<sup>442</sup> Office of the SRSG on Violence Against Children, *Promoting restorative justice for children*, p 26.

<sup>443</sup> Recommendation 6.33: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 109.

family relationships, to enable young people to be released from custody back to the family home.<sup>444</sup>

DJCS has advised the Commission that implementation of this recommendation is in progress. Work is underway on 2 restorative justice trials – one in youth justice centres, and one linking family violence intervention programs with youth justice group conferencing. The Youth Justice Strategic Plan commits to ‘exploring options to expand the availability of restorative approaches’;<sup>445</sup> however, it is not clear whether this would include early intervention restorative justice programs.

There is widespread support for the increased use of restorative justice programs in Victoria.<sup>446</sup> Under *Burra Lotjpa Dungaludja*, Eastern Metropolitan and Hume RAJACs are working in partnership with Jesuit Social Services to develop the Restorative Justice Pilot Project for Aboriginal children and young people in contact with the justice system. This project combines restorative justice practice with local culture and knowledge to provide a culturally specific restorative justice response for children and young people, victims, their families and communities.<sup>447</sup> The program model also allows referrals from schools and out-of-home care.

In Chapter 7.2 ‘Youth Justice practices and family involvement’, the Commission recommends the adoption of family group conferencing based on the New Zealand model (described in that chapter). This would provide a restorative justice response to Aboriginal children and young people in the youth justice system. However, family group conferencing could also be valuable for children who have not yet reached the minimum age of criminal responsibility. In such cases, the conference would be led and delivered by Aboriginal communities, and provide important supports for young Aboriginal children by emphasising collective responsibility and justice. It would also draw on:

*community strengths, resources and experience, not only in developing solutions to conflicts, but also by involving the community in the consideration of the*

<sup>444</sup> Recommendation 6.33: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 109.

<sup>445</sup> DJCS, *Youth Justice Strategic Plan 2020 – 2030*, p 45.

<sup>446</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 96; Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, p 9; Victorian Aboriginal Children and Young People’s Alliance, Submission to *Our youth, our way* inquiry, p 6.

<sup>447</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, p 5.

*underlying factors contributing to delinquency, such as child abuse and neglect.*<sup>448</sup>

## Child-centred responses

A youth support system responding to Aboriginal children aged 10 to 13 years must be child-centred and guided by the child’s best interests. A child-centred system is one that recognises and builds on children’s strengths, provides flexible and individualised responses based on Aboriginal understandings of wellbeing, and listens and gives due weight to the voices of Aboriginal children in decision-making that affects them. A child-centred system is also responsive to the unique experiences and circumstances of each Aboriginal child and young person who comes into contact with it. This means being sensitive to the multiple aspects of a young person’s identity, including gender, disability and LGBTQI+ status (see Chapter 6.4 ‘Responding to individual needs’).

## Addressing serious anti-social behaviour

A very small proportion of those involved in the youth justice system at the ages of 10 to 13 years exhibit serious or violent anti-social behaviour.<sup>449</sup> In most cases, serious anti-social behaviour is the result of very serious abuse and neglect. The United Nations Committee on the Rights of the Child notes that before any services are engaged, ‘a comprehensive and interdisciplinary assessment of the child’s needs’ must be undertaken.<sup>450</sup> It is particularly important that these children have all services made available to meet their needs as part of a coordinated youth support system. Research demonstrates that restorative justice programs are particularly effective at reducing recidivism for children who engage in violent anti-social behaviour.<sup>451</sup> In fact, some researchers argue that restorative justice has a greater positive impact on children engaging in serious rather than mild anti-social behaviour.<sup>452</sup>

<sup>448</sup> Office of the SRSG on Violence Against Children, *Promoting restorative justice for children*, p 7.

<sup>449</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, p 52.

<sup>450</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 11.

<sup>451</sup> Office of the SRSG on Violence Against Children, *Promoting restorative justice for children*, p 22.

<sup>452</sup> LW Sherman and H Strang, *Restorative justice: the evidence*, The Smith Institute, 2007, p 71; LW Sherman, H Strang and DJ Woods, *Recidivism patterns in the Canberra Reintegration Shaming Experiments (RISE)*, Centre for

## 5.2 Age-appropriate responses to Aboriginal children and young people

Guidance from the Committee on the Rights of the Child makes it clear that relevant programs should be available for children without removing them from their home environment, and that ‘as an absolute priority, children should be supported within their families and communities’.<sup>453</sup> This is particularly important for Aboriginal children, where maintaining connection with family, kin and community is critical. In very serious cases, or where services in communities have been exhausted, the Committee on the Rights of the Child states that spending time in a therapeutic facility ‘may be appropriate in some instances, to provide the necessary array of professional services’.<sup>454</sup> This should only be used as a last resort and for the shortest appropriate time. Where children require intensive, therapeutic care, healing centres should be available to support their needs (see Recommendation 47 in Chapter 9.2 ‘Substance use’).

Raising the minimum age of criminal responsibility would mean that police would no longer have the power to arrest, detain or charge children aged 10 to 13 years. Where police came into contact with a child in this age group, they would have an important welfare role to play in referring them to the early intervention supports recommended in this chapter and throughout the report. In this respect, the Northern Territory Royal Commission noted:

*Some children under [the age of criminal responsibility] will display risks and needs which require a level of support and intervention. Where police become aware of those situations, they should have the power to deal with them by way of diversion to appropriately resourced programs, subject to the condition that if they had been over [the age of criminal responsibility] they would have been reasonably suspected to have committed a criminal offence.*<sup>455</sup>

Restorative Justice, Research School of Social Sciences, Australian National University, 2000.

<sup>453</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 11.

<sup>454</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children’s rights in the child justice system*, paragraph 11.

<sup>455</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 418.

## Recommendation 8

That the *Children, Youth and Families Act 2005* be amended to increase the minimum age of criminal responsibility in Victoria to 14 years. This should not be subject to any exceptions.

## Recommendation 9

That the Victorian Government, in partnership with Aboriginal organisations, develop and provide a range of culturally responsive and gender-specific programs and services that are tailored to meet the needs of Aboriginal children under the age of 14 years who are engaging in anti-social behaviour, and to address the factors contributing to the behaviour.

## Minimum age of incarceration

### Finding 5

Current laws allowing children to be remanded in, or sentenced to, youth justice custody disproportionately harm Aboriginal children.

*Being locked up shouldn’t exist for young people. We should get support from the community to become stronger instead of punishing us because we are traumatised.*  
– Chelsea, 16 (in custody)

The *Our way* vision is that no Aboriginal child or young person is incarcerated. In contrast, Aboriginal children and young people are over-represented in youth justice custody<sup>456</sup> in Victoria, accounting for 16% of the youth

<sup>456</sup> The CYFA and the Sentencing Act refer to ‘detention’ and ‘detaining’ a child or young person in one of two kinds of facility – a ‘youth residential centre’ (for children aged 10 to 14 years) or a ‘youth justice centre’ (for children aged 15 years and above). The CYFA also refers to ‘remand centres for the detention of children awaiting trial or the hearing of a charge’ (s 478(a)). In this report for simplicity we refer to

justice centre population,<sup>457</sup> despite making up approximately 1.5% of the Victorian population of children and young people.

Depriving a child of liberty is depriving them of their childhood.<sup>458</sup> Any time in custody can be harmful,<sup>459</sup> and can impair healthy development and compound mental illness and trauma.<sup>460</sup> Youth justice custody can be especially harmful to younger Aboriginal children in the youth justice system, as illustrated by Djiran's story at the start of this chapter. Custody is also considerably more expensive than community-based alternatives, and usually counterproductive to the goal of preventing reoffending.

The United Nations has regularly raised concerns about the deprivation of children's liberty. In 2018, the Human Rights Council recommended worldwide decarceration of youth justice systems:

*The scale and magnitude of children's suffering in detention and confinement call for a global commitment to the abolition of child prisons and large care institutions alongside scaled-up investment in community-based services.*<sup>461</sup>

In 2019, the United Nations Committee on the Rights of the Child updated General Comment No. 24 to recommend 16 years of age as the minimum age for the deprivation of a child's liberty:

*The Committee recommends that no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children*

*may not legally be deprived of their liberty, such as 16 years of age.*<sup>462</sup>

For the purposes of the Committee's recommendation, 'deprivation of liberty' means any form of detention or imprisonment, or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.<sup>463</sup> In Victoria, this would include:

- arrest of a child or young person by a police officer or other authorised officer
- remand of a child or young person to police custody or youth justice custody
- sentencing of a child or young person to youth justice custody
- sentencing of a child or young person to adult imprisonment.

The Taskforce and this inquiry are concerned with the over-representation of Aboriginal children and young people in Victoria's youth justice system, and the Commission for Children and Young People Act limits the Commission's jurisdiction for systemic inquiries to 'youth justice services provided, or omitted to be provided, by the Secretary'.<sup>464</sup> Accordingly, this part of the report is focused on the deprivation of liberty of children and young people in Victoria's youth justice centres, whether via remand or a sentencing order. We refer to this as 'youth justice custody'. This includes the power of adult courts to sentence children and young people under the age of 21 years to youth justice custody under the 'dual track' system in the Sentencing Act.

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each type of facility as a 'youth justice centre', and to 'youth justice custody' as including sentenced and remanded children and young people.

<sup>457</sup> This figure reflects the time frames of the Taskforce and inquiry. As noted in Chapter 3 'Overview of the Victorian youth justice system', in 2019–20, Aboriginal children and young people accounted for 13% of all children and young people aged 10 to 17 years supervised by Youth Justice in custody on an average day. Nationally, Victoria also had the lowest rate ratio of Aboriginal children and young people aged 10 to 17 years in custody at June 2020: AIHW, *Youth detention population in Australia 2020*.

<sup>458</sup> UN General Assembly, *Global study on children deprived of liberty*, UN Doc A/74/136, 2019, paragraph 3.

<sup>459</sup> Atkinson, *Report on youth justice*, p 24.

<sup>460</sup> Johnstone, *Early intervention, diversion and rehabilitation from the perspective of the Children's Court of NSW*.

<sup>461</sup> Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN Doc A/HRC/38/36, 2018, paragraph 53.

<sup>462</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, paragraph 89.

<sup>463</sup> United Nations Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, paragraph 8.

<sup>464</sup> Section 39(2)(b).

### Custody often harms Aboriginal children and young people

*The kids are there to be rehabilitated, but they're not treated as youth. They're not treated as human... There's no rehabilitation, they're treated as criminals. I haven't been to an adult centre in years, but I don't remember it looking as bad as it does for the young ones. – Aboriginal Independent Visitor*

The findings of this inquiry indicate that youth justice custodial facilities are often unsafe and harmful environments for Aboriginal children and young people, damaging their social and emotional wellbeing.

Custody removes Aboriginal children and young people from their families, communities and culture, often compounding the trauma and disconnection experienced by Aboriginal communities as a result of longstanding child removal practices and intergenerational incarceration. As noted in Chapter 13 'Safe custody', the over-representation of Aboriginal children and young people in youth justice centres is inextricably linked to the past and ongoing ways in which Aboriginal people have been dispossessed and disempowered through colonisation. The incarceration of Aboriginal children and young people continues this process.

Depriving a young person of their liberty dislocates them from their protective factors.<sup>465</sup> For Aboriginal children and young people, disconnection from family, community and Country can result in social isolation and alienation, which places great stress on the child and on the community they are removed from. This dislocation can be particularly damaging to the wellbeing of younger Aboriginal children.

The wellbeing of Aboriginal children and young people is also frequently harmed by the conditions and practices in Victoria's youth justice centres. Chapter 13.2 'Conditions in youth justice custody' examines the negative impacts of widespread lockdowns, the use of force by staff and the frequency of assaults in youth

justice centres. It also examines the high rates of self-harm among Aboriginal children and young people in youth justice custody, and the absence of a consistent, effective, therapeutic response by Youth Justice staff.

The experience of custody frequently exacerbates existing mental health concerns among Aboriginal children and young people, and creates new ones. Youth justice custodial facilities are not suitable environments to treat or manage mental health issues, at best providing inadequate or ad hoc responses. They are also unsuitable for responding to drug or alcohol misuse, which is experienced by many Aboriginal children and young people. These issues are examined in Chapter 9.1 'Mental health' and Chapter 9.2 'Substance use'.

Custody can also disrupt Aboriginal children and young people's education and limit their employment opportunities. Chapter 10.4 'Education in custody' examines the challenges of delivering effective and engaging education programs to Aboriginal children and young people in youth justice centres. That chapter demonstrates that most Aboriginal children and young people are disengaged from education before they enter the youth justice system. This makes engagement in education programs in custody, and the continuation of education or the pursuit of employment opportunities following release, particularly challenging.

In addition, despite some positive endeavours, youth justice centres are generally not culturally safe environments for Aboriginal children and young people. Programs to maintain and build connection with family, community and culture in custody are inadequate, and fail to sufficiently foster the protective factors that assist children and young people with pro-social behaviours, including strong relationships, identity and community networks. This is examined in detail in Chapter 7 'Family, community & culture' and Chapter 13.1 'Cultural safety and support in custody'.

### Custody and reoffending

*When I was younger, before I ever got locked up, I was always on bail, but after the first time you get locked up, it's always lockup. – Karl, 21*

<sup>465</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 15.



There is no evidence indicating that custodial orders reduce offending.<sup>466</sup> Several Aboriginal children and young people who had been remanded in, or sentenced to, youth justice custody under the age of 16 years spoke to the Commission about repeated custodial stays:

*From 13 to 19, I've been in [youth justice custody] about 10 times. The longest time I got sentenced was 2 years. – Malkar, 19*

*I've been in Parkville 4 times. The first time was one night, second time was 3 months, third time was 2 months, fourth time was 7 months (but they sentenced me for 15 months). – Gabrielle, 15*

*I was 12 the first time I went there. I've been there twice. First time was for a weekend. Three weeks were waiting for court... It could be better by not sending kids there. – Ruan, 14*

Time in custody often results in a cycle of reoffending, remand and custodial sentences<sup>467</sup> that is underpinned by the system's failure to meet children and young people's underlying needs. Aboriginal children and young people in custody under the age of 16 spoke to the Commission about this cycle:

*I want to get back home to dad, Country, live my life, go hunting, find a missus, get out of trouble. Lockup is no life. I never should have got locked up, but I keep coming back, like a drug. Crimes get worse. – Aaron, 16*

Many children and young people told the Commission that their connections in custody do, or could, lead them to reoffend, indicating that the experience of custody in Victoria is criminogenic for many children and young people.

<sup>466</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 15.

<sup>467</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*.

*I don't think places like this should exist. You can't heal in here. You need to be on Country where you come from with your family to heal. You need family. This place makes you worse. You meet people that have done worse crimes than you and you talk about it and get linked up with that person. – Jasper, 17*

*I assumed that people in juvenile justice would be 18 to 21, and to find children just into the double digits, it's a real eye opener, and that some of them have been there 4 or 5 times. – Aboriginal Independent Visitor*

In 2016, the Sentencing Advisory Council published its report *Reoffending by children and young people in Victoria*. It found that among children and young people in the study group who were sentenced to a youth justice centre order or a youth attendance order, over 80% reoffended.<sup>468</sup>

Other research demonstrates that punitive responses such as custody, as opposed to diversionary or therapeutic responses, are linked to higher levels of reoffending.<sup>469</sup> Even short incarceration periods can lead to a significant increase in offending.<sup>470</sup>

The Australian Law Reform Commission's 2017 inquiry on the incarceration of Aboriginal people stated that 'juvenile detention can be seen as a key driver of adult incarceration'.<sup>471</sup> The Australian Law Reform Commission's report refers to a study which found that, nationally, 90% of Aboriginal young people who appeared in a children's court went on to appear in an adult court within 8 years, with 36% receiving a prison sentence later in life.<sup>472</sup> In Victoria, the Sentencing Advisory Council found in 2016 that over half of the children and young people who had been sentenced to a custodial order or a youth attendance order were sentenced to imprisonment by an adult court in the 6 years after their index sentence.<sup>473</sup>

<sup>468</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, p 52.

<sup>469</sup> M Lynch, J Buckman and L Krenske, 'Youth justice: criminal trajectories', *Australian Institute of Criminology trends & issues in crime and criminal justice*, number 265, 2003.

<sup>470</sup> Lynch et al., 'Youth justice: criminal trajectories'.

<sup>471</sup> ALRC, *Pathways to justice*, p 486.

<sup>472</sup> ALRC, *Pathways to justice*, p 486.

<sup>473</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, p 52.

## 5.2 Age-appropriate responses to Aboriginal children and young people

Children and young people whom the Commission consulted were highly conscious of this progression, as were many of their family members.

*The jail system changes when you get older. When you see all the older people in there, you meet murderers. My mate is only 19 and he'll do 16 years straight. People are there so long they try killing themselves. – Malkar, 19*

*My nephew was in Parkville... nothing was ever dealt with. Back in court, remand in Parkville, then to Fulham [adult prison]... nothing is fixed. – Aunty of young person under 16 in custody*

In contrast, early intervention, diversion, cultural and therapeutic programs that operate outside the formal youth justice system are effective in meeting children's needs and supporting them to reduce offending.<sup>474</sup>

*Parkville and Malmsbury does not address the underlying issues of the young people. Have people from their community as mentors; as a connection to community with cultural activities, parenting programs, empowerment focused leadership, substance abuse information. – Aboriginal youth worker, MDAS*

### Custody is costly

The ineffectiveness of custody comes at great social, cultural, health and economic cost for children and young people, communities and the state. In 2019–20, Victoria spent \$2,450 per day per child or young person in custody.<sup>475</sup> However, this figure, based on the running costs of custodial facilities,<sup>476</sup> does not capture the ongoing costs that custody creates.

<sup>474</sup> HRLC, Submission to *Our youth, our way* inquiry, p 16.

<sup>475</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.20.

<sup>476</sup> The running costs of custodial facilities include the cost of programs and services provided to children and young people in youth justice custody, including recreational programs and activities (such as sport, music and art programs), Aboriginal Liaison Officer roles and cultural programs for Aboriginal children and young people, programs for culturally and linguistically diverse children and young people, and chaplaincy programs.

A 2017 study measured the ongoing costs of the incarceration of Aboriginal people by considering a range of economic and fiscal costs, including the cost of crime, loss of productive output, excess burden of tax, cost of justice, welfare (human services, social services, Centrelink) and foregone taxation.<sup>477</sup> The study found that, nationally, the cost of incarcerating Aboriginal children, young people and adults was \$7.9 billion in 2016. With increasing incarceration rates, the study predicted a conservative cost estimate of \$9.7 billion in 2020 and \$19.8 billion in 2040.<sup>478</sup>

As the youth justice system can be a driver of adult imprisonment, it has a pivotal role in avoiding the staggering potential impacts of rising incarceration rates. During the Taskforce, Elders identified the importance of a systemic shift to address this challenge:

*If not sorted out now, the future costs are gonna blow out of proportion. Governments don't look at the future anymore – they have to start turning their thinking a bit to how to solve these problems... if you can fix it now, you're going to save money, families, communities, and our people for the future, and that's what needs to happen. – Elder*

The immense social and economic cost of placing Aboriginal children and young people in custody can be avoided by replacing custody with effective community solutions. Community supervision has far lower economic costs than custody. In 2019–20, Victoria spent \$295 per day per child subject to community-based supervision on an average day.<sup>479</sup> Community-based alternatives described in this chapter address children and young people's needs, have lower economic costs than custody and are far more likely to reduce reoffending than custody.

According to the President of the Law Society of New South Wales:

*Jail is an ineffective tool to deter crime – indeed prisons have been referred to as 'universities of crime', so effective they seem at encouraging recidivism. Jailing people is also very costly, so it is*

<sup>477</sup> PwC, *Indigenous incarceration*, p 25.

<sup>478</sup> PwC, *Indigenous incarceration*, p 7.

<sup>479</sup> Productivity Commission, *Report on Government Services 2021*, data table 17A.19.

time that we tackle the problem and find ways to reduce the record number of people filling our jails. Investing more funds in early intervention, prevention and diversion programs that can help address the underlying causes of crime is likely to achieve safer communities and reduce rates of reoffending.<sup>480</sup>

## The over-representation of Aboriginal children aged 10 to 15 years in custody

Aboriginal children aged 10 to 15 years are substantially over-represented in youth justice custody in Victoria. Table 5.5 shows the number of Aboriginal and non-Aboriginal children in this age group who received a custodial order (including remand) each year from 2010 to 2019. This data illustrates that, although the rate of Aboriginal over-representation among this age group in custody has fluctuated over the 10-year period, it remains very high.

**Table 5.5** Number of children aged 10–15 who received a custodial order (remand or sentence) by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
2010	40	21%	153	79%
2011	25	12%	183	88%
2012	36	17%	174	83%
2013	27	15%	151	85%
2014	48	24%	156	76%
2015	62	26%	175	74%
2016	52	21%	191	79%
2017	38	16%	194	84%
2018	43	20%	168	80%
2019	39	15%	214	85%
<b>Average</b>	<b>41</b>	<b>19%</b>	<b>176</b>	<b>81%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

## International models

In many countries, a minimum age of criminal responsibility of 16 or higher protects younger children from custody. Other jurisdictions have adopted a minimum age of custody that is higher than the

<sup>480</sup> P Wright, 'President's message', *Law Society Journal*, 2017, 34:8, p 8.

minimum age of criminal responsibility, and introduced safer, more effective alternatives to custody. Two examples of alternative approaches follow – these are illustrative only, as many jurisdictions have adopted similar variations.<sup>481</sup>

## Scotland

Scotland is transitioning to a youth justice system where no person under 18 is imprisoned.<sup>482</sup> As discussed earlier in this chapter, the minimum age of criminal responsibility in Scotland is 12; however, there is no prison service for children under the age of 16.<sup>483</sup> Children aged 12 to 18 exhibiting offending behaviours are managed entirely within the child welfare system. This response is characterised by a children's hearing system, which has almost completely replaced children and young people's involvement in the criminal court process.

When children and young people aged 12 to 18 require intensive therapeutic care, they may be placed in a Safe Centre, if one or more of the following conditions applies:

- the child has previously absconded and is likely to abscond again, and, if the child were to abscond, it is likely that the child's physical, mental or moral welfare would be at risk
- the child is likely to engage in self-harming conduct
- the child is likely to cause injury to another person.<sup>484</sup>

Kibble, one of the main providers of therapeutic accommodation for children and young people in contact with the youth justice system, provides places for 18 young people in 3 6-bed houses. Children under 16 years reside in either secure or non-secure parts of the same campus, which is open to the public and is a

<sup>481</sup> See for example, Denmark, where the minimum age of incarceration is 15 years, and children and young people on community-based sentences are supervised and supported by social services: J Grzywa-Holten, P Horsfield, A Păroşanu and I Pruin, 'Country reports (snap shots)' in A Păroşanu, I Pruin, J Grzywa-Holten and P Horsfield (eds), *Alternatives to custody for young offenders and the influence of foster care on European juvenile justice*, European Project 'Alternatives to Custody for Young Offenders – Developing Intensive and Remand Fostering Programmes', European Union, 2015, p 61. See also other European jurisdictions detailed in Grzywa-Holten et al., 'Country reports (snap shots)'.

<sup>482</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 364.

<sup>483</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 364.

<sup>484</sup> *Children's Hearings (Scotland) Act 2011*, s 83.

## 5.2 Age-appropriate responses to Aboriginal children and young people

home-like environment.<sup>485</sup> The Safe Centre model is referred to in Chapter 13.2 ‘Conditions in youth justice custody’, and shares key characteristics with the healing centres recommended in Chapter 9.2 ‘Substance use’.

By shifting to a child welfare model, the number of children and young people involved in criminal court processes in Scotland has significantly reduced. In 2016, only 24 children (all of whom had been found guilty of serious offences) in a population of approximately 5.4 million attended court.<sup>486</sup> Only a very small number of children in Scotland are detained pre-trial.<sup>487</sup>

### Slovenia

Slovenia’s minimum age of criminal responsibility is 14 years; however, only children and young people aged 16 and 17 can be given a custodial order.<sup>488</sup> Further, 16 and 17 year olds are only given custodial sentences if found guilty of more serious offences that would result in a sentence of 5 years or more if committed by an adult.<sup>489</sup> Children and young people between the ages of 14 and 18 can be remanded; however, Slovenia’s Criminal Procedure Code states that this must only happen in exceptional circumstances.<sup>490</sup>

This approach results in very low numbers of children and young people in custody. Slovenia’s use of diversion, educational responses and restorative justice means that only one-third of young people who are reported to the police appear before a court.<sup>491</sup> In 2012, 99% of cases that went to court resulted in educational measures being imposed on children and young people. The remaining 1% – only 4 children and young people – received a custodial sentence.<sup>492</sup>

<sup>485</sup> Scotland Care Inspectorate, *Kibble Safe Centre Secure Accommodation Service: inspection report*, Scotland Care Inspectorate, 2018.

<sup>486</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 365.

<sup>487</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 365.

<sup>488</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 418.

<sup>489</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 418.

<sup>490</sup> Grzywa-Holten et al, ‘Country reports (snap shots)’, p 149.

<sup>491</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 418.

<sup>492</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 418.

## Raising the minimum age of youth justice custody in Victoria

*What would we do if we didn't lock them up? Intense consulting with the youth. Working with families who have a lot going on. Community people sitting alongside, working with the young people. – Elder*

According to the Northern Territory Royal Commission:

*There are many considerations which, singly and in combination, establish that any apparent punishment and deterrent value of detention is far outweighed by its detrimental impacts, particularly for the minority group of pre-teens and young teenagers... There is therefore strong evidence in support of restricting the ages of children who may be admitted to detention and for those younger children, focussing intervention in response to their offending wholly around their family life and social network in the community.<sup>493</sup>*

The considerations referred to by the Northern Territory Royal Commission include the developmental status of this cohort, the harsh consequences of separating younger children from family, interruption of the normal pattern of ‘aging out’ of offending behaviour, and the lack of evidence in support of positive outcomes from custody.<sup>494</sup> The Northern Territory Royal Commission recommended legislative amendments to prohibit children under the age of 14 years from being ordered to serve a term of detention.<sup>495</sup>

The Commission agrees with the analysis of the Northern Territory Royal Commission, but recommends that the minimum age of youth justice custody in Victoria be increased to 16 years, consistent with international best practice.<sup>496</sup> Unlike the Northern

<sup>493</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 419.

<sup>494</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 419.

<sup>495</sup> Recommendation 27.1: Northern Territory Royal Commission Final Report, Volume 2B, p 420.

<sup>496</sup> The Northern Territory Royal Commission published its final report in November 2017, before the United Nations Committee on the Rights of the Child updated General Comment No. 24 in 2019 to recommend 16 years as the minimum age at which a child should be able to be deprived of liberty.

Territory Royal Commission, our recommendation also includes remand in youth justice custody, in addition to sentencing.

Our recommendation would require at least the following key legislative changes:

- amendments to the *Bail Act 1977* (Vic) and the CYFA to prohibit a bail decision-maker from remanding a child under the age of 16 to youth justice custody
- amendments to the CYFA to prohibit the Children's Court from sentencing a child under the age of 16 to youth justice custody
- amendments to the Sentencing Act to prohibit an adult court from sentencing a child under the age of 16 to youth justice custody.

We also recommend amendments to the Sentencing Act to prohibit an adult court from sentencing a child under the age of 18 years to imprisonment in an adult correctional facility, and amendments to the CYFA to prohibit the transfer of children under 18 years from youth justice custody to adult prison. These changes would be consistent with our principal recommendation to increase the minimum age of youth justice custody. They would also comply with article 37(c) of the Convention on the Rights of the Child, which requires children deprived of liberty to be separated from adults.

Above we recommend that Victoria increase its minimum age of criminal responsibility to 14 years. If this recommendation were implemented, children aged 10 to 13 years would no longer be able to be charged with a criminal offence, and the Criminal Division of the Children's Court would have no jurisdiction in respect of this age group. This would mean that the recommendation made here to raise the minimum age of youth justice custody would, in practice, apply only to 14 and 15 year old children.

DJCS data from 2010 to 2019 indicates that increasing the minimum age at which a child can be remanded or sentenced to youth justice custody in Victoria to 16 years would have the effect of removing an average of approximately 32 Aboriginal and 150 non-Aboriginal children aged 14 and 15 years from the youth justice custodial system each year.<sup>497</sup> This would have a transformative effect on the over-representation of

<sup>497</sup> Compiled from DJCS data provided regularly to the Commission.

Aboriginal children and young people in the youth justice system.

In relation to the recommended prohibition on remand, careful consideration would need to be given to whether the Bail Act should simply require a bail decision-maker to grant bail to a child aged under 16 years, or whether a mechanism other than bail should be developed to ensure the attendance of a child in this age group at court for the hearing and determination of the charge(s).

Consideration would also need to be given to whether the recommended prohibitions in relation to remand and sentencing should be subject to any exceptions for specific charges or offences. The Northern Territory Royal Commission recommended that its prohibition *not* apply where:

- the child has been convicted of a 'serious and violent crime against the person'
- the child 'presents a serious risk to the community', and
- the sentence is approved by the President of the Children's Court.<sup>498</sup>

The Royal Commission indicated its expectation that this exception 'would be rarely used'.<sup>499</sup>

The Commission does not agree with the recommended approach of the Royal Commission. In our view, the prohibition should not be subject to any exceptions. However, if an exception were to be included, it should be confined and clearly delineated. The phrase 'serious and violent crime against the person' is capable of broad interpretation. The Commission strongly recommends that any exception to the prohibition be limited to the specified homicide offences in the CYFA in respect of which the Children's Court currently has no jurisdiction.<sup>500</sup>

<sup>498</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 420.

<sup>499</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 419.

<sup>500</sup> Murder, attempted murder, manslaughter, child homicide, arson causing death, culpable driving causing death: CYFA, s 356(1).

### Responding to Aboriginal children aged 14 and 15 years

*One of their needs is structure in their lives. A lot go inside at a young age, when they don't have a concept of the future. The future is here and now for them. We need a model where there is structure. They still need support and guidance. With a family, someone is guiding that kid in what they do. Every kid needs that, the feeling of being wanted and loved. If you're out on your own, it's hit and miss – Elder*

Throughout the Taskforce and the inquiry, Aboriginal community members working with children and young people in the youth justice system referred to the need to replace custody with effective therapeutic responses.

*I don't think detention centres should exist. A cultural property should exist with youth rehabilitation, visits on Country with Elders, family visits, cultural programs. Teach them the history of the land and animals, teach them things to assist to build strong leaders. Address the direct needs of the children. Otherwise, detention creates a pathway to the wider justice system. – Aboriginal youth worker, MDAS*

*Send them up to rehab for a couple of weeks rather than sending them away [to custody]. They get shipped off here, there and everywhere, come on back down here and learn your culture and heritage – men do the young boys, and women do the girls and that in a place like [culturally based school]. – Elder*

The recommended changes would enable a shift away from a damaging, ineffective and costly response to children aged 14 and 15 years in the youth justice system, to effective, community-based responses that meet the needs of this age group and support them to address problem behaviours. These responses are

described in this chapter and throughout the report. They include improved early interventions, such as:

- youth hubs (recommended in Chapter 5.1 'Early intervention')
- mentoring (recommended in Chapter 9.3 'Mentoring')
- educational supports (recommended in Chapter 10 'Education & learning')
- healing centres (recommended in Chapter 9.2 'Substance use')
- other community-led justice reinvestment youth supports (discussed in this chapter).

They also include new and existing youth justice system responses, such as:

- family group conferencing (recommended in Chapter 7.2 'Youth Justice practices and family involvement')
- improved support for Aboriginal children and young people on bail, including supported bail accommodation in small, home-like facilities (recommended in Chapter 12.2 'Bail and remand')
- Children's Court diversion (discussed in Chapter 12.1 'Diversion')
- community-based Youth Justice supervision (discussed in Chapter 12 'Pathways out of the youth justice system'), supported by an expanded Koori Youth Justice program (discussed in Chapter 6.2 'Relationships with workers').

## Recommendation 10

That the *Children, Youth and Families Act 2005*, the *Sentencing Act 1991* and the *Bail Act 1977* be amended to prohibit:

- a) children under the age of 16 years being sentenced to, or remanded in, youth justice custody
- b) children under the age of 18 years being sentenced to adult imprisonment
- c) the transfer of children under the age of 18 years from youth justice custody to an adult prison.

## 5.3 Recommended model

Table 5.6 summarises the Commission’s recommendations for just and age-appropriate responses to Aboriginal children and young people in Victoria which meet the needs of children and young people while reducing the harm of custody.

**Table 5.6** Commission’s recommended responses for Aboriginal children and young people

Age group	Recommended community and social services responses	Recommended youth justice system responses
10–13 years	Aboriginal community-designed and led youth support services including: <ul style="list-style-type: none"> <li>• youth hubs</li> <li>• healing centres</li> <li>• mentoring</li> <li>• community-based family group conferencing</li> <li>• education engagement programs</li> </ul>	None
14–15 years	As above	<ul style="list-style-type: none"> <li>• Caution and diversion</li> <li>• Family group conferencing</li> <li>• Improved bail support, including supported bail accommodation and healing centres</li> <li>• Children’s Court diversion</li> <li>• Community-based Youth Justice supervision, supported by the Koori Youth Justice program</li> </ul> No remand or sentence to youth justice custody
16+ years	As above, as well as improved housing supports, including youth foyers and crisis accommodation	<ul style="list-style-type: none"> <li>• Caution and diversion</li> <li>• Family group conferencing</li> <li>• Improved bail support, including supported bail accommodation and healing centres</li> <li>• Children’s Court diversion</li> <li>• Community-based Youth Justice supervision, supported by the Koori Youth Justice program</li> <li>• Small, home-like facilities as an alternative to youth justice centres for remanded and sentenced young people</li> </ul>

Children and young people who have reached the minimum age of criminal responsibility and are thus subject to youth justice system processes must, at every point in the continuum, be subject to the least intrusive intervention that is necessary in the circumstances. This must include decisions about whether to take any formal action against a child, including arresting, questioning, searching, cautioning, charging, bailing or remanding (for those who have

reached the minimum age of incarceration) the child or young person. Diversionary and early intervention processes should be prioritised at every stage, and criminal proceedings must only be commenced if there is no other appropriate means of dealing with the matter.

### Recommendation 11

That the new Youth Justice Act require youth justice system decision-makers:

- a) to prioritise early intervention and diversionary processes at all points on the youth justice system continuum
- b) to ensure that children and young people are subject to the least intrusive intervention that is necessary in the circumstances, including a decision not to take any formal action against the child or young person
- c) not to commence a criminal proceeding against a child or young person if there is another appropriate means of dealing with the matter.

#### Preservation of positive features of Victoria's current youth justice system

If implemented, the recommendations in this chapter and throughout the report would transform the youth justice system. However, it is also important to note that there are certain fundamental features of the existing youth justice system that the Commission believes should be retained in any restructuring of the system.

The first is the inclusive jurisdiction of the Children's Court in respect of young people who are aged 17 years at the time of committing an offence, but who turn 18 before they are sentenced. It is important that the Children's Court retain the discretion to sentence young people in this category to a youth justice sentencing disposition under the CYFA. There should be no presumption in favour of adult sentencing orders for young people in this category simply because they have turned 18 before sentencing.

Another feature which should be retained is Victoria's unique 'dual track' system, whereby an adult court can sentence a young person aged 18 to 20 years to youth justice custody if 'there are reasonable prospects for the rehabilitation' of the young person, or if the young person 'is particularly impressionable, immature or likely to be subjected to undesirable influences in an adult prison'.<sup>501</sup> In determining whether to sentence a young person to youth justice custody via dual track, the court must have regard to the nature of the offence and 'the age, character and past history' of the young person.<sup>502</sup>

<sup>501</sup> Sentencing Act, s 32(1).

<sup>502</sup> Sentencing Act, s 32(2).

The dual track system reflects research indicating that young people aged under 21 years have more in common neurobiologically, cognitively and psychologically with children than with adults.<sup>503</sup> It recognises the potential vulnerability of this age group in the adult prison system<sup>504</sup> and the importance of providing them with a response based on rehabilitation rather than punishment.

Access to dual track sentencing has been narrowed in recent years.<sup>505</sup> The Youth Justice Review found that the dual track system provided 'a genuine alternative to adult prison for vulnerable young adults who showed promise for rehabilitation' where the focus was on education, training and readiness for work.<sup>506</sup> The Youth Justice Review recommended that this approach be preserved as 'a low-security custodial model for very vulnerable young adults'.<sup>507</sup>

However, in implementing this recommendation, it is important to ensure that dual track is not unnecessarily narrowed, and that Aboriginal young people aged 18 to 20 years continue to have access to youth justice custody as an alternative to adult imprisonment.

In particular, it is important to ensure that vulnerable Aboriginal young people, many of whom have long histories in the child protection and youth justice systems, are not excluded from dual track sentencing due to a perception that they are 'unsuitable' for youth justice custody because of prior challenging behaviour in custody. Such behaviour must be properly understood in the context of childhood trauma, often compounded by successive failures by Child Protection and Youth Justice over many years to identify and address the complex underlying causes of young people's offending behaviour. Labelling such young people as too 'complex' or 'difficult' for the youth justice system and moving them on to the adult system fails to acknowledge this cumulative harm and

<sup>503</sup> Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 10.

<sup>504</sup> Sentencing Advisory Council, *Rethinking sentencing for young adult offenders*, Sentencing Advisory Council, Melbourne, 2019, accessed 20 November 2020, p xiii.

<sup>505</sup> For example, changes introduced by the Children and Justice Legislation (Youth Justice Reform) Act that limit dual track sentencing in relation to 'Category A serious youth offences' and 'Category B serious youth offences': ss 32(2C) and (2D).

<sup>506</sup> Armitage and Ogloff, *Youth justice review and strategy*, Part 2, p 89.

<sup>507</sup> Armitage and Ogloff, *Youth justice review and strategy*, Part 2, p 89.



underestimates their potential to develop, grow and change with the right support.



# A child-centred system

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*The journey of the young people is at the centre, as it's a reminder that we are all on a journey. The figures lifting and raising people up are a reminder of the need for people to support us throughout our whole journey. It is important they do this. The gathering symbol at the centre of the work is a reminder that we are strong in culture, and mob will always show up, because we need community. The spear is to protect us and keep us safe. – Young people of Shepparton, Yorta Yorta Country*

## Our way

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*Making a child responsible for the inadequacies of bureaucracy is not fair. It's too high a load, particularly for young people who have been traumatised through their own lack of nurturing and support in their life. – Community member*

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*It has been my experience at times that young people with extremely problematic behaviours, particularly violent behaviours, are almost defined as default adults and treated with a lack of empathy and care once they reach a sort of 'threshold point' of being cycled through 3 or more times. If the rehabilitation and supports being provided are not working, that is an issue with the service or support.  
– RAJAC Chair*

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The Aboriginal community's vision is for a Victorian youth justice system that places Aboriginal culture and the social and emotional wellbeing of Aboriginal children and young people at its centre. A truly child-centred youth justice system treats each Aboriginal child and young person as a unique individual, meets their holistic needs and supports them to achieve their potential and thrive. It requires the youth justice, child protection, health and education systems to collaborate effectively, at every level of intervention.

A child-centred youth justice system for Aboriginal children and young people is one that:

- recognises and builds on Aboriginal children and young people's strengths
- meets Aboriginal children and young people's needs with flexible and individualised responses focused on Aboriginal understandings of social and emotional wellbeing<sup>508</sup>
- ensures that organisations involved in an Aboriginal child or young person's life work together in a coordinated, collaborative, flexible and culturally centred way to support the child or young person
- listens and gives due weight to the voices of Aboriginal children and young people in decision-making that affects them
- is informed by the expertise and wisdom of the Aboriginal community and led by its decisions.

<sup>508</sup> See Chapter 9 'Wellbeing' for a discussion of Aboriginal social and emotional wellbeing.

## Tooran's story

I'm speaking on behalf of my sister, Wawal.<sup>509</sup>

*We grew up together in a small town. We have some supports here, but there are so many cracks that people can fall through, especially with homelessness. The supports are so narrow that they don't understand what people really need. Wawal never felt safe here. No one knew why. She felt like she couldn't stay in our home town.*

*My sister really struggled at school. Like lots of other kids, she needed flexibility, but our school was so narrow-minded. Wawal was fiercely independent and didn't like asking for help. When school didn't 'get' her she just dropped out around Year 9. That's when she moved on to a different path, got involved with drugs and alcohol, and started getting in trouble with cops.*

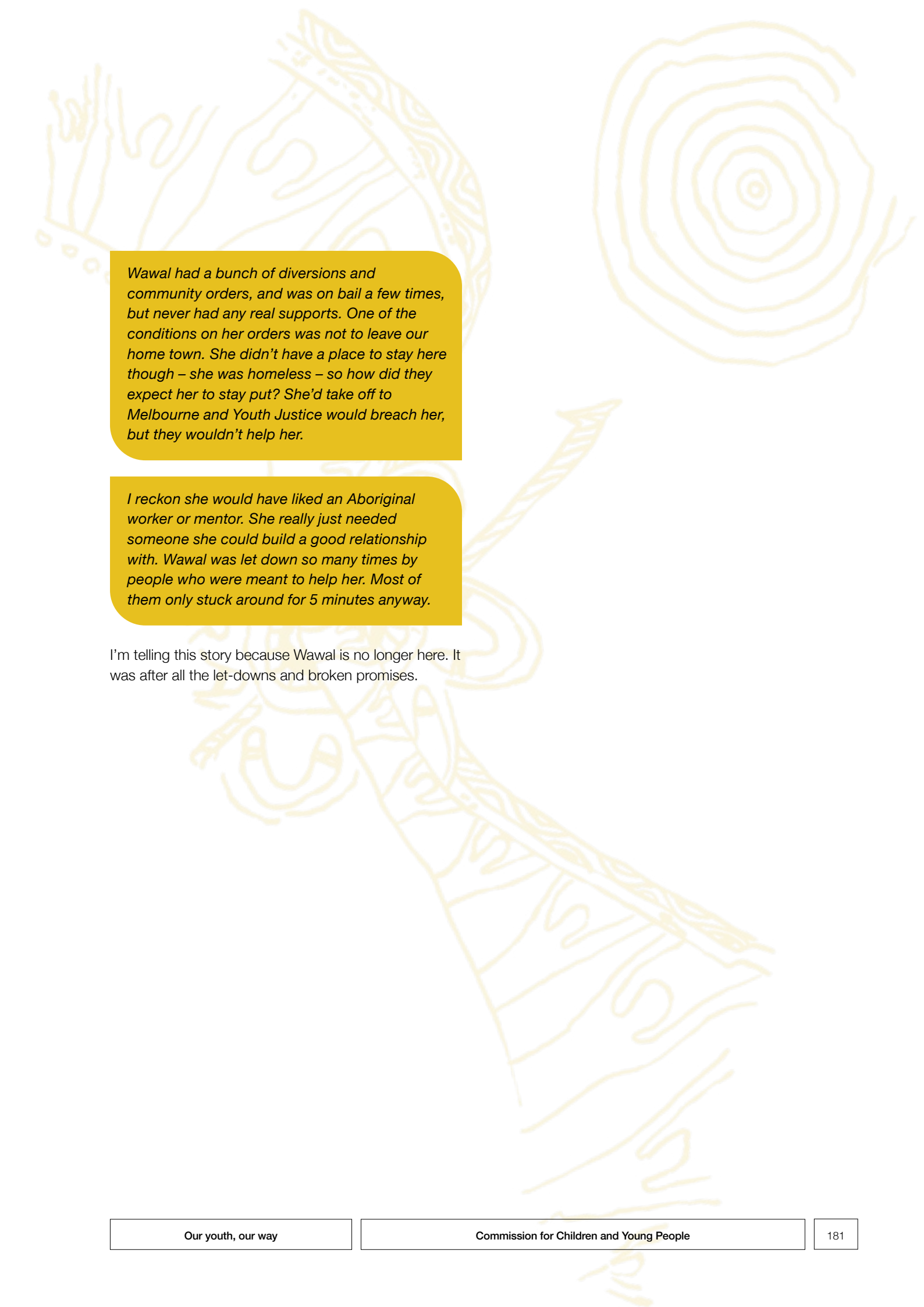
*She was so young when the cops started getting involved. They picked her up so many times that I can't remember them all. Sometimes the cops were all right with her, but other times they were so rough. Once, in front of Macca's, they manhandled her. My cousin was there screaming at them to 'Call Tooran! Call Tooran!' to sort it out, but they just shoved Wawal in the car and drove away.*

*Another time, 8 cops showed up and said they needed to take her away, with no explanation. She didn't want to go, so all 8 of them piled on top of her. I told them there was no need for that. It was no wonder she went off her head when they brought 8 people around. Once, at our local cop shop, one of them punched her in the nose. That horrified me. They had placed her in the cells – always by herself. Once, she was in there a whole day. They treated her like shit.*

*When the cops hurt her like that I'd call Youth Justice, but I couldn't get in touch with them. It was always like that. I had so many conversations with her case manager, but there was just no support. I'd be forever on the phone to them asking, 'What's going on? What are you guys doing?' The response was always, 'Oh, we're sorting something out.'*

*Wawal never got the help she needed. Like I said, there's too many cracks. I thought she might have issues with her mental health, but we never knew for sure. She didn't get checked or anything, not even in custody. She needed to be linked in with services, but Youth Justice never came through. She was in Parkville for 3 months. It's sad to say, but I was relieved when she was in there because she actually had a place to sleep and could be off the drugs. She never had that in our home town. Youth Justice promised her they'd help her with finding accommodation here, going back to school, AOD [alcohol and other drug] counselling, mental health. But when she came out of custody none of it was done. She thought, 'Fuck it,' and went back to Melbourne.*

<sup>509</sup> Wawal is a pseudonym meaning 'feather ornaments' in Kirrae Wurrung. Tooran is also a pseudonym. It means 'rainbow' in Kirrae Wurrung.



*Wawal had a bunch of diversions and community orders, and was on bail a few times, but never had any real supports. One of the conditions on her orders was not to leave our home town. She didn't have a place to stay here though – she was homeless – so how did they expect her to stay put? She'd take off to Melbourne and Youth Justice would breach her, but they wouldn't help her.*

*I reckon she would have liked an Aboriginal worker or mentor. She really just needed someone she could build a good relationship with. Wawal was let down so many times by people who were meant to help her. Most of them only stuck around for 5 minutes anyway.*

I'm telling this story because Wawal is no longer here. It was after all the let-downs and broken promises.

## Chapter at a glance

- Government agencies often fail to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people involved in the youth justice system. This limits positive outcomes and compounds disadvantage.
- When agencies collaborate and focus on young people's individual needs and strengths, better outcomes are achieved.
- Aboriginal children and young people are able to receive better support and feel more connected to services when they have a trusted, reliable adult in their lives who is able to advocate for their needs. In many cases this will be an Aboriginal worker.
- Koori Youth Justice workers play a central role in supporting Aboriginal children and young people in culturally appropriate ways.
- Meaningful participation by Aboriginal children and young people in the youth justice system is limited. Youth Justice must ensure that Aboriginal children and young people have meaningful input into the decisions that affect them in the youth justice system.
- The youth justice system often fails to adequately respond to the individual needs of Aboriginal girls and young women, children and young people with disability, and LGBTQI+ young people.

### Key data

- Aboriginal children and young people in the youth justice system have multiple and complex needs. Of Aboriginal children and young people under Youth Justice supervision (custody and community) on 31 December 2019:
  - 84% had been a victim of abuse, trauma or neglect as a child
  - 64% had been subject to a child protection order
  - 63% had experienced family violence
  - 66% presented with mental health issues
  - 49% presented with cognitive difficulties or disability impacting on daily functioning.
- In 2019, Aboriginal girls and young women received 48% of all custodial orders received by girls and young women and 19% of all remand orders given to girls and young women.
- The Koori Youth Justice Program exceeded its annual target for the number of Aboriginal children and young people engaged by 133% in 2018–19.



## Current context

Research has consistently shown that Aboriginal children and young people who come into contact with the criminal justice system have a complex array of needs.<sup>510</sup> These arise from a range of circumstances and adverse life experiences, including trauma, disability, mental health concerns, substance misuse, exposure to family violence, housing instability and disrupted education.

In Victoria, there is no single government department or agency that supports Aboriginal children and young people in all of these areas of need. Rather, responsibility for meeting these different needs is spread across various agencies and services. Some of these key agencies are set out in Table 6.1.

**Table 6.1** Principal areas of government and organisations with responsibility for providing services to, and meeting the needs of, Aboriginal children and young people

Agency	Responsibility
Youth Justice Community Services and Youth Justice Custodial Operations, Department of Justice and Community Safety	Youth Justice is responsible for the statutory supervision of children and young people in the youth justice system. It provides programs and resources to assist Aboriginal children and young people to address criminogenic need.  Community Services and Custodial Operations are distinct areas. Community Services is responsible for the supervision of children and young people in the community. Custodial Operations is responsible for the safety of children and young people in custody at Parkville and Malmsbury youth justice centres. Community Services maintains the lead case management role for all children and young people, whether in the community or in custody.
Child Protection Service, Department of Families, Fairness and Housing	The Child Protection Service is responsible for investigating and responding to concerns that a child or young person may be at risk of harm and for providing a range of services to children and young people where harm has been substantiated. These include providing care placements.
Aboriginal community-controlled organisations	Aboriginal community-controlled organisations generally adopt a holistic approach and assist with a wide variety of services, including child, youth and family services and care services such as residential care.
Community service organisations	Community service organisations deliver child, youth and family services, including Child FIRST (child and family information, referral and support teams) and The Orange Door (family violence support services and family services), and out-of-home care services such as residential care. They provide health services, including mental health, drug and alcohol, and medical services. They also provide disability services and support through the National Disability Insurance Scheme.
Department of Education and Training/schools/alternative education programs	The Department of Education and Training, schools and alternative education programs are responsible for the educational and learning needs of Aboriginal children and young people.

<sup>510</sup> AIHW, *Youth justice in Australia 2018–19*, pp 8–12; S Baidawi and R Sheehan, 'Maltreatment and delinquency: examining the contexts of offending amongst child protection-involved children', *British Journal of Social Work*, 2019, 50(7):2191–2211.

Given the complex needs of Aboriginal children and young people and the number of different agencies involved, collaboration between agencies is crucial to providing holistic and effective supports for those children and young people. Conversely, the absence of effective collaboration by relevant agencies and organisations can have a highly detrimental impact on the provision of necessary supports to Aboriginal children and young people, and consequently on their wellbeing.

The prevailing discourse in social and justice policy is that agencies that support Aboriginal children and young people must collaborate to achieve good outcomes. Youth justice reviews in Australia and internationally have identified the need for multi-agency responses to be coordinated and cohesive. In 2017, the Youth Justice Review observed that:

*Youth Justice alone cannot meet the range of needs of young offenders. The wellbeing of children and young people should be a whole-of-government priority. A multi-agency approach is required to address the multiple and complex welfare needs of young people who are in contact with the youth justice system.*<sup>511</sup>

The Youth Justice Strategic Plan recognises the need for close collaboration between Youth Justice and service delivery partners, and coordinated responses to children and young people.<sup>512</sup> Youth Justice program documents (discussed in more detail in Chapter 6.1 ‘Collaboration’) reiterate these principles.<sup>513</sup> Despite such clear statements, there are too many cases in which effective collaboration does not occur, to the detriment of Aboriginal children and young people.

Two of the principles underpinning the Youth Justice Strategic Plan are to ‘build on the strengths of children and young people to support their positive growth and development’, and to ‘deliver individualised services that are cognisant of young people’s age, gender, Aboriginal status, cultural background, family circumstances, health, mental health, disability and

social needs and sexuality and gender identity’.<sup>514</sup> These principles are consistent with the Aboriginal community’s vision for a child-centred youth justice system. However, without effective collaboration between the various agencies that support Aboriginal children and young people, individualised and strengths-based responses cannot be provided.

Individualised responses and positive outcomes are also impeded in a youth justice system in which Aboriginal children and young people do not have a trusting relationship with their Youth Justice case manager, or with another worker responsible for their supervision. It is clear from the Taskforce and this inquiry that Aboriginal children and young people receive better support and feel more connected to services when they have a trusted, reliable adult in their lives who knows them well, understands their needs and is involved in key decision-making regarding their care and support.

While some Youth Justice workers are able to build a relationship of trust with Aboriginal children and young people, as Youth Justice practice guidelines direct them to, a proportion do not. In such cases, it is important to recognise the value of other trusted relationships in the young person’s life. In many cases, an Aboriginal young person’s most trusted relationship will be with a Koori Youth Justice worker or another Aboriginal worker.

The Youth Justice Strategic Plan and Youth Justice program documents also contain clear statements reflecting the value of children and young people’s participation in the youth justice system. As noted above, a child-centred youth justice system is one that prioritises the voice of the child or young person. This means providing regular opportunities for the child or young person to meaningfully participate in meetings and express their views and aspirations regarding their progress and engagement with services and programs while under supervision. It also means ensuring that those views and aspirations are accorded due weight in decision-making. Despite the Victorian youth justice system’s apparent emphasis on youth participation, meaningful participation by Aboriginal children and young people is limited and they often do not feel heard or understood.

<sup>511</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 15. See also C Taylor, *Review of the youth justice system in England and Wales*, Ministry of Justice, United Kingdom, 2016, p 3.

<sup>512</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 36.

<sup>513</sup> Similarly, Child Protection has protocols with other agencies, including Youth Justice, which focus on collaboration and information-sharing: Department of Health and Human Services (DHHS), *Protocols*, Child Protection Manual, DHHS website, 2018, accessed 18 April 2021 (see Chapter 6.1 ‘Collaboration’).

<sup>514</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 14.

This chapter explores the ways in which the youth justice and related systems affect Aboriginal children and young people, and makes recommendations directed at creating a more child-centred system. It is divided into 4 parts:

- 6.1 'Collaboration' examines inter-agency collaboration.
- 6.2 'Relationships with workers' considers the nature of the relationships that Aboriginal children and young people in the youth justice system have with their workers.
- 6.3 'Participation in the youth justice system' examines Aboriginal children and young people's participation in the youth justice system.
- 6.4 'Responding to individual needs' explores the responsiveness of the youth justice system to the needs of Aboriginal girls and young women, children and young people with a disability and LGBTQI+ children and young people.

# 6.1 Collaboration

## Finding 6

Government agencies often fail to act in a collaborative, coordinated and integrated way to provide support to Aboriginal children and young people involved in the youth justice system. This limits positive outcomes and compounds disadvantage.

## Finding 7

When agencies collaborate and focus on young people's individual needs and strengths, better outcomes are achieved.

*Why not just talk to [young people] and ask them why they're doing what they're doing? Most people have a reason – they don't just go muck around for fun. Try and help them get better. Help them help themselves get better. – Peyton, 16*

As noted above, Aboriginal children and young people in the youth justice system have multiple, complex needs. The 2019 annual survey of young people involved with Youth Justice indicates that, among Aboriginal children and young people under Youth Justice supervision (custody and community, including bail) on 31 December 2019:

- 84% had been a victim of abuse, trauma or neglect as a child
- 64% had been subject to a child protection order

- 63% had experienced family violence
- 66% presented with mental health issues
- 49% presented with cognitive difficulties or disability impacting on daily functioning
- 94% had a history of alcohol and/or drug misuse
- 78% had a highest completed level of education of Year 9 or less
- 65% had been suspended or expelled from school.<sup>515</sup>

These figures are broadly consistent with the findings from the Taskforce case file review. In addition, 38% of the young people for whom a Taskforce case planning session was held did not complete any years of secondary school.

To effectively meet the needs of Aboriginal children and young people, the multiple systems and services that support them must be coordinated and cohesive, and have a united purpose. This should be made clear in departmental policies on inter-agency collaboration. These are discussed in the following section.

## Departmental policies on collaboration

The principle of cross-agency collaboration is clearly articulated throughout Victorian Government program documents and policies. According to the Youth Justice Strategic Plan:

*Children and young people in Youth Justice often present with complex needs, have been exposed to trauma and family violence, and frequently experience inequality and disadvantage across one or more social and economic indicators. This underscores the need for close collaboration with service delivery partners and a coordinated, multiagency and multisystem service response to reduce reoffending. These collaborative efforts require effective information sharing, multiagency case management*

<sup>515</sup> DJCS, *Young people involved with Youth Justice in 2019*.

*practices and clear roles, responsibilities and accountability for agreed actions for each and every child and young person in Youth Justice.*<sup>516</sup>

The importance of collaboration is also reflected in Youth Justice policy and practice documents. For example, the Youth Justice Case Management Evidence Base states that ‘strong, local collaborative practices are paramount to succeeding in working with young people’<sup>517</sup> and the Youth Justice Case Management Framework identifies collaboration with service partners as one of its 6 case management principles.<sup>518</sup> The Case Management Framework also includes an explicit recognition of the fact that, ‘[d]ue to the complexity and range of issues many young people in contact with YJ present with, their needs often cannot be met adequately by one professional’.<sup>519</sup>

Detail on how collaboration is to be achieved is provided in various Youth Justice practice guidelines, most notably the *Care teams* guideline.<sup>520</sup> According to this guideline, a care team is ‘a group of professionals working together... to manage a young person subject to a statutory order imposed by a court’. The guideline emphasises collaboration and coordination, and states that, while the Youth Justice case manager’s focus is the young person’s criminogenic risks and needs, the care team ‘as a whole’ should be encouraged to take responsibility for non-criminogenic needs, such as mental health, intellectual disability, employment support and housing.<sup>521</sup>

Importantly, the case manager ‘should ensure that all services and supports actively participate and share contemporary and relevant information with each other about their involvement with the young person and the family’.<sup>522</sup> Strong professional relationships outside care team meetings are also encouraged.

<sup>516</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 36.

<sup>517</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 47.

<sup>518</sup> ‘Case management is most effective if it strives to work collaboratively with young people, their social systems and YJ partners. Proactive collaboration ensures that information sharing is timely, targeted and leads to holistic care. Effective collaboration engages multiple partners and there is a clear understanding of roles, responsibilities and actions.’: DJCS, *Youth Justice Case Management Framework*, p 10.

<sup>519</sup> DJCS, *Youth Justice Case Management Framework*, p 28.

<sup>520</sup> See also *Working with housing services, Community case review, Custodial intake, Custodial intervention and Custodial case review practice guidelines*.

<sup>521</sup> Department of Justice and Community Safety (DJCS), *Care teams: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 5.

<sup>522</sup> DJCS, *Care teams*, p 5.

For children and young people who are also involved with Child Protection, the *Protocol between child protection and youth justice* outlines general principles for how those agencies must work together in respect of ‘joint clients’.<sup>523</sup> This protocol is outdated, given the transfer of responsibility for Youth Justice from DHHS to DJCS in 2017, and is currently under review following the Youth Justice Review’s recommendation to examine its suitability.<sup>524</sup> Nevertheless, the 2016 protocol is clear in its emphasis on collaboration:

*The protocol encourages collaboration between department staff involved in a client’s life to ensure a holistic focus on client and family needs and enable joint decision-making, reduce duplication of effort, and promote service coordination. These elements contribute to positive outcomes.*<sup>525</sup>

Child Protection has several joint protocols with other agencies and departments that cover (among other matters) housing, education and mental health. Each protocol promotes the notion that collaboration is imperative to appropriately support children and young people.

Despite these numerous statements clearly emphasising cross-agency collaboration, the Commission observed through the Taskforce that, in an alarming number of cases, agencies failed to collaborate effectively. As a consequence, the needs of Aboriginal children and young people in many cases went unaddressed. The Commission also observed that, over time, repeated failures to collaborate tended to compound the disadvantage experienced by Aboriginal children and young people. These failures were also reflected in the experiences of the children and young people whom the Commission consulted as part of the inquiry.

<sup>523</sup> Department of Health and Human Services (DHHS), *Protocol between child protection and youth justice* [PDF], DHHS, Victorian Government, 2016, accessed 27 August 2020.

<sup>524</sup> Recommendation 6.11: ‘The existing Protocol between Child Protection and Youth Justice should be examined for its suitability as an instrument to guide operations across the two departments to ensure young offenders who are simultaneously subject to orders by both Child Protection and Youth Justice receive coordinated care.’: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 42. DHHS (now DFFH) advised the Commission that the protocol is being updated (see also Chapter 8.2 ‘The responsibilities of Child Protection’).

<sup>525</sup> DHHS, *Protocol between child protection and youth justice*, p 1.

## Young people's experiences

*I just wish the community worked better together. I feel like I have to chase it if I want help with mental health or getting out of trouble.*  
– Chelsea, 16

Forty-five young people told the Commission about their experience of gaps in services and system failures, including a lack of planning by, and continuity of, services.

*They closed my case without warning – no referrals or nothing and we still needed help.<sup>526</sup> I was living in crisis accommodation and homeless.* – Bailey, 18

*The system that some of us are in – when we get out, we fail.* – Watjpa, 21

Eight young people spoke specifically about the lack of support they or their family experienced while they were transitioning into and out of custody and out-of-home care (see also Chapter 8.1 'Child Protection involvement', Chapter 8.2 'The responsibilities of Child Protection' and Chapter 13.3 'Leaving custody').

*I was released straight out the front. I signed papers... I got dropped off [by another worker] then went straight out and did what I did before.*  
– Aiden, 17

*My parole date keeps getting pushed back because there are no supports. I gave up on the thought of being happy when I got out [of custody]. They don't have a time for me. I want to stay for another couple of days until supports are in place.* – Pearl, 19

*I got put back into resi care and [my school] and ACCO helped me at the time. I needed more support though, with my anger and anxiety and shit.* – Vincent, 17

Twenty-eight young people spoke about the need for individualised and holistic support. They told the Commission about instances where this was not provided, and the ways in which this contributed to their needs not being met. They spoke about missed opportunities to intervene.

*You need to be treated like an individual case, instead [the system] treats everyone the same. Instead of being treated like a criminal, you could be treated like a person who has done the wrong thing.* – Hayleigh, 21

*It's about opportunities. If you reach out for help, there's no help until you get in trouble.*  
– Kirrae, 22

*There should be proper support around it so you're not setting that kid up for failure... They don't listen to your needs, Child Protection workers. They think they know what's best for you. They don't look at the full picture.*  
– Summer, 18

## Lack of collaboration

The Commission observed throughout the Taskforce that, despite good intentions on the part of most workers and agencies, frequent failures to collaborate resulted in many Aboriginal children and young people not receiving the support they needed. The Taskforce case planning sessions revealed that systems lacked coordination and integration, and services worked in silos.

The lack of coordination between Youth Justice, Child Protection and DET was apparent in various ways. In some cases, representatives working with the same young person met for the very first time at the Taskforce case planning session. In other cases, agencies only became aware of the involvement of other agencies at the Taskforce case planning session.

<sup>526</sup> Child Protection intervention ceases and case closure occurs when a young person reaches the age of 18 years.

Large care teams were often common for children and young people within the scope of the Taskforce who had particularly complex needs; however, this did not necessarily improve outcomes for the young person. Young people often told the Commission that they didn't know who their workers were or what was happening in their case.<sup>527</sup> For some children and young people, there were more than 20 participants at a Taskforce case planning session, yet often these large care teams could not overcome the challenge of working within their own 'siloes' frameworks and accountabilities. It was evident that, in some cases, agencies had not developed shared objectives for the young person, as in the case of Percy.

The Commission observed other examples at Taskforce case planning sessions where agencies and services:

- applied their policies rigidly, rendering them unable or unwilling to meet a young person's needs (see further discussion below under 'Failures in planning')
- argued over payment for essential assessments or services
- sought to shift responsibility for supporting children and young people to other agencies
- were willing to end a discussion with no real solution for the child or young person.

The fact that different agencies have separate, though often overlapping, responsibility for aspects of the care of Aboriginal children and young people is a significant barrier to an integrated and strong network of service provision.

Actions concerning collaboration between services were developed for 37 of the 69 Aboriginal children and young people for whom Taskforce case planning sessions were held. These actions included:

- drafting a case plan with the involvement of the young person and their family, and including all relevant services
- forming a care team including all relevant services and convening a meeting of the care team as a matter of urgency
- convening a care team to draft a detailed holistic case plan for the young person, addressing health,

<sup>527</sup> This was also the case in the Commission's inquiry into out-of-home care in Victoria – see Commission for Children and Young People, *In our own words*, p 253.

## Percy

Percy is a young man with complex needs who had been cycling between residential care, remand and secure welfare. Youth Justice, Child Protection and mental health and disability services failed to work together to identify a suitable, therapeutic placement for Percy. It was apparent that Youth Justice and Child Protection had different views on the appropriateness of remand for him. Youth Justice viewed custody as an option of last resort and identified a pressing need to develop a bail plan to return Percy to the community as soon as possible. In contrast, Child Protection took the view that custody was relatively appropriate, and did not act with urgency to identify a feasible alternative therapeutic placement. Youth Justice convened regular care team meetings about Percy, but Child Protection often did not attend, instead holding separate meetings. Youth Justice was often unaware of Child Protection's decisions regarding Percy.

During a further period on remand, Youth Justice Custodial Services organised a forensic psychological assessment to assist them to manage Percy's behaviour in custody. This assessment led to a comprehensive and culturally appropriate plan to address Percy's needs. It also created a pathway out of custody for him. It should not have been necessary to place Percy in custody for this assessment and planning to occur.

## 6.1 Collaboration

Centrelink, tenancy and family services, and including a cognitive assessment

- convening a student support group meeting as a matter of urgency to consider an individual learning plan
- undertaking a services review, and considering whether Aboriginal or mainstream services suit the young person's needs best
- coordinating a comprehensive leaving care plan to meet the young person's future needs, including assessing the National Disability Insurance Scheme (NDIS) plan for compatibility and including a cultural connection
- arranging a meeting between services to formulate an education plan, including transport support
- ensuring that there is a plan to transition the young person from a custodial health service to a community health service.

Of all case planning actions, 9% related to collaboration of services and information-sharing.<sup>528</sup> Of those actions, 38% were still incomplete in June 2020. It is concerning that such actions were not occurring prior to and outside the Taskforce process.

According to Dardi Munwurro, an Aboriginal youth service:<sup>529</sup>

*The system puts barriers up for kids who are really trying. For example, one of our young people was supposed to get diversion for a police matter. He was doing our youth program for 6 months voluntarily. He was enrolled in a course with supported accommodation, and the police matter showed up on his police check as a pending charge. The police were dragging their feet, and he nearly withdrew from his course because he was so anxious [about the police matter], and then nearly got kicked out of his accommodation because he wasn't enrolled anymore.*

Participants at the Taskforce regional forums identified a lack of inter-agency collaboration for Aboriginal children and young people in the youth justice system. They emphasised the importance of such collaboration, particularly as a way of ensuring the continuity and

<sup>528</sup> This calculation does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>529</sup> Dardi Munwurro is also an Aboriginal Youth Support Service provider (see Chapter 10.1 'Engagement in education').

longevity of services for Aboriginal children and young people beyond their involvement with Youth Justice. Participants at the Southern Metropolitan regional forum indicated that in their case planning sessions they saw evidence of multiple referrals being made, but no follow-up to determine whether these had been successful. Shepparton noted that referral pathways are often very complex to navigate.

At the Shepparton forum, the view was also expressed that agencies tend to wait until things get to crisis point before stepping in and providing support. Participants at the Southern Metropolitan and Western Metropolitan forums indicated that young people with complex needs are often deemed too difficult for agencies to deal with, and fall through gaps in service delivery. These young people are discussed in more detail in the following section.

### **Failure to support young people in the youth justice and child protection systems**

Throughout the Taskforce, the Commission observed that the wellbeing of children and young people with long histories with Child Protection and/or Youth Justice had often been harmed as a result of multiple system failures and missed opportunities for intervention over many years – in some instances long before children were at the age of criminal responsibility. We saw, in particular, missed opportunities to address trauma and welfare concerns.

The Taskforce revealed cases where children and young people who had been the victims of sexual offending or extreme family violence in their early years, later became involved in offending behaviour due to mental ill-health and substance use connected to unaddressed childhood trauma. In some of these cases, referrals to support services had been made, but there was little or no follow through. In Taskforce case planning sessions, these young people were often spoken about solely in terms of their current offending behaviour, with no acknowledgment of service failures that had resulted in the young person not receiving the support they needed in early childhood. The Commission saw similar patterns for children who had presented with behavioural issues at school, and who were then excluded from education and not offered support.

These issues were also identified at the Taskforce regional forums. Participants at the Western



Metropolitan forum referred to the intersection between offending and grief, trauma, mental health and substance use, and to the problems of not addressing these issues holistically. They commented that highly traumatised children and young people often receive cumulatively harmful responses from multiple agencies, for example, removal from family, removal from Country, exclusion from school, and placement on child protection and youth justice orders. This region reflected on the lack of therapeutic responses for such young people.

These observations are consistent with research on 'crossover children', which indicates that children and young people with both Child Protection and Youth Justice involvement are 'overwhelmingly impacted by cumulative harm across their lives' and experience the compounded effects of trauma, mental health challenges, disability, and emotional and behavioural regulation difficulties that begin in early childhood.<sup>530</sup> This research is discussed further in Chapter 8.1 'Child Protection involvement'.

In its second report on crossover children, *Crossover kids: vulnerable children in the youth justice system*, the Sentencing Advisory Council found that the overwhelming majority of crossover children in its study group were known to Child Protection before their first sentenced or diverted offence, indicating that there had been 'early opportunities for concerted and coordinated action across service systems before the child started offending'.<sup>531</sup>

It also identified that many crossover children who have been found guilty of offences against the person are themselves victims of violent crimes, a complexity not easily navigated or consistently recognised by the many service systems that they encounter.<sup>532</sup>

<sup>530</sup> S Baidawi and R Sheehan, *Cross-over kids: effective responses to children and young people in the youth justice and statutory child protection systems*, Report to the Criminology Research Advisory Council, Australian Institute of Criminology, Canberra, 2019, pp 8, 12. See also the Edinburgh Study of Youth Transitions and Crime, which highlights that young people involved in persistent and serious offending are more likely to have been victimised and subjected to social adversity: L McAra and S McVie, 'Youth crime and justice: key messages from the Edinburgh study of youth transitions and crime', *Criminology and Criminal Justice*, 2010, 10(2):179–209.

<sup>531</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 25.

<sup>532</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 76.

During the Taskforce process, it was difficult to formulate an effective plan for these children and young people in case planning sessions without exploring broader contextual and environmental factors. Such factors often required the commitment of multiple services for long-term planning and collaboration, past the 8-week review period. This was often out of reach of the Taskforce process. (Youth Justice has indicated that it will continue to work on actions from the case planning process; however, there is no specific external monitoring role in relation to this work.<sup>533</sup>)

Aboriginal children and young people with long child protection and youth justice histories are often particularly vulnerable to inter-agency failures in planning. These are discussed in the following section.

## Failures in planning

Throughout the Taskforce case planning sessions, the Commission observed cases where agencies struggled to plan ahead appropriately for young people, or to respond sufficiently quickly to changing circumstances, often to the detriment of the young person. This included cases where agencies were attempting to improve arrest protocols for children and young people who frequently came into contact with police, or to jointly plan a young person's release from custody.

The Commission also observed cases where Youth Justice was unable to secure the assistance of Child Protection in identifying a suitable bail or parole plan (see also Chapter 8.2 'The responsibilities of Child Protection'). This resulted in children and young people being placed in vulnerable situations, such as being accommodated in a motel or another unsupported placement. It also led to children and young people spending more time in custody than necessary. Lack of throughcare planning was something young people told the Commission they struggled with. This is examined further in Chapter 13.3 'Leaving custody'.

The Commission also observed a tendency on the part of agencies to cease focusing on children and young people while they were in custody. For example, Child Protection and DET both failed to progress Taskforce actions for some children and young people who were in custody. Similarly, Youth Justice Community Services on occasion failed to appropriately plan for the release

<sup>533</sup> As noted in Chapter 1 'About this report', DJCS advised the Commission that the Director, Aboriginal Youth Justice monitors the progress of remaining actions from Taskforce case planning sessions as part of her role.

## 6.1 Collaboration

of children and young people from custody, particularly those in the out-of-home care system.

### Failure to share relevant information

As noted above, inter-agency information-sharing is a key element of effective collaboration in the youth justice system. However, the Commission observed in many Taskforce cases that important information about Aboriginal children and young people was not shared between Youth Justice, Child Protection and DET.

Examples observed by the Commission in the case planning sessions included:

- a failure to share educational and psychological assessments (relevant to informing interventions for the young person) within care teams
- confusion among care teams as to the nature of a child or young person's disability, and the progress of relevant assessments, leading to confusion about access to the NDIS and the supports available to the child or young person
- a lack of coordination in relation to a young person who was a victim of sexual assault, and confusion as to whether appropriate responses had been provided by Child Protection and Victoria Police.

Actions related to the sharing of reports were identified for 13 out of the 69 Aboriginal children and young people for whom case planning sessions were held.<sup>534</sup> These cases indicate to varying degrees that there are obvious areas where services could improve their care of, and support for, Aboriginal children and young people by placing greater emphasis on sharing important information about them. They also indicate a need to clarify roles and responsibilities to ensure the coordination of appropriate services and interventions.

### Information management as a barrier to information-sharing

A barrier to effective inter-agency information-sharing is the absence of effective internal information management systems within individual agencies. Prior to each Taskforce case planning session, the Commission reviewed material provided by departments on the child or young person. In just under half of cases (30 of 69 children and young people for whom sessions were held), there were

significant gaps in the information held by departments concerning the child or young person. Examples are set out below.

- For some children and young people who had also been part of Taskforce 1000, Child Protection was unable to locate any Taskforce 1000 documents or provide updates on Taskforce 1000 actions. In some cases, Child Protection was unable to indicate whether a young person had in fact been part of Taskforce 1000.
- In some cases, Child Protection was unable to indicate how much funding children and young people had on their targeted care packages, and how funds had been spent.
- In some cases, Child Protection and DET staff were unable to provide information about interventions following forensic or psychological assessments being undertaken on children and young people.
- In one case, Child Protection did not know whether the parent of a young person in its care was alive.
- In one case, the Aboriginality of a young person was recorded with one school in the area and not with another, leading to the young person not having access to Aboriginal educational supports.

In some cases, most of the case planning session was spent working out basic details about the child or young person and their situation. Remarkably, the Commission observed that the more entrenched children and young people were in the youth justice and child protection systems, the more difficult it was to obtain accurate and specific details about their circumstances, and to identify which agencies, services and supports were engaged with them, and how those organisations were working to assist the child or young person.

In addition, Child Protection staff frequently stated in case planning sessions that they were not aware of particular details of a child's background or service history because colleagues (who had moved on or were not at the session) had managed the child previously. Some Youth Justice staff made similar statements. There appeared to be a reliance on workers' personal knowledge of children and young people, verbal handovers and informal information transfer. This suggests that Youth Justice and Child Protection have inadequate systems and processes to

<sup>534</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

allow important information about children and young people to be easily shared internally among staff.<sup>535</sup>

The results of the Taskforce case file review indicate similar concerns. This process consisted of a desktop survey sent to Youth Justice, Child Protection, Education, Justice Health and Victoria Police, to be completed by those agencies in order to inform the Taskforce about Aboriginal children and young people in the youth justice system (see Chapter 1 'About this report' for details). This survey was poorly completed by some agencies. Information was often missing, internally inconsistent or contradictory. In some cases, entire sections of the survey were left blank. Information about some aspects of the child or young person was particularly problematic, including information about disability, Child Protection involvement, custodial history, the young person's highest level of education, whether a young person was living in a residential unit or with family, and whether a young person's bail had been revoked.

Many questions were answered with 'unable to ascertain from CRIS' (the Client Relationship Information System). CRIS is a cumbersome system from which it can be time-consuming to extract a complete picture of a child or young person's history. It is also important to acknowledge the design limitations of the survey (for example, its considerable length). However, these factors cannot fully explain the poor completion rates, which prevented the Taskforce properly informing itself about Aboriginal children and young people in the youth justice system.

Having accurate, current and detailed information about Aboriginal children and young people in the youth justice system is essential to providing them with individualised and effective support. It is incumbent on departmental agencies to support their workers to have access to key information about the children and young people under their care. This may mean ensuring that caseloads do not prevent workers from engaging with the detail on files, clarifying what is expected of workers, or improving information management systems to allow workers to easily input and extract information about children and young people.<sup>536</sup>

<sup>535</sup> In response to this, DFFH stated that Child Protection has adequate systems and processes in place to record information on the child's file through the Client Relationship Information System.

<sup>536</sup> The broader impact of inadequate information management concerning Aboriginal children and young people in the youth justice system is that wider reporting and analysis

## Information-sharing between Youth Justice and Child Protection

Given that so many Aboriginal children and young people are involved with both Child Protection and Youth Justice, a strong collaborative relationship, with effective inter-agency information-sharing, is critical. The 2016 protocol addresses the ways in which Child Protection and Youth Justice are to deal with children and young people under the care of both agencies. It refers to workers sharing information, communicating effectively and resolving disputes quickly. As noted above, the 2016 protocol has not yet been updated to reflect the 2017 transfer of responsibility for Youth Justice from DHHS to DJCS.

The Youth Justice Review identified poor service coordination and communication between Youth Justice and Child Protection<sup>537</sup> and recommended the establishment of an information-sharing protocol between DHHS and DJCS,<sup>538</sup> including a 'positive presumption' whereby:

*key information is shared in a manner that allows both services to acquit their duty of care, with a lead worker role agreed between the two services on a case-by-case basis. This must also include the funded out-of-home care provider where applicable.*<sup>539</sup>

However, the Youth Justice Review also noted that 'the existence of a protocol alone does not ensure collaborative practice'.<sup>540</sup>

We did not observe consistent, effective information-sharing between Youth Justice and Child Protection during the Taskforce case planning sessions. The 2017 machinery of government changes may have made information-sharing between the 2 agencies more challenging. However, it is clear from the findings of the

of systems data, trends and outcomes is limited. This is explored in Chapter 4.2 'Data on Aboriginal children and young people in the youth justice system'.

<sup>537</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 40.

<sup>538</sup> Recommendation 6.11: 'To facilitate improved information sharing between Child Protection and Youth Justice, DHHS and DOJR must establish an information-sharing protocol that takes account of the Victorian Protective Data Security Standards 2016.': Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 42.

<sup>539</sup> Recommendation 6.11, Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 42.

<sup>540</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 41.

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Youth Justice Review that coordination problems predated these changes.<sup>541</sup>

### Child Information Sharing Scheme, Child Link and MARAM

In 2018, the Child Information Sharing Scheme was introduced in Victoria. This scheme is intended to promote early identification and intervention for at-risk children and their families, and to encourage a cohesive and integrated service response. The scheme includes a legislative framework in the *Child Wellbeing and Safety Act 2005* (Vic) to enable specified agencies to share confidential information ‘in a timely and effective manner in order to promote the wellbeing and safety of children’, if certain thresholds are met. The information-sharing principles require responsible agencies to give precedence to children’s safety and wellbeing, work collaboratively, and support family relationships.<sup>542</sup> Youth Justice, Child Protection and most ACCOs are part of the scheme. Schools and a range of other universal services became part of the scheme on 19 April 2021.<sup>543</sup>

A key component of the scheme is the Child Link database, which will contain key information about children and families and their involvement with services. Authorised professionals will have access to Child Link. Child Link will become operational by December 2021.<sup>544</sup>

Victoria also has a Family Violence Information Sharing Scheme, introduced following the Victorian Royal Commission into Family Violence, as part of the Multi-Agency Risk Assessment and Management Framework (MARAM). MARAM sets out the responsibilities of different workforces in identifying, assessing and managing family violence risk. The Family Violence Information Sharing Scheme enables authorised organisations and services, including Youth

Justice, Child Protection and schools, to share information about family violence risk.<sup>545</sup>

The Victorian legislative framework for information-sharing gives agencies sufficient latitude to share essential information to improve the quality of services for Aboriginal children and young people involved in the youth justice system. There does not, however, appear to be a culture in Youth Justice, Child Protection or DET of sharing information about Aboriginal children and young people between agencies.<sup>546</sup> This would appear to be symptomatic of the broader issue, identified above, of a failure to collaborate.

Despite the various failures of collaboration, planning and information-sharing described above, there were instances in the Taskforce where agencies managed to collaborate and achieve positive outcomes for children and young people. These are discussed in the following section.

### Examples of effective collaboration

*We are restrained by a broken system. We have to find the way to navigate through [all the different] roles. We need to be bold, coordinate [and] work through the hard stuff. – Barwon South West (Geelong) regional forum*

*As long as everyone does their bit, we can create a safety net between all agencies to catch the young person when they fall. – Eastern Metropolitan regional forum*

<sup>541</sup> We also did not observe the existing protocol being applied more broadly. For example, we did not see any evidence of care teams making decisions about who would be the lead case manager for children and young people involved with both agencies, as directed by the protocol (DHHS, *Protocol between child protection and youth justice*, p 3). These issues are discussed further in Chapter 8.2 ‘The responsibilities of Child Protection’.

<sup>542</sup> Child Wellbeing and Safety Act, s 41U.

<sup>543</sup> Department of Education and Training (DET), *Child and Family Violence Information Sharing Schemes*, DET website, 2021, accessed 20 April 2021.

<sup>544</sup> Victorian Government, *Child Link*, Victorian Government website, 2020, accessed 18 February 2021.

<sup>545</sup> As noted in Chapter 3 ‘Overview of the Victorian youth justice system’ (see Figure 3.4), *Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families* is the key Aboriginal-led agreement that commits the Victorian Government, Aboriginal communities and Aboriginal services to work together and be accountable for ensuring that Aboriginal people, families and communities are strong, safe, thriving and living free from family violence: Dhelk Dja Partnership Forum, Department of Health and Human Services (DHHS), *Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families*, Victorian Government, 2018, accessed 20 April 2021.

<sup>546</sup> Although, during regional visits conducted through the Taskforce and inquiry, the Commission did observe some isolated examples of effective information-sharing where agencies were co-located.

Participants at Taskforce regional forums across Victoria overwhelmingly expressed the view that collaborative, individualised and holistic responses to Aboriginal children and young people are critical.<sup>547</sup> They also indicated that care teams should focus on the young person's strengths, aspirations and goals, and not simply on assisting the young person to meet conditions and complete orders. They should be led by the agency with the most relevant practice area to the young person's primary needs.

Participants at regional forums also expressed the view that flexibility and tailoring responses to a young person's individual needs are important. They felt that trying to fit children and young people into organisational and governmental 'check boxes' does not work. Similarly, when systems dictate goals and outcomes for young people, interventions are often not successful.

Aboriginal organisations with which the Commission consulted made similar points, emphasising the importance of taking the time to get to know each young person and understand their individual goals and needs, build trust and provide support that is embedded in culture. They also referred to the importance of flexibility in working with Aboriginal children and young people.

*Our service is tailored to each young person – it's flexible. We are really flexible with hours and work whenever the kids need us to. We work extended hours – 10 am to 6 pm and every second Saturday – so we can support the kids when other services can't. We have programs every single day and the kids can come when they need. – Dardi Munwurro*

*We use our brokerage to get the kids anything they need – food for court, exercise equipment, anything they need to keep them at home and in a good spot. We will hang on to young people until we feel they are no longer at risk. Our workers are able to do things a bit differently, working with what our young people need, for example, facilitating access appointments with the young person's child... We go above and beyond if we can – we care for community and they are our kids and we don't want to see them suffer. You really want to work with young Aboriginal people. There's a lot of negativity about our mob but we feel we can get the best out of our mob. – BWAYS*

Aboriginal organisations also referred to the importance of collaboration between services.

*We do above and beyond what we are asked to do, but we do it because these young men need it. Breaking down silos and having better networks between 2 organisations [means] better outcomes for clients. – Dardi Munwurro*

BWAYS referred to the close working relationship it had with the Youth Justice office in the Northern Metropolitan region, which enabled the 2 organisations to work collaboratively and provide better support for children and young people overall.

The Taskforce case planning sessions also provided examples of the potential for positive outcomes when agencies collaborated and focused on the individual needs of the young person, as illustrated in Mark's case.

<sup>547</sup> This is broadly consistent with an approach known as 'collective impact' – 'a collaborative approach to addressing complex social issues, consisting of five conditions: a common agenda; continuous communication; mutually reinforcing activities; backbone support; and shared measurement.'; J Smart, *Collective impact: evidence and implications for practice*, CFA paper no. 45, Australian Institute of Family Studies, Australian Government, 2017, accessed 25 August 2020, p 1.

## Mark

In one region, the Taskforce heard about Mark, a young person who was missing at the time of his case planning session, and in breach of a supervised order and bail. At the start of the session, there was an active warrant out for Mark’s arrest, and Victoria Police indicated that it would seek for Mark to be remanded when he was found. Youth Justice also indicated that it would not support bail. Mark was in out-of-home care and usually lived in a residential unit.

During the case planning session, Youth Justice, Child Protection and Victoria Police came together to formulate a bail plan to keep Mark in the community. These agencies also devised a longer-term plan to get Mark into Bunjilwarra, a residential healing centre. These 2 actions were reflected in Mark’s case plan. Mark was found shortly after the case planning session, and was not remanded. At the 8-week review of actions from this session, most of Mark’s case plan actions had been completed and he had commenced the engagement process with Bunjilwarra. Mark’s engagement with Bunjilwarra was variable, but the care team continued to support his attendance there as well as at other drug, alcohol and mental health services.

Stakeholders expressed the view that in this case it was powerful to hear police express the same objectives as Mark’s support services, namely that those supporting Mark must use their best endeavours to keep him out of custody.

The Commission observed other examples of novel, multi-agency collaboration. In one case, a young person’s parent had a substantial housing debt waived, enabling her to provide stable accommodation for her child. In this case, and others, the presence of senior departmental executives at case planning sessions appears to have been instrumental in achieving positive outcomes. While such interventions were extremely

welcome, effective inter-agency collaboration should not rely on the intervention of senior executives.

Though relatively rare, these Taskforce examples of collaboration were encouraging, as they demonstrated the capacity of agencies to work together to improve outcomes for Aboriginal children and young people.

### Victoria’s Common clients reform

In Victoria, the government has acknowledged that the demand for justice and social services has risen significantly in recent years and demands a different way of providing services. It is therefore initiating change through the *Common clients reform*.<sup>548</sup> This project aims to improve outcomes for people who use justice, health and social services, and to reduce their contact with the justice system through an integrated, client-centred approach that focuses on meeting ‘whole of life’ needs.<sup>549</sup> It has been informed by consultation with DFFH and DJCS staff and service providers, who identified several barriers to providing improved outcomes for clients, including information-sharing challenges, ‘siloes’ approaches to funding, IT issues and a lack of shared accountability. These are all issues encountered by the Commission during the Taskforce.

Initially the reform focused on 4 priority groups who access services across multiple systems due to the complexity of their needs. These groups have since been broadened to include other groups experiencing vulnerability, such as people experiencing homelessness and housing stress, financial instability, family violence, mental ill-health and other complex needs that can lead to poor outcomes and drive engagement with acute services. Four demonstration sites were initially established to progress the reform. These are now being expanded statewide. Practical changes being progressed to enable more effective cross-portfolio ways of working include the shared use of data, joint client outcomes, information-sharing and the development of common workforce practices.<sup>550</sup>

<sup>548</sup> Victorian Government, *Justice and social services (common clients) reform*, Presentation to Aboriginal Justice Forum, 21 February 2020.

<sup>549</sup> Victorian Government, *Justice and social services (common clients) reform*.

<sup>550</sup> Information provided to the Commission by DJCS on 10 April 2021.

The Commission supports the aims of this project, and our recommendations in this part of the report are consistent with those aims.

## Collaborative and holistic responses in other jurisdictions

Inter-agency collaboration is the hallmark of various youth justice systems around the world. Jurisdictions such as New Zealand and Scotland offer examples of how youth justice systems can be based on a foundation of holistic and child-centred care.<sup>551</sup> In both jurisdictions, the youth justice system is underpinned by a framework that promotes the shared responsibility of the wellbeing and development of children and young people across all relevant agencies. In the absence of a broad framework of shared responsibility, there are also jurisdictions that provide examples of collaborative youth justice practice.<sup>552</sup>

### New Zealand

In 1989, prompted by the disproportionate representation of Māori children and young people in out-of-home care and youth justice, New Zealand passed the *Children, Young People and their Families Act 1989* (renamed the Oranga Tamariki Act in 2017). This legislation introduced a new model of youth justice based on the principles of diversion, community- and family-based decision-making, cultural flexibility and collaborative practice.<sup>553</sup> Collaboration in the New Zealand youth justice system is embedded in a number

of strategies and programs, 2 of which are discussed briefly below.<sup>554</sup>

Youth Offending Teams, developed in 2002, bring together representatives from Police, Oranga Tamariki (the Ministry for Children), the Ministry of Health, the Ministry of Education and community organisations on a local basis to identify and share information about risk factors for youth in each community, and work together to address those risk factors.<sup>555</sup> Youth Offending Teams also often include members of local councils, non-government organisations, *iwi* (tribe) and *hapū* (clan or descent group), and schools.<sup>556</sup> These teams have been effective in improving outcomes for at-risk youth when members have good relationships with each other and with broader community organisations and leaders.<sup>557</sup>

The *Youth Crime Action Plan 2013–2023* was developed by Oranga Tamariki, Corrections, the Ministries of Education, Health, Justice and Social Development, Te Puni Kōkiri (the Ministry of Māori Development) and Police. This plan commits partner agencies to a new, more collaborative governance structure led by a committee with representatives from each partner agency, and to exploring opportunities for better training (especially in cultural safety and awareness), integration of service workforces, and information-sharing between partner agencies.<sup>558</sup>

One of the strengths of the New Zealand model is the shared departmental responsibility for the wellbeing

<sup>551</sup> Denmark, Sweden, Norway, Finland and Iceland also base their youth justice systems on cross-agency collaboration and holistic care. For example, Denmark uses the ‘SSP’ (schools, social services and police) framework, which formalises a cooperative working relationship between schools, social services, police and other partner agencies working with children and young people, to develop local responses to youth offending. Individual interventions for children and young people involve a plan that maps out how agencies will meet the needs of the child or young person, which typically fall across the domains of education, welfare, health and risk. Regular meetings monitor individual interventions and information about the child or young person is shared readily between partner agencies: J Pedersen and B Stothard, ‘The Danish SSP model: prevention through support and cooperation’, *Drugs and Alcohol Today*, 2015, 15(4):231–242.

<sup>552</sup> See for example, Wayne County, Michigan: Wayne County Children & Family Services, *Juvenile services reform in Wayne County, Michigan* [PDF], Wayne County Children & Family Services, 2009, accessed 18 August 2020.

<sup>553</sup> Ministry of Justice, *Youth justice*, Youth Court of New Zealand website, 2019, accessed 22 November 2019.

<sup>554</sup> In addition, the 2019 *Prime Minister’s strategy for child and youth wellbeing* provides a new mandate and funding for government agency collaboration and a focus on all aspects of young people’s wellbeing, including within the youth justice system: Department of Prime Minister and Cabinet (DPMC), *Child and youth wellbeing strategy*, DPMC, New Zealand Government, 2019, accessed 17 August 2020. Twenty government agencies are required to collaborate to deliver 75 primary and 49 supporting actions, backed by \$3.5 billion in funding under the 2019 Budget: Department of Prime Minister and Cabinet, *Current programme of action*, Child and Youth Wellbeing website, 2019, accessed 17 August 2020. The strategy provides a mandate from the highest level of government for Oranga Tamariki to work with other relevant agencies in improving outcomes for Māori young people, including in the youth justice sector.

<sup>555</sup> Ministry of Justice, *Youth offending teams guide: youth crime action plan 2013–2023* [PDF], Ministry of Justice, New Zealand Government, 2014, accessed 20 November 2019.

<sup>556</sup> Ministry of Justice, *Youth offending teams guide*.

<sup>557</sup> A Harland and A Borich, *Evaluation of youth offending teams in New Zealand: research report*, Ministry of Justice, New Zealand Government, 2007, accessed 17 August 2020.

<sup>558</sup> Ministry of Justice, *Youth crime action plan 2013–2023: report*, Ministry of Justice, New Zealand Government, 2013, accessed 17 August 2020, p 15.

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and development of children and young people, and the strong commitment to collaborative, inter-agency responses to youth offending. The Commissioner for Aboriginal Children and Young People visited New Zealand in 2020 with senior DJCS representatives and observed this strong collaborative approach in action.

### Scotland

Scotland's 2015–2020 youth justice strategy, *Preventing offending: getting it right for children and young people*, prioritises the advancement of Scotland's 'whole system approach for children and young people who offend'.<sup>559</sup> This approach was developed in 2011 and involves streamlined and consistent planning, assessment and decision-making processes across all systems for young people who offend.<sup>560</sup> The whole system approach operates on the principle that multi-agency groups should be able to meet the needs of the child or young person. The implementation and management of the whole system approach is left to local regions, giving it the flexibility to respond to demographic issues, available services and regional differences.

Each of the 3 main policy strands under the whole system approach – early and effective intervention, diversion from prosecution, and reintegration and transitions – employs a strong multi-agency approach, which prioritises meeting holistic need.<sup>561</sup> Each follows a general formula of information gathering and sharing, multi-agency meetings, appointment of a lead agency or professional, and monitoring of interventions. Agencies involved cover youth work, social work, health, education and training, restorative justice, and drugs and alcohol support.

A 2015 evaluation of the whole system approach found that it had been a 'galvanising factor' in driving improvements in partnership working, information-

sharing and shared learning across agencies.<sup>562</sup> Further, practitioners consulted in the evaluation believed that the whole system approach 'facilitates improved outcomes for young people through closer multi-agency working, closer information sharing and the strong incorporation of welfarist values in decision-making and practice', although the evaluation noted that systematic evidence of individual outcomes was difficult to obtain.<sup>563</sup>

### New South Wales – A place to go

*A place to go* is a pilot program operated out of Nepean Police Area Command and the Parramatta Children's Court in New South Wales.<sup>564</sup> It aims to provide young people in contact with the youth justice system with support in accessing 'holistic, strengths-based, wraparound services which meet their immediate and long-term needs'.<sup>565</sup> It does this by allocating a key worker who is connected with a team of practitioners, including a cross-agency coordinator, an accommodation provider, an adolescent specialist family and community services manager, a court-based multi-disciplinary team, and specialist community-based positions in the Justice Health and Forensic Mental Health Network with a focus on mental health and drug health.

Eligibility for the program is based on locality but is otherwise broad. Engagement is centred on holistic goals that young people identify themselves. The key worker assists the young person to navigate existing service systems and access dedicated *A place to go* services, working within the young person's identified goals and wishes. The key worker also acts as a single point of contact for all referrals, and continues to work with the young person until their goals are achieved or

<sup>559</sup> Safer Scotland, *Preventing offending: getting it right for children and young people*, Safer Scotland, The Scottish Government, 2015, accessed 17 August 2020. This strategy is underpinned by a whole-of-government strategy called Getting it right for every child, which aims to help children and young people 'grow up feeling loved, safe and respected so that they can realise their full potential': The Scottish Government, *Getting it right for every child (GIRFEC)*, The Scottish Government website, accessed 17 August 2020.

<sup>560</sup> K Murray, P McGuinness, M Burman and S McVie, *Evaluation of the whole system approach to young people who offend in Scotland*, The Scottish Centre for Crime & Justice Research, The Scottish Government, 2015, p 6.

<sup>561</sup> Murray et al., *Evaluation of the whole system approach to young people who offend in Scotland*, pp 10–11.

<sup>562</sup> Murray et al., *Evaluation of the whole system approach to young people who offend in Scotland*, p 7.

<sup>563</sup> Murray et al., *Evaluation of the whole system approach to young people who offend in Scotland*, p 7.

<sup>564</sup> *A place to go* is part of the 2016 'Their futures matter' reforms to improve outcomes for vulnerable children, young people and families in New South Wales. These reforms were introduced to address whole-of-system issues identified in the 2015 *Independent review of out-of-home care: D Tune, Independent review of out of home care in New South Wales: final report* [PDF], NSW Government, 2015, unpublished, accessed 17 August 2020. The review resulted in the NSW Government trialling a 'cohort approach', where wraparound supports are designed to meet the needs of a particular cohort, for example, children and young people in contact with the youth justice system.

<sup>565</sup> Communities & Justice, *A place to go*, NSW Government Communities & Justice website, accessed 17 August 2020.



they age out of the program (there is no fixed period of engagement).

The program facilitates inter-agency case panel meetings that provide case oversight and ensure that coordination and collaboration between agencies is maintained. This is supported by director-level meetings to discuss and resolve any agency barriers that arise.

The program has access to its own brokerage, which can be used to pay for services and assessments that are not readily available in the community, such as speech therapy, driving lessons and significant dental work. It also has a 4-person therapeutic home as a transitional accommodation option, available to young people who have no other housing options.<sup>566</sup> The program auspices after-hours support through a community organisation. This support complements other roles in the program that focus on improving interactions between police and young people in the area.

A formative review of *A place to go* found that the initiative is well-designed to meet the needs of the target cohort and has great potential to make a significant positive impact for young people. Key to this is cross-agency collaboration and coordination, and the flexibility needed to deliver a holistic, multi-disciplinary service response for young people. The most commonly identified success factors included:

- therapeutic, trauma-informed, short-term accommodation for young people who are unable to return home (including those in out-of-home care), while longer-term planning is undertaken
- the key worker function, providing intensive case management to support young people in setting and achieving their goals through a trusting and positive relationship, utilising a trauma-informed, strengths-based approach
- a multi-disciplinary approach, flexibility to respond to young people's complex needs beyond agency silos, and availability of brokerage funding to ensure that young people are able to access the right services at the right time.

<sup>566</sup> The home is set on several acres and is staffed by trauma-informed, therapeutic workers. It promotes healing and decompression, and further linkages can be provided to other services. The accommodation also includes support to transition to long-term accommodation, and aftercare support is provided for up to 12 weeks to assist young people to maintain their longer-term accommodation.

At the time of writing, an outcomes evaluation of *A place to go* by the University of New South Wales was in its final stages.

## Improving inter-agency responses to Aboriginal children and young people in Youth Justice

The Commission's findings highlight the need for a different approach to supporting Aboriginal children and young people in the youth justice system.

The principles underlying the *A place to go* integrated case management program in New South Wales closely align with the *Our way* principles of child-centred, strengths-based, holistic care and support. Further, the 'cohort approach' of *A place to go* is an approach that is already being trialled by the Victorian Government in the *Common clients reform*.

On this basis, we recommend the establishment of a Victorian pilot based on *A place to go* for Aboriginal children and young people in the youth justice system. The pilot should be designed and implemented in partnership with relevant Aboriginal organisations, which must play a central role in ensuring that the program is grounded in Aboriginal approaches to wellbeing, care and support. We suggest that the pilot be established in at least 2 regions with high numbers of Aboriginal children and young people on Youth Justice orders.

One of the central features of *A place to go* is the allocation of a 'key worker' to every child and young person in the program, to help them navigate and access the service system, and act as a single point of contact for referrals. The key worker is allocated according to the young person's needs, goals and preferences. Ideally, each key worker in the Victorian pilot would be Aboriginal, although this may not always be possible.

In addition, where a child or young person already has a trusted relationship with a Koori Youth Justice worker, a cultural mentor or another Aboriginal worker, that trusted person should be included in inter-agency meetings arranged through the program (see the discussion and recommendations in Chapter 6.2 'Relationships with workers' concerning the involvement of trusted workers in Youth Justice planning and decision-making).

Not all youth justice system-involved Aboriginal children and young people would have access to the

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recommended case management pilot program. Accordingly, other measures to improve collaboration are needed. At the Taskforce regional forums, participants indicated that stronger governance and oversight of care teams dealing with Aboriginal children and young people would help to address system fractures and provide a safeguard to ensure that young people did not fall through gaps.

One model for providing such governance and oversight is the model adopted for the Taskforce case planning sessions. Despite the relatively low completion rate for actions arising from these sessions at the 8-week review (46%), those involved in the process generally felt that there were significant benefits to meeting to identify and address the specific needs of Aboriginal children and young people involved with Youth Justice.<sup>567</sup> Stakeholders told the Commission that the process enabled the various agencies and community members to come together, identify options, discuss barriers and develop strategies for achieving positive outcomes.

The Youth Justice Strategic Plan commits to the delivery of a 'High Risk Panel to oversee and support the most complex and high-risk young people in custody and the community', and also refers to the continuation of Multi-Agency Panels, which currently operate in different regions of Victoria and bring together representatives from schools, Victoria Police and relevant departments and agencies.<sup>568</sup> While these panels are welcome initiatives, they do not focus specifically on Aboriginal children and young people.

In April 2021, DJCS advised the Commission that an allocation of \$1.2 million from the 2020–21 State Budget will be used to establish Aboriginal Case Management Review Panels, based on the Taskforce case planning sessions, to support and monitor case planning for Aboriginal children and young people in the youth justice system who have complex needs. DJCS also advised that all children and young people whose cases were considered by the Taskforce will be the subject of consideration by these panels.

Consistent with the Taskforce case planning sessions, the Aboriginal Case Management Review Panels should:

- be chaired by a senior Aboriginal person
- include senior representatives of relevant departments and service providers
- adopt a strengths-based approach
- give due weight to the views of the child or young person
- have culture at their centre.

During the Taskforce and the inquiry, youth justice system stakeholders also told the Commission that they wanted ongoing opportunities to bring together agencies and organisations in their regions to discuss and improve responses to local youth justice issues for Aboriginal children and young people. They saw opportunities for collaboration as key to solving Aboriginal over-representation in Youth Justice.

We agree that regular, regional youth justice forums would enable services working with justice system–involved Aboriginal children and young people to focus on collaboration and system improvements by:

- providing a community of practice where expertise and knowledge is shared
- discussing new initiatives and developments in the sector
- piloting programs
- consulting with Elders and community members and learning from their expertise
- building relationships between agencies, including 2-way learning between Aboriginal and mainstream agencies, particularly in relation to culture
- introducing and upskilling new staff.

We recommend that careful attention be paid to the terms of reference for, and membership of, these forums in order to best capture and represent the needs of Aboriginal children and young people.

<sup>567</sup> This calculation does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>568</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 28.

## Recommendation 12

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That the Victorian Government pilot in at least 2 regions an integrated case management program for Aboriginal children and young people in the youth justice system, based on *A place to go*.

## Recommendation 13

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That Youth Justice ensure that the proposed Aboriginal Case Management Review Panels are chaired by a senior Aboriginal person, include senior representatives of relevant departments and service providers, adopt a strengths-based approach, give due weight to the views of the child or young person and place culture at their centre. The panels should be monitored at Secretary level by all relevant departments to ensure collaboration and accountability in relation to nominated actions, and to identify and address any systemic issues that arise. The panels should be established in consultation with the Commissioner for Aboriginal Children and Young People.

## Recommendation 14

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That Youth Justice establish regular regional Koori youth justice forums with local justice partners and social services.

## 6.2 Relationships with workers

### Finding 8

Aboriginal children and young people are able to receive better support and feel more connected to services when they have a trusted, reliable adult in their lives who is able to advocate for their needs. In many cases, this will be an Aboriginal worker.

*Every young person needs a trusted adult in their life. – Eastern Metropolitan regional forum*

### The importance of trusting relationships

It is well established that trusting and consistent relationships with workers are a key factor in engaging and supporting children and young people.<sup>569</sup> The Commission has previously highlighted the importance of trusted relationships for children and young people with Child Protection involvement.<sup>570</sup> Such relationships

<sup>569</sup> Australian Youth Affairs Coalition, *The AYAC definition of youth work in Australia*, Australian Youth Affairs Coalition, NSW, 2013, accessed 17 August 2020; P Mendes, S Baidawi and PC Snow, *Good practice in reducing the over-representation of care leavers in the youth justice system. Leaving care and youth justice – phase 3 report*, Monash University, Melbourne, 2014; Baidawi and Sheehan, *Cross-over kids*; B Lewing, L Doubell, T Beevers and D Acquah, *Building trusted relationships for vulnerable children and young people with public services*, Early Intervention Foundation, London, 2018, accessed 25 September 2020.

<sup>570</sup> Commission for Children and Young People, *In our own words*, p 268. See also recommendation 5 in *In our own words*, 'Provide a single point of contact/key worker for all children and young people in care'.

are equally important for Aboriginal children and young people in the youth justice system.<sup>571</sup>

Relationships with workers can enable change, by allowing young people to form connections that promote social inclusion and development.<sup>572</sup> Research into risk and protective factors for Aboriginal young people in New South Wales found that young people who reported 'having someone to talk to if there was a problem' were less likely to encounter difficulties.<sup>573</sup> Research also indicates that Youth Justice workers who have good relationship skills and form a 'therapeutic alliance' with the young people with whom they work can have a positive effect on the recidivism rates of those young people.<sup>574</sup>

To achieve good outcomes in the youth justice system, it is also essential to hear children and young people's views on supports and interventions.<sup>575</sup> While it is accepted best practice for Youth Justice workers to elicit young people's voices in case planning, it is not always possible for young people to directly participate

<sup>571</sup> B Byrne and S Case, 'Towards a positive youth justice', *Safer Communities*, 2016, 15(2):69–81.

<sup>572</sup> Byrne and Case, 'Towards a positive youth justice', p 76.

<sup>573</sup> C Young et al., 'The prevalence and protective factors for resilience in adolescent Aboriginal Australians living in urban areas: a cross-sectional study', *Australian and New Zealand Journal of Public Health*, 2018, 43(1):8–14.

<sup>574</sup> C Trotter, *Effective community-based supervision of young offenders*, Australian Institute of Criminology, Australian Government, 2012, accessed 17 August 2020, pp 2, 6; J Bonta et al., 'An experimental demonstration of training probation officers in evidence-based community supervision', *Criminal Justice and Behavior*, 2011, 38(11):1127–48; C Trotter, 'The impact of different supervision practices in community corrections', *Australian and New Zealand Journal of Criminology*, 1996, 29(1):29–46.

<sup>575</sup> DH Drake, R Fergusson and DB Briggs, 'Hearing new voices: re-viewing youth justice policy through practitioners' relationships with young people', *Youth Justice*, 2014, 14(1):22–39; P Morrison and R Gibson, *Promoting young people's participation*, University of Strathclyde, Glasgow, 2017; R Little, 'Participation and practice: youth justice', *Eurovista*, 2015, 3(3); Safer Scotland, *Preventing offending*, p 12.

in case management meetings and decisions.<sup>576</sup> In such situations, evidence suggests that directly involving a trusted person who knows the child or young person and their needs is vital to effecting change.<sup>577</sup>

For many Aboriginal children and young people, this trusted person is someone other than a Youth Justice worker. Before discussing Aboriginal children and young people's connections with Youth Justice workers and Aboriginal workers, we first outline the qualities of a trusted worker.

### The qualities of a trusted worker

Aboriginal children and young people involved in the youth justice system (n = 51) and their families (n = 4) told the Commission about the importance of workers, and the difference a good worker can make in their lives. They identified the key attributes of a trusted worker as being someone who is caring, understanding, reliable, consistent, respectful and attentive to needs. A good worker also listens, communicates effectively and assists with practical supports. Children and young people in the out-of-home care system have identified similar attributes as essential in their relationships with workers.<sup>578</sup>

Overwhelmingly, Aboriginal children and young people told us that what matters is knowing that their worker cares, and is making an effort to build a genuine connection with them.

*A good worker is someone who actually cares. When I'm upset, [my worker] talks to me and actually cares. – Aiden, 17*

*[My worker] is a good person. He's very supportive and he tries. It matters that he cares. – Derry, 16*

Aboriginal children and young people said that they want to be treated like people, not clients. They want their workers to listen to them and understand them.

*My case manager for [community service organisation], he's good. He's proactive, he understands and relates well. – Callum, 17*

*[My worker] connects. He wasn't so like, 'You fit in my box'. A shit worker, they don't listen to your needs... they think they know what's best for you. They don't look at the full picture. – Summer, 18*

Aboriginal children and young people and their family members also told the Commission that they want workers who are reliable, consistent, organised and able to help in practical ways. They value workers who communicate regularly and effectively with them, especially during periods in custody, and with whom they have longstanding relationships.

*My YJ [Youth Justice] worker is real organised. Whenever I need something, he tells me to call him and he'll get me what I need, like someone on my phone list or my visit list. Staff are real slow with stuff like seeing a psych and getting meds, but my YJ worker can get it for me right away. – Pakap, 16*

*He's good. I just gotta call him up and he'll pick me up, take me for a feed. – Ronan, 15*

*[Worker] from the co-op is great and has known our family for years. She's the most consistent person in our lives. – Mum*

*They were good to me cos I knew them. I just see them around and I knew one of the workers there, one of the girls. I had to go to court and she seen me there a few times. – Sequoia, 17*

<sup>576</sup> Youth participation in the youth justice system is discussed in more detail in Chapter 6.3 'Participation in the youth justice system'.

<sup>577</sup> HM Inspectorate of Probation, *Desistance and young people: an inspection by HM Inspectorate of Probation* [PDF], HM Inspectorate of Probation, Manchester, 2016, accessed 17 August 2020.

<sup>578</sup> Commission for Children and Young People, *In our own words*, pp 246–250.

## 6.2 Relationships with workers

*I had a case manager that seen me grow up, she knew me since I was a young fella. She cares about me. She's sick of seeing me locked up. She even helped me get a house when I was living on the streets. – Watjpa, 22*

*[A good worker will] check in once a week. – Macy, 23*

Conversely, Aboriginal children and young people told the Commission that they did not value workers who were unreliable, inaccessible and unhelpful.

*Workers gotta stop promising. If they can't keep a promise, they shouldn't make one. Stop promising things if you're not going to do anything. – Caleb, 18*

*I don't get support when I ask for it. But when they want to talk, they come. – Djiran, 19*

*My worker hasn't answered the phone in 2 weeks. I don't know what's going on. – Cadell, 17*

*Stuck in [custody], receiving no info about what they are doing. – Jamil, 16*

At the Taskforce regional forums, participants echoed many of these views. They indicated that trusting relationships between workers and Aboriginal children and young people require workers to be consistent and reliable, and to have sufficient time to build genuine connections. They noted that building rapport with a young person who has experienced complex trauma can take time, and that trauma can be exacerbated by frequent changes in a young person's worker. It was acknowledged in some regions that they have not always provided consistency in this regard for their young people.

Participants at regional forums also recognised that an important part of engaging Aboriginal children and young people is committing to assertive outreach and taking extra steps such as helping them get to

appointments – waking them up, getting them out the door, driving them there – and having appointments at locations where they feel comfortable. This is the sort of assistance that Aboriginal children and young people told the Commission they valued.

While some Youth Justice workers are able to build trusting relationships with Aboriginal children and young people and provide this kind of support, this is not consistently the case.

### Relationships with Youth Justice workers

The Youth Justice Case Management Evidence Base highlights the importance of relational work with children and young people, and identifies such work as vital to effective intervention.<sup>579</sup> This is reiterated throughout specific practice guidelines. According to the *Engagement* practice guideline, the establishment of a 'therapeutic alliance' between a case manager and a child or young person is often the most effective component of case management, because 'it exposes young people to healthy and authentic relationship patterns, which many may not have previously experienced'.<sup>580</sup>

In addition, Youth Justice practice documents encourage workers to adopt and display many of the attributes valued by Aboriginal children and young people (outlined above). For example:

*Established trust with the Youth Justice population is a complex task. Many young people in Youth Justice have experienced poor relationships with adults and have been hurt by the people who should have protected them. Being open, honest and consistent is vital. This means following through on commitments, keep[ing] appointments and only promising what can be delivered.<sup>581</sup>*

Despite this, Aboriginal children and young people told the Commission, and the Commission observed throughout the Taskforce, that relationships between Youth Justice workers and Aboriginal children and young people were varied. While some Aboriginal

<sup>579</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 38.

<sup>580</sup> Department of Justice and Community Safety (DJCS), *Engagement: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 9.

<sup>581</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 40.

children and young people reported feeling connected to their Youth Justice worker, others did not. Aboriginal children and young people did not always appear to have a therapeutic alliance with their Youth Justice worker.<sup>582</sup>

Twenty-five Aboriginal children and young people spoke positively about their experiences with Youth Justice workers, indicating that they were supportive, helpful and organised, and provided material supports. Trust, communication and longevity were features of positive relationships with Youth Justice workers.

*[My YJ worker], she understands me. We get along pretty well and understand each other.*  
– Watanom, 19

*Mine was really good – all the support, non-judgment, them just listening. Just someone who actually cares and doesn't want to see you or any young person in that predicament.*  
– Grace, 20

*YJ is good because they bought me a tracksuit, runners. I have to go see them, have lunch with them, and it's pretty good.* – Jamil, 16

*YJ is good. They help me out. They give me myki cards when I need them. That lady, she been with me for years – for 6 years – she's good.*  
– Drew, 19

*Had the same YJ worker for years. I would just keep reoffending. She's a good worker. She has saved my arse so many times. I've thanked her so many times.* – Seth, 16

Other Aboriginal children and young people expressed mixed feelings about Youth Justice workers, particularly in terms of delivering outcomes.

*[My YJ worker] was alright. Don't think she was that helpful though.* – James, 18

*I had a YJ case worker. She was good... But when she said she was going to take me to TAFE and shit, she didn't do much. Maybe get me more involved in education stuff – that's what I needed at the time. I'm only just getting back on track now.* – Blair, 17

Sixteen Aboriginal children and young people referred to negative experiences with Youth Justice workers. Commonly expressed themes were that Youth Justice workers were unreliable, inaccessible and uninterested, and lacked sufficient time for children and young people. Many of these young people felt that their Youth Justice worker didn't do their job properly, didn't listen, and failed to help them with their needs.

*[My Youth Justice worker] doesn't really get it. I needed help with ice. She didn't give me help. Said I shouldn't have bail cos I was on ice. Shouldn't have asked her for help anyway. I've proved I can do it, but they all sit there like I haven't done anything in my life. They need to pay attention to the work I'm doing for my life, listen to me.* – Harley, 19

*They were pretty shit. They didn't listen. Stuck by the rules. They didn't do nothing for you unless they got told to. I had to go see them – they wouldn't come see me. They just didn't help me at all.* – Vincent, 17

*She sometimes forgets stuff that we ask her to do, or we make appointments and she doesn't show up. She doesn't come sometimes, so I don't go to appointments because she doesn't come to mine. I hate her. I don't want that YJ worker. She should ring me if she's not coming to appointments. She forgets everything.*  
– Dion, 15

<sup>582</sup> The Commission also observed no evidence of Aboriginal children and young people having a therapeutic alliance with their Child Protection workers.

## 6.2 Relationships with workers

*I've been trying to call my YJ worker to get a plan and my lawyer, but YJ don't answer. – Cadell, 17*

Aboriginal children and young people also referred to having many different workers, although this was not limited to Youth Justice. Relationships with Child Protection workers are examined in Chapter 8.2 'The responsibilities of Child Protection'.

*I have had... 3 Youth Justice workers in the last 8 months. – Cameron, 17*

*Seeing YJ worker and another 2 to 3 youth workers in the same week and they are all basically asking you the same things. They never come to me. They never make any effort. – Watanom, 19*

The Taskforce case file review revealed that, throughout their involvement with Youth Justice, 21 Aboriginal children and young people had had between 6 and 10 Youth Justice case managers each, and 6 had had more than 10 case managers each. There was also a high turnover of Youth Justice staff apparent within the span of the young person's current youth justice order, with only 58% of young people retaining the same case manager for their current order. A high turnover of workers limits opportunities to build trusting relationships with Aboriginal children and young people and can lead to their disconnection from the service system.

### **Observations of concerning attitudes towards Aboriginal children and young people in the youth justice system**

During the Taskforce, the Commission observed some Youth Justice and Child Protection workers make statements about Aboriginal children and young people which appeared to indicate a lack of understanding of the complex drivers of their offending behaviour. These statements were often made in the context of case planning sessions. The Commission also observed some concerning statements made by Youth Justice in written materials provided in respect of individual young people, either as background material to assist in preparing for case planning sessions, or in the context of 4- and 8-week updates on case plans. Examples are set out below.

Some workers appeared to focus on 'surface-level' problems or issues, without seeking to understand the factors that might be contributing to them. For example, some Youth Justice workers referred to children and young people as having a 'disorganised lifestyle', without acknowledging broader, underlying factors such as the lack of a stable home.

Similarly, some Youth Justice workers referred to young people's 'difficulty in managing family relationships' and 'irregularity in attending appointments' as barriers to completing case plan actions, without exploring the possible reasons for such barriers or acknowledging the complex reality of many young people's lives. 'Negative peer associates' were often identified as a causative factor for offending behaviour, without any corresponding reference to factors that might drive such associations, such as an unstable home environment or a lack of a sense of belonging.

In many cases, 'lack of motivation' was listed as a barrier to the young person's engagement with services, without acknowledgment of the impact of childhood trauma. Participants at Taskforce regional forums similarly noted that young people in the youth justice system are often described as being 'disengaged', 'unmotivated' and 'having their walls up'. Participants at the Shepparton forum expressed the view that agencies need to 'unpack' why a young person is 'unmotivated' or 'not confident'. It is well established that the effects of trauma on behaviour are significant and complex.<sup>583</sup>

In one Taskforce case, 'limited motivation to change and cognitive functioning' were described as barriers for a child under the age of 14 years with an intellectual disability. Similarly, another young person's intellectual disability was said to impact their engagement with services. One case planning document stated that 'mental health and disability are barriers to engaging in cultural activities'. In another case, 'motivation' was identified as a barrier to school attendance for a young person with a learning disability, without any plan as to how this might be overcome.

<sup>583</sup> See Sentencing Advisory Council, *Crossover kids*, Report 3.



Such statements about barriers may be factually accurate. However, in our view, they indicate a systemic failure to look beyond immediately identifiable ‘problems’ to understand the complex needs of Aboriginal children and young people and the drivers of their offending behaviour, and to work collaboratively to identify solutions.<sup>584</sup> This lack of focus on problem-solving can have a highly detrimental impact on the self-esteem of children and young people, and indirectly convey the notion that responsibility for difficulties (and consequently for overcoming them, and ceasing offending behaviour) lies predominantly with the children and young people themselves. It can also convey blame.

*Ever since I had the accident, they treat me like I killed someone, like a murderer. They treat me like real shit. – Logan, 16*

*People are more likely to tell you the truth if you’re open with them, rather than interrogating them and making them feel insignificant. – Hayleigh, 21*

*Ya just get drilled and drilled and drilled, [with workers] telling you what you can’t do, and that’s why I’m here right now. – Leroy, 14*

Research indicates that this kind of approach fails to place proper weight on factors such as vulnerability by virtue of age and immaturity, and reliance on adults for access to support, guidance and opportunities.<sup>585</sup> For Aboriginal children and young people, this kind of approach fails to recognise the larger socio-economic,

<sup>584</sup> See the work of Dr J Stuart Ablon and colleagues in relation to the ‘collaborative problem-solving’ approach for working with children and young people with challenging behaviours. This work is premised on the notion that children do well if they can, and that those with challenging behaviours lack the *skills* rather than the *will* to behave well, and as such are ‘tragically misunderstood and mistreated’. Rewards and punishments do not work for such children. Collaborative problem-solving focuses on building skills like flexibility, frustration tolerance, and problem-solving, rather than simply seeking to motivate children to behave better: Think:Kids, Rethinking Challenging Kids, *Collaborative Problem Solving (CPS)*, Think:Kids website, 2021, accessed 1 March 2021.

<sup>585</sup> S Case and K Haines, ‘Children first, offenders second, Positive promotion: reframing the prevention debate’, *Youth Justice*, 2015, 15(3):226–239, p 232.

historical and political contexts that affect their lives on a daily basis.

This approach also risks placing unrealistic expectations on Aboriginal children and young people to take responsibility for their own welfare. Participants at the Northern and Western Metropolitan regional forums commented on the unrealistic expectations placed on Aboriginal children and young people in the youth justice system, with little consideration given to the emotional and cultural loads they carry or the additional stressors and complications in their lives. Twenty-seven young people told the Commission about their experiences of having such expectations placed on them.

*Everything was so hard. I was trying to get my son back because DHHS got involved and he was in my nan’s care, and I had to get drug tests, meet with YJ, a drug and alcohol counsellor and VACCA, and then at the end of it, it was too many people. I wanted to see my son, but I was on curfew, and after all my appointments, I couldn’t see my son. – Monica, 17*

*Making it into town when there was no transportation. Getting up on time. I guess I could say that it was on me too. I could have made more of an effort, I guess. It would have helped if I had someone helping out. – Kirrae, 22*

*I had to have a matter heard in [another town] without support to travel. Travelled with my mum and I stayed with Aunty. If my Aunty wasn’t there, we would’ve been sleeping in the car. If I didn’t show up at court I would’ve got 3 months [for breaching my order]. – Nataya, 21*

Similar examples are discussed in Chapter 12.2 ‘Bail and remand’ and Chapter 12.5 ‘Community orders supervised by Youth Justice’, in the context of the difficulties Aboriginal children and young people face in complying with the conditions of bail and community orders.

### Deficit discourse or strengths-based approaches

The Youth Justice *Engagement* practice guideline states that the quality of the relationship between the Youth Justice case manager and the child or young person is a 'crucial determinant' of effective case management, and emphasises the importance of establishing trust.<sup>586</sup> It also requires case managers to 'make it clear to young people that their behaviours are not being judged, especially when they fail to meet an objective'.<sup>587</sup>

However, this practice guideline also warns Youth Justice workers of 'traps that can emerge', and advises them to be aware of a range of 'personas' that young people can project in case management sessions. These include:

- 'The Joker', who is 'always joking' and who 'seeks to control by making you their audience'<sup>588</sup>
- 'The Bully', who 'blames you and others for their situation' and 'wants to frighten you'<sup>589</sup>
- 'Slippery', who uses charm 'to intimidate and/or unnerve you'.<sup>590</sup>

Such guidance tends to pathologise children and young people, and to reduce them to stereotypes. It has the potential to encourage workers to view children and young people negatively, and as 'offenders', rather than as unique individuals who are capable of change with the right support. Negative labels have the potential to alter how children and young people see themselves, and how others see them.<sup>591</sup>

As discussed in Chapter 1 'About this report', the way we speak to and about Aboriginal children and young people matters. 'Deficit thinking' or 'deficit discourse' is a mode of thinking about Aboriginal people which has been shown to reinforce negative stereotypes and undesired behaviours, inhibit the use of alternative solutions, limit the provision of opportunities that facilitate growth and thriving, and create barriers to improving outcomes.<sup>592</sup> In contrast, 'strengths-based

approaches' focus on the positive attributes and capabilities of individuals, families and communities.<sup>593</sup>

Many participants at the Taskforce regional forums strongly advocated the adoption of a strengths-based approach in working with Aboriginal children and young people in the youth justice system. The Mildura and Bendigo forums reflected on the successes care teams in these regions had achieved by employing a strengths-based approach. Staff at Dardi Munwurro told the Commission about the strengths-based approach to their services:

*Every single person in [the young person's] life can tell you what's wrong with that kid. But we see them for who they are and their strength. We see cases of when someone should have intervened and they didn't... what they chose to do is look at the label... rather than listen to the young person. – Dardi Munwurro*

The positive impacts of such an approach were reflected in young people's experiences:

*[My worker] really gave a fuck. He was one of the best people in my life – he helped me good. Like, even now – if he sees me, he's like, 'You have so much potential'. He still cares about me. – Karrwin, 20*

### Improving relationships between Youth Justice workers and Aboriginal children and young people

The inquiry revealed examples of positive, trusting relationships between Aboriginal children and young people and their Youth Justice workers. However, we also heard from young people who did not feel that they had therapeutic relationships with their Youth Justice workers. As outlined above, the Commission observed patterns of discourse on the part of some workers during the Taskforce case planning sessions which appeared to indicate a greater focus on 'problems' and barriers, than on solutions based on young people's strengths and needs.

<sup>586</sup> DJCS, *Engagement*, p 4.

<sup>587</sup> DJCS, *Engagement*, p 7.

<sup>588</sup> DJCS, *Engagement*, p 15.

<sup>589</sup> DJCS, *Engagement*, p 16.

<sup>590</sup> DJCS, *Engagement*, p 17.

<sup>591</sup> D Saleebey (ed), *The strengths perspective in social work practice*, 2nd edition, Longman, New York, 1997.

<sup>592</sup> Fogarty et al., *Deficit discourse and strengths-based approaches*, p 4. See also Paradies et al., *The impact of racism on Indigenous health in Australia and Aotearoa*; Priest

et al., 'Racism and health among urban Aboriginal young people'.

<sup>593</sup> Nissen, 'Bringing strength-based philosophy to life in juvenile justice', p 41.

It is crucial that Youth Justice workers build trusting relationships with the Aboriginal children and young people with whom they work. This should be the case even where the child or young person has a trusting relationship with a Koori Youth Justice worker or another Aboriginal worker (relationships between children and young people and Aboriginal workers are discussed in the following sections). While Youth Justice practice guidelines refer in some detail to the importance of building a therapeutic alliance with children and young people, this does not appear to be the subject of specific training for Youth Justice staff.

It is also important that Youth Justice workers avoid deficit-based thinking and discourse with respect to Aboriginal children and young people. Strengths-based approaches have much to offer in the youth justice system. The Commission observed examples in Taskforce case planning sessions where possibilities were identified with respect to supports, programs and opportunities when alternative, strengths-based perspectives were adopted. Such approaches are consistent with, and promote, the *Our way* vision outlined at the beginning of Chapter 6.

## Recommendation 15

That Youth Justice ensure that its staff are adequately resourced and trained to comply with practice guidelines focused on building trusting, stable and therapeutic relationships with Aboriginal children and young people. In particular, Youth Justice staff should be equipped to understand and respond to different behaviours in Aboriginal children and young people, and to apply a culturally safe and trauma-informed approach.

## Recommendation 16

That Youth Justice review its policies, guidelines and training to ensure that they do not promote 'deficit discourse' with respect to Aboriginal children and young people, and consider the adoption of a strengths-based framework for case management of Aboriginal children and young people.

## Relationships with Aboriginal workers

Aboriginal children and young people in the youth justice system often develop a trusted relationship with an Aboriginal worker.<sup>594</sup> Nineteen children and young people told the Commission about their strong connections with an Aboriginal worker.<sup>595</sup>

*[A Koori Youth Justice worker] is more for us. They support us more. Youth Justice do it because it's their job. – Zaine, 19*

*He associates with not just us, but more people. He sits down and has a yarn with ya about what you need and always finds a way to help out and stuff. – Blair, 17*

*There's another brother boy here – he's a Koori youth worker. I go through him cos I know him really well. – Bodhi, 23*

Many young people felt that Aboriginal workers could relate to them due to a shared understanding of experiences and context.

*I've had Aboriginal workers. That makes a difference. They can relate to what's going on. – Macy, 23*

*It's probably better if they're Aboriginal. You relate to them more. – Carson, 19*

*[My Aboriginal worker], she really gets it and she knows how to get a point across... It's good to have an Aboriginal worker. – Caleb, 18*

<sup>594</sup> As noted later in this chapter, this could be a Koori Youth Justice worker, an Aboriginal Liaison Officer, a cultural mentor or another Aboriginal worker in a community organisation.

<sup>595</sup> Twenty-seven children and young people spoke about Aboriginal workers generally.

## 6.2 Relationships with workers

*Give people a chance to work in Youth Justice who've been through it, with that understanding. Give them job opportunities and it's win-win. Get workers who can relate and know what it's like. – Harley, 19*

Young people (n = 8) spoke about the importance of culture and the ways in which their workers connected them to culture.

*He's reconnecting me with culture. I haven't had much experience with culture before. We go out bush. I'm always happy to get my feet dirty. – Ruan, 14*

*[Elder and worker] is a great man. Everything he says is the right thing. He stands up for his culture. He has a strong spirit and is proud to be Aboriginal. – Malkar, 19*

At many Taskforce regional forums, participants noted that their children and young people engaged particularly well with Aboriginal workers. Participants at the Bairnsdale and Shepparton forums said that these relationships were often the most trusted, stable and consistent relationships in a young person's life. Participants at Bairnsdale also commented that increasing the number of Aboriginal workers and the stability of this workforce was important for the operation of the broader youth justice system in that region. This was echoed in Bendigo, Ballarat, Shepparton and Morwell.

Several regions noted that the strengths of Aboriginal workers include their ability to engage with children and young people as individuals, and provide holistic support without judgment, while being embedded in the community. Agencies at the regional forums acknowledged that strong, trusting relationships between Aboriginal workers and children and young people can also assist agencies in engaging with those children and young people.

Importantly, stakeholders in Shepparton indicated that Aboriginal workers require extra support, as they are not able to 'leave work at work', and this takes a toll. In addition, they often perform assertive outreach with Aboriginal children and young people. Regions noted

that Aboriginal workers are stretched in this regard, and that the sector needs more of them.

In several regions, there was particular praise for the Koori Youth Justice workers who were observed to have positive rapport and strong engagement with the children and young people in the area.<sup>596</sup> These workers were commended for their commitment to young people and for always going 'above and beyond'. Regions noted that there was a reliance on these workers, and ACCOs more broadly, to lead cultural activities and provide holistic supports for the young person and their families. This reliance included maintaining engagement after the conclusion of Youth Justice involvement, and providing broader support for the young person's goals. Southern Metropolitan region noted the gap that the absence of a Koori Youth Justice worker created in the community. The Koori Youth Justice Program is discussed in more detail below.

### The approach of Aboriginal organisations

The Commission consulted with Aboriginal organisations about their engagement strategies with Aboriginal children and young people. Staff at Aboriginal organisations highlighted their focus on building relationships with children and young people, and the centrality of this work in providing their services.

*Our approach is based on us being able to build relationships [with young people]. It's not a one-size-fits-all service. We work with each young fella as an individual and I think that is what makes a difference... We focus on each kid, building trust. – Dardi Munwurro*

*Relationships are, of course, the cornerstone of all of our work. – VACCA*

*[A worker's] strength is building relationships. – BADAC*

<sup>596</sup> Grampians (Ballarat), Loddon Mallee (Bendigo), Gippsland (Morwell) and Hume (Shepparton).

*Our team... they do whatever they can to get [young people] engaged. They know that you need to keep trying. We go above and beyond if we can. We care for community and they are our kids and we don't want to see them suffer... Most of our workers will work out in community, using their community networks, trying to see who knows family, who can talk to Mum, doorknock, doing whatever they can. – BWAYS*

*You have to take the judgment out. Otherwise there is a blockage with the kids. It's two-way respect from community. You have to communicate with clients on their level. We say, 'How can we get through this together', not, 'This is what you have to do'. Young people's self-determination is deciding what they want for their future. – BWAYS*

*We walk with the young people in their path. We don't stand on the sidelines. – Gunditjmarra*

Aboriginal organisations referred to the importance of their staff having lived experience, being from the local community, and being able to relate to Aboriginal children and young people.

*When [young people] are with me and they tell me things, I can feel it because I've experienced it too, and I can give them tools through what I've learnt. As opposed to someone who deals with it intellectually... and can't connect. – Dardi Munwurro*

*[We employ people who] really want to work with young Aboriginal people. The main thing is wanting to make a difference in the community. We want to see young people get over the line. – BWAYS*

*We've employed Aboriginal men with lots of different backgrounds, skills and experiences. Our own lived experiences are important [for connection]. – Dardi Munwurro*

They also referred to the centrality of culture in their practice.

*We need to include young people and their families back to culture in community. Culture for us is stripping away, back to basics – arts, language and linking in with Elders. Our programs give young people cultural guidance and we believe the key to keeping kids safe and strong is teaching them about their cultural identity from an early age. – Gunditjmarra*

*We acknowledge that spiritual element which can be broken in guys sometimes because of some of their experiences... Techniques given to kids to handle difficult issues and emotions are embedded in culture. The guys really help with cultural safety. – Dardi Munwurro*

Aboriginal organisations can create a link between services and the young person.

*I see us as the connection between community and institutions and systems. – BWAYS*

*YSAS and other services use us as a bridge. Kids feel safe with us, so if they are doing something confronting they will come to us first. We are non-judgmental here. – Dardi Munwurro*

## **Expanding connections with Aboriginal workers**

Aboriginal workers who support Aboriginal children and young people in the youth justice system are located in different roles and across different organisations. These include Koori Youth Justice workers employed by ACCOs, Aboriginal Liaison Officers (ALOs) in youth justice centres, Aboriginal statutory Youth Justice workers and Aboriginal workers from other community organisations.<sup>597</sup>

<sup>597</sup> There are Aboriginal statutory Youth Justice workers in Preston, Dandenong, Geelong, Shepparton and Morwell. They are Koori Intensive Support Program workers. The Youth Justice Review observed that the very small proportion of Aboriginal people employed by Youth Justice is a 'missed opportunity to ensure the cultural needs of Koori young

## 6.2 Relationships with workers

This section focuses on Koori Youth Justice workers. The ALO role is discussed in detail in Chapter 13.1 'Cultural safety and support in youth justice custody'. The Koori Intensive Support Program is discussed in Chapter 12.2 'Bail and remand'.

### Koori Youth Justice workers

The Koori Youth Justice worker role was created by the Victorian Government in 1992 as part of the Community-Based Koori Youth Justice Program (CBKYJP)<sup>598</sup> to offer culturally appropriate and local responses for Aboriginal children and young people on supervised orders, or at risk of entering or re-entering the criminal justice system.<sup>599</sup> Funded ACCOs (and one community service organisation) employ Koori Youth Justice workers, who provide both individual case management services to Aboriginal children and young people on supervised orders, and diversionary activities for 'at risk' children and young people.<sup>600</sup> The program was expanded in 2016 to bring the total number of Koori Youth Justice workers across Victoria to 23.

During the Taskforce, the Commission observed that, in many cases, Aboriginal children and young people had trusted relationships with the Koori Youth Justice worker in their region. This was confirmed by some of the Aboriginal children and young people consulted during the inquiry. Nineteen young people referred to experiences with Koori Youth Justice workers, and 9 spoke of positive experiences. Young people variously described their Koori Youth Justice worker as supportive, caring, and a good person who believed in them and advocated for their needs.

*[My Koori Youth Justice worker] said how he knows I want to do good and I want to get on the right path, and that he believes I can do it. He's a shy person so it made me feel really good that he would get up in court and talk on my behalf. It was really good. – Taj, 16*

people are met and community and custodial supervision practices are culturally effective': Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 105.

<sup>598</sup> This program is part of the broader Koori Youth Justice Program (also known as the Aboriginal Youth Justice Program).

<sup>599</sup> Department of Justice and Regulation (DJR), *Evaluation of the expansion to the community based Koori youth justice program*, Final report, DJR, Victorian Government, 2017, pp 2, 5.

<sup>600</sup> DJR, *Evaluation of the expansion to the community based Koori youth justice program*, p 2.

*He helps me understand things – harder things that I can't really understand. – Vincent, 17*

*He tries to get all the Aboriginal kids into programs and things, get us away from here. – Zaine, 19*

The objectives of the CBKYJP are broad. Program documents indicate that it was designed to provide significant flexibility to ACCOs to deliver localised services to Aboriginal children and young people.<sup>601</sup> As a result, Koori Youth Justice workers have considerable scope to provide holistic services to the Aboriginal children and young people they work with. This allows them to undertake critical relational work with Aboriginal young people and their families. In many instances, Koori Youth Justice workers provide the interface between Aboriginal children and young people and the youth justice system.

Participants at regional forums and Youth Justice workers consulted during the inquiry noted that Koori Youth Justice workers actively engage with the community and, as such, are able to build rapport with Aboriginal children and young people and their families. They also noted that one of the strengths of Koori Youth Justice workers is their ability to engage with Aboriginal children and young people where Youth Justice workers are unable to.

There is a risk that, where a Koori Youth Justice worker is involved with a young person, the Youth Justice case manager may expect the Koori Youth Justice worker to undertake the bulk of the relational work with that young person. The involvement of a Koori Youth Justice worker in a young person's life does not alleviate the need for the Youth Justice case manager to build a trusting relationship with that young person.

A 2017 evaluation of the CBKYJP reported that '[c]onsulted stakeholders consistently noted that the greatest strength of the [program] was that it was delivered in a culturally appropriate way, which had proven effective in engaging with Koori young people'.<sup>602</sup> Aboriginal children and young people told the Commission that they valued the cultural

<sup>601</sup> DJR, *Evaluation of the expansion to the community based Koori youth justice program*, p 2.

<sup>602</sup> DJR, *Evaluation of the expansion to the community based Koori youth justice program*, p 5.

connections their Aboriginal workers could provide. One ACCO described their Koori Youth Justice worker and the strength of his work as follows:

*He has always been around in the community, but in different roles. His strength is building relationships, and he concentrates on doing that well. He will pick kids up from programs when they need it. He goes with them to court. He takes kids to have time out in the bush, sourcing and making boomerangs and clapsticks. None of them are from here so he takes them back to his Country, shoes off, scarring trees. He gets good results. – ACCO staff member*

A 2018–19 Youth Justice performance report showed that most ACCOs delivering the CBKYJP exceeded their performance targets for the number of Aboriginal children and young people engaged in the program.<sup>603</sup> The performance report concluded that the Koori Youth Justice Program had exceeded its annual target for the number of Aboriginal children and young people engaged by 133%.<sup>604</sup>

The Commission observed that, despite Koori Youth Justice workers undertaking much of the on-the-ground engagement work with Aboriginal children and young people, they are not well resourced. This was also reflected in our consultation with Youth Justice workers, who noted that Koori Youth Justice workers are often more actively engaged with Aboriginal children and young people, but have access to fewer resources than Youth Justice.

The 2017 evaluation recommended increasing the provision of brokerage funding (which was then \$3,000 per DHHS region) to improve the effectiveness of the program. Brokerage funding was increased to \$3,000 per ACCO in 2018, and then to \$3,675 per organisation in 2020–21. Despite these increases, this sum is only a small amount for a Koori Youth Justice worker who may have a case load of between 20 and 50 children and young people, and wants to develop or deliver programs and activities for them. Increased brokerage funding would go some way to ensuring that

an Aboriginal child or young person's trusted worker had all of the necessary tools to properly support the child or young person (see discussion below under 'Involvement of trusted workers in planning and decision-making').

The Youth Justice Review recommended increased funding for ACCOs to expand the CBKYJP.<sup>605</sup> The 2017 evaluation of this program found that its resourcing levels were insufficient to meet demand, and identified an increase in the overall number of Koori Youth Justice workers as an 'opportunity for improvement'.<sup>606</sup>

In its 2018–19 Budget, the Victorian Government invested \$5 million over 4 years, and \$1.3 million on an ongoing basis, to continue the expanded Koori Youth Justice Program at the level of 23 full-time CBKYJP worker positions, based across 13 ACCOs and one community service organisation. This investment also included 5 Koori Intensive Support Program workers based within the Regional DJCS offices. While this investment was welcome, it did not appear to increase the number of Koori Youth Justice workers beyond the expanded levels introduced from 2016.

Koori Youth Justice workers play a central role in diverting Aboriginal children and young people from, and supporting them in, the youth justice system in culturally appropriate ways. It is not clear that the current levels of resourcing, both in terms of the number of Koori Youth Justice workers across Victoria and the levels of allocated brokerage funding, are sufficient to meet demand for the CBKYJP. The program should be further expanded to ensure that all eligible Aboriginal children and young people have access to a Koori Youth Justice worker who is sufficiently resourced to provide holistic supports for children and young people. All Koori Youth Justice worker roles should be identified positions.

In March 2021, the Victorian Government announced funding of \$4.5 million to expand the CBKYJP and provide additional Koori Youth Justice workers, with a focus on providing support to Aboriginal young women and connecting them with school, training, health and cultural supports.<sup>607</sup>

<sup>603</sup> Department of Justice and Community Safety (DJCS), *Youth Justice activities quarterly performance report Q4 2018-19*, DJCS, Victorian Government, unpublished, accessed 15 September 2020, p 29.

<sup>604</sup> DJCS, *Youth Justice activities quarterly performance report Q4 2018-19*, p 30.

<sup>605</sup> Recommendation 6.28: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 99.

<sup>606</sup> DJR, *Evaluation of the expansion to the community based Koori youth justice program*, p 11.

<sup>607</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and*

### Recommendation 17

That the Victorian Government, in implementing the expansion of the Community-Based Koori Youth Justice Program announced in March 2021, ensure that the program has sufficient capacity to provide holistic support for Aboriginal children and young people in the youth justice system, including through increased brokerage funding and an appropriate gender distribution among Koori Youth Justice workers (see Recommendation 21).

#### Involvement of trusted workers in planning and decision-making

As noted above, not all Aboriginal children and young people in the youth justice system form a trusted relationship with their Youth Justice worker. Similarly, for those who are also involved in the child protection system, not all form a trusted relationship with their Child Protection worker. Many of these children and young people do, however, form a trusted relationship with a Koori Youth Justice worker or another Aboriginal worker.

Throughout the Taskforce case planning sessions, the Commission observed that in several regions one or 2 workers had positive connections with, and were integral to supporting, the justice system-involved Aboriginal children and young people in the area.<sup>608</sup> These trusted workers were Aboriginal people working in an Aboriginal organisation or a community organisation. While their roles and professional experience varied, these workers all had strong connections to culture and community, which enabled them to understand the young person's background, including their family and home life. This understanding informed their approach to supporting the young person.

In the case planning sessions, these workers typically knew the most about the young person and their experiences, having known or worked with them for

some years. They were frequently the first to speak to the strengths of the young person, which enabled them to advocate persuasively for the young person's needs. These workers also provided an interface between the child or young person and the statutory youth justice, child protection and education systems. Examples of this 'interface' work included:

- locating children and young people when they were missing and negotiating with them to return to their placement
- accompanying children and young people to difficult appointments such as mental health, medical and supervision appointments
- facilitating court attendances
- facilitating school attendance.

Throughout the Taskforce process, the Commission observed that these workers had varying degrees of authority and autonomy to make decisions concerning the child or young person. For example, in Bendigo, the trusted worker had sufficient influence to lead the service response for Aboriginal children and young people. It was evident that Youth Justice and other agencies in this region recognised the value of this worker's relationship with Aboriginal children and young people who were also involved with those agencies. Consequently, agencies allowed this worker to lead their work. In case planning sessions, this worker was described as 'a much-valued resource to Youth Justice with reference to engaging young people'. There was a demonstrated mutual commitment from agencies to support this worker.

However, in other regions, the Commission observed missed opportunities to build service connections on relationships between young people and their trusted workers, to the detriment of the young people. The following case study is illustrative.

*young people.* DJCS advised the Commission that funding will be provided to organisations across Victoria that require additional staff to meet demand. Funding will also be prioritised for areas where there are high numbers of Aboriginal children and young people in contact with the youth justice system, or where there is a need for gender-specific or after-hours support.

<sup>608</sup> Grampians (Ballarat), Loddon Mallee (Bendigo and Mildura), Eastern Metropolitan, Northern Metropolitan, Hume (Shepparton), Southern Metropolitan, and Barwon South West (Warrnambool).



## Ian

Ian is 15. He loves his family and wants to take care of his younger siblings. Ian has experienced significant family violence. He was removed from his mum's care when he was 10. This was extremely traumatic for him. The disconnection Ian felt being the only one in his family placed in a residential unit had a profound effect on him. Ian started damaging property in the residential unit. Police attended the unit frequently and Ian became accustomed to dealing with police. He was initially placed on probation, and was subsequently sentenced to a community-based order. Agencies found it hard to engage with him. Youth Justice recommended that Ian serve a custodial sentence.

Ian finds it hard to trust people, especially workers. Nevertheless, he had a good connection with the Koori Youth Justice worker in the region, who had known Ian and his family since he was a young child, from living in the community and from other roles the worker had held. Ian confided in this worker.

Ian was eligible for a targeted care package and one was created for him. Ian did not connect comfortably with his key worker and therefore did not engage with the targeted care package process. Funding for cultural activities was allocated to Ian but none of it was accessed because there were no structured timeframes for when the activities would occur and no one followed it up.

Despite the Koori Youth Justice worker's strong and trusted connection with Ian, he was not involved in the targeted care package planning, nor was he invited to any care team meetings. In the Taskforce case planning session for Ian, this worker asked if he could attend some of the care team meetings for Ian, as he had valuable input to provide. One of the actions in Ian's case planning session plan was to ensure that further targeted care package planning involve the Koori Youth Justice worker.

In its previous work on the child protection system, the Commission found that children and young people came into contact with workers who had varying degrees of authority to make decisions about their care. The Commission found that, in some cases, case managers who were responsible for most of the individual needs of children were not similarly responsible for making significant decisions about their care. This fragmentation of decision-making power led to inefficiencies and created the risk that requests from children and young people would be missed.<sup>609</sup>

The Commission observed the same issues for Aboriginal children and young people in the youth justice system, where trusted workers in ACCOs or community service organisations were often prevented from effectively influencing the ways in which care teams responded to children and young people,

despite having the best understanding of the young person's needs. When possible responses required funding, statutory office holders would generally have to approve expenditure.

The Commission considers that a greater degree of authority on the part of an Aboriginal young person's trusted worker results in stronger connections between agencies and the young person, and improved outcomes for the young person. This requires involvement of the trusted worker in planning and decision-making, and providing the trusted worker with greater decision-making authority for brokerage. Where a child or young person's trusted relationship is with an Aboriginal worker outside of the statutory framework of Youth Justice or Child Protection – for example, with a cultural mentor – practice and systems should be flexible enough to allow such workers to take the lead in case management and care.

<sup>609</sup> Commission for Children and Young People, *In our own words*, p 253.

### Recommendation 18

That Youth Justice develop a framework to identify an Aboriginal child or young person's most trusted worker, and give them a central role in planning and decision-making concerning the child or young person's care. DFFH should commit to the same framework for Aboriginal children and young people for whom DFFH has joint responsibility with Youth Justice. This should be reflected in the revised protocol between Child Protection and Youth Justice (see Recommendation 40).

The framework should be based on the following principles:

- Engagement with Aboriginal children and young people is a critical factor in enabling services to support them.
- An Aboriginal child or young person's trusted worker is most likely to listen to the child or young person and advocate in their best interests.
- Trusted relationships can take various forms. Flexibility is necessary to accommodate a young person's trusted worker, and their strengths and experience.
- Aboriginal children and young people should be asked to identify who their most supportive and trusted worker is.

### Reconciling the recommendations in this chapter

It is important to acknowledge that there is, to some degree, an inherent tension in the recommendations in Chapter 6.2. On the one hand, the recommendations focus on expanding the involvement of Koori Youth Justice workers and other Aboriginal workers in Youth Justice case management and decision-making for Aboriginal children and young people. On the other, they seek to ensure that Youth Justice workers themselves build trusting relationships with Aboriginal children and young people under their supervision.

This tension can be resolved by taking a child-centred approach – the various agencies and workers involved with a child should all work in a collaborative and flexible way to meet the needs of that child. The involvement of a Koori Youth Justice worker or other trusted worker does not absolve Youth Justice of the need to make every effort to engage with the child or young person.

## 6.3 Participation in the youth justice system

### Finding 9

Meaningful participation by Aboriginal children and young people in the youth justice system is limited.

*People must be empowered to be key actors in their own development. This applies equally to children, whose participation and self-expression based on their evolving capacities and with respect for parental guidance, should be valued by adults.*<sup>610</sup>

*Services should consider children who offend, as with other socially excluded children, as potential assets to their communities whose participation is central to the future well-being of those communities. Within individual interventions and within the design and direction of services, children should be seen not as the problem but as having the key to effective solutions.*<sup>611</sup>

It is a well-established principle of youth participation that children and young people should have the right to express their views on decisions that affect them, and that those views should be taken seriously. Article 12 of the United Nations Convention on the Rights of the Child requires States parties to:

<sup>610</sup> KA Annan, *We the children: meeting the promises of the world summit for children* [PDF], UNICEF, New York, 2001, accessed 17 August 2020, p 99.

<sup>611</sup> M Drakeford and L Gregory, 'Transforming time: a new tool for youth justice', *Youth Justice*, 2010, 10(2):143–156.

*assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*<sup>612</sup>

A large body of research has explored the benefits of involving children and young people in decision-making affecting them across a variety of systems.<sup>613</sup>

Encouraging children and young people to be involved in goal-setting and decision-making fosters ownership and accountability. Engaging young people in this way has been shown to be beneficial, not only for individual young people, but for the effectiveness of services, and for communities.<sup>614</sup>

Genuine participation by Aboriginal children and young people in the youth justice system is key to developing culturally appropriate, child-centred solutions. Such participation can occur on 2 levels – at the individual level, where a young person who is under the supervision of Youth Justice has input into planning and decision-making that directly affects them, and at the systemic level, where Aboriginal children and young people have input into the development of policy and reforms in relation to youth justice issues. These are discussed separately in the following sections.

<sup>612</sup> Convention on the Rights of the Child, article 12(1).

<sup>613</sup> M Connolly and T Ward, *Morals, rights and practice in the human services: effective and fair decision-making in health, social care and criminal justice*, Jessica Kingsley Publishers, London, 2008; H Shier, 'Pathways to participation: openings, opportunities and obligations; A new model for enhancing children's participation in decision-making, in line with article 12.1 of the United Nations Convention on the Rights of the Child', *Children & Society*, 2001, 15:107–117; J Cashmore, 'Promoting the participation of children and young people in care', *Child Abuse & Neglect*, 2002, 26(8):837–847; E Sacre Trawick, 'The strength of youth voice: exploring the influence of youth strength-perspective on desired outcomes for youth enrolled in system-of-care services', *Journal of Prevention & Intervention in the Community*, 2019, 47(2):104–124.

<sup>614</sup> BW Head, 'Why not ask them? Mapping and promoting youth participation', *Children and Youth Services Review*, 2011, 33(4):541–547; Commission for Children and Young People, *In our own words*.

### 6.3 Participation in the youth justice system

At the individual level, agencies must ensure that they have robust and culturally appropriate youth engagement frameworks that create an environment where Aboriginal children and young people's voices can be heard and acted upon. For Youth Justice, this means providing opportunities to meaningfully engage with Aboriginal children and young people on the ways in which youth justice orders are managed, goals are developed and support is provided. This is essential to achieving positive outcomes.<sup>615</sup>

It is important to acknowledge that the notion of individual participation in the youth justice system is complex, as choice is generally considered to be one of the preconditions for genuine and effective youth participation,<sup>616</sup> whereas a child or young person's involvement in the youth justice system is usually involuntary.<sup>617</sup> Further, Aboriginal children and young people may not wish to participate in case management or other Youth Justice processes. There are many possible reasons for this – a high turnover of workers, an absence of trust in the relationship with their case manager, or a belief that previously expressed views were unheard or not acted upon. Where this is the case, or it is otherwise not possible for a young person to directly participate in case management meetings and decision-making, evidence suggests that involving a trusted worker who knows the young person and their needs is vital to effecting change.<sup>618</sup> The involvement of the child or young person's family is also crucial. This is discussed in Chapter 7 'Family, community & culture'.

More broadly, participation for Aboriginal children and young people in the youth justice context means being listened to and respected from their first contact with police, and being informed about and represented through the court process and through any periods of custody, as well as post-custody when they return to the community.<sup>619</sup> In order to engage in meaningful participation, Aboriginal children and young people must have a clear understanding of what is going on around them, including the various legal processes in

which they are involved. This is discussed in Chapter 12.3 'Court' and Chapter 12.4 'Legal assistance'.

This chapter begins by outlining Youth Justice policies on youth participation. It then describes the experiences of Aboriginal children and young people in relation to participation, and the Commission's observations from the Taskforce on the effectiveness of children and young people's participation in Youth Justice processes. It concludes with a discussion of Aboriginal children and young people's systemic participation in the development of youth justice policy.

#### Youth Justice policies on participation

Youth Justice policies highlight the importance of youth participation. One of the objectives of the Youth Justice Strategic Plan is to strengthen the voice and participation of young people and their families in Youth Justice, as:

*[r]especting the agency of young people, supporting their families, and ensuring they have a voice in Youth Justice is fundamental to delivering a child-centred response. This means engaging regularly, providing information that is understood and relevant, and being genuinely open to their participation.*<sup>620</sup>

The Youth Justice Case Management Evidence Base<sup>621</sup> and various practice guidelines similarly emphasise the need to ensure that the young person's voice is heard throughout the case management process by involving the young person in planning, giving them 'ownership' in relation to setting goals, and seeking their input into decision-making.<sup>622</sup> This is acknowledged as improving

<sup>615</sup> Drake et al., 'Hearing new voices'; Morrison and Gibson, *Promoting young people's participation*; Little, 'Participation and practice'; Safer Scotland, *Preventing offending*, p 12.

<sup>616</sup> Little, 'Participation and practice', p 17.

<sup>617</sup> Cashmore, 'Promoting the participation of children and young people in care'; Youth Affairs Council Victoria, *Youth participation*.

<sup>618</sup> See, for example, HM Inspectorate of Probation, *Desistance and young people*.

<sup>619</sup> Little, 'Participation and practice'.

<sup>620</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 39.

<sup>621</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 39.

<sup>622</sup> For example, *Case planning* (Department of Justice and Community Safety (DJCS), *Case planning: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 3), *Care teams* (DJCS, *Care teams*, p 5), and *Trauma-informed practice* (Department of Justice and Community Safety (DJCS), *Trauma-informed practice: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 8). See also Department of Justice and Community Safety (DJCS), *Exiting custody, transition and reintegration: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020; Department of Justice and Community Safety (DJCS), *Managing non-compliance: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020; Department of Justice and Community Safety (DJCS), *The ACE model: a rewards and consequences approach in custody: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, each of which refers to the importance of the child or young person's active participation, and directs case

the young person's motivation, engagement with services, compliance with orders, and outcomes.<sup>623</sup>

Participation involves young people and their families attending care team meetings 'wherever possible and appropriate'.<sup>624</sup> The *Care teams* practice guideline acknowledges that some young people may choose not to attend meetings, and that, for others, attendance may not be appropriate due to their age or stage of development. In such situations, the case manager is directed to ensure that the young person is informed about discussions and decisions and 'that their views and wishes are considered during meetings'.<sup>625</sup> However, the guideline does not indicate precisely how this is to occur.

Youth Justice practice guidelines do not direct case managers as to how to give 'due weight' to the views of the young person in case management processes, and thereby ensure that young people feel heard, valued and empowered. The experiences of Aboriginal children and young people indicate that they often do not feel heard or valued in the youth justice system.

### Aboriginal children and young people's experiences

The Commission asked Aboriginal children and young people whether they were able to participate in decisions affecting them in the youth justice system, and whether they felt heard. Most told the Commission that they weren't able to have a say. Overwhelmingly, they said that they did not feel heard.

*Give young people a say in what is going on... I've never been given a voice. I'm still trying.*  
– Seth, 16

managers to consult with young people and seek their input into planning and decision-making.

<sup>623</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 39; DJCS, *Care teams*, p 6. The *Trauma-informed practice* guideline refers to the importance of empowering young people by giving them 'meaningful ways to express their concerns', thereby restoring 'a sense of personal control and agency over their lives', which may have been eroded by trauma (DJCS, *Trauma-informed practice*, p 8).

<sup>624</sup> DJCS, *Care teams*, p 5.

<sup>625</sup> DJCS, *Care teams*, p 6.

*Then I mucked up and they won't support me, but they weren't helping anyway. I was telling Youth Justice the placement was going to break down and they didn't help.* – Logan, 16

*I got enrolled but I didn't go because I was in Melbourne at [a school] and I didn't know anyone there. I just got enrolled for bail [purposes]. It would have been better to be enrolled back home... but I didn't have a say.*  
– Jasper, 17

One young person told the Commission that he wasn't able to have input into his cultural support plan because he didn't know that it was being created. Another young person told us that in order to get the help she needed, she had to 'speak up [and] persevere' and that she would advise other young people to 'keep speaking your mind, telling the truth and saying [to services] that you need it'.

Aboriginal children and young people told the Commission that they wanted to have meaningful input and more than one choice in their lives.

*I think people should have more choices.*  
– Hayleigh, 21

*Ask people what they want to do, give them more than one option.* – Seth, 16

One young person said that 'letting [young people] have a say and more support' would have improved the youth justice experience. When Aboriginal children and young people were able to have a say, or felt heard, they spoke positively about the experience. According to one young person, it's good when 'you get to have a say and family gets to have a say'.

### Observations from Taskforce case planning sessions

During the Taskforce case planning process, the Commission observed that most Youth Justice and Child Protection staff accepted in principle the value of including the voices of Aboriginal children and young people in their work. Despite this, young people's

### 6.3 Participation in the youth justice system

meaningful participation in Taskforce case planning was, in too many cases, not realised in practice.

The Commission spoke to 23 Aboriginal children and young people before their case planning session, in part to ascertain whether there were any specific issues that the child or young person wanted participants at the session to discuss. This enabled the Commission to include the voice of the child or young person in the case planning session, and to seek to incorporate their views in case planning. Of the 23 children and young people with whom the Commission spoke, 18 identified specific issues they wanted raised. This included help with:

- setting up their rooms
- arranging access to family
- finding a job
- mentoring
- welfare-related issues, such as help at home and access to child support.

These issues translated into 43 actions. At the conclusion of the 8-week review process, only 14 of these actions (33%) had been completed.

The Commissioner for Aboriginal Children and Young People said of one young person's case planning session:

*We've all got the ability to make what he wants happen. We've got to coordinate it. He's sick of broken promises. He's expressing what he wants. We need to support him and his mother to have a healthy relationship. The next few years are critical for him. If we get this right for him, he could be anything. He's being brave. He wants to do things like going back to Country, living independently. Everything he is requesting is doable, we can make it happen.*  
– Commissioner for Aboriginal Children and Young People

Erin's case (below) illustrates a failure by agencies to give sufficient weight to the views of an Aboriginal young person, to her detriment. A possible barrier to the effective participation of Aboriginal children and young people in such cases is an unwillingness on the part of agencies to orient services or interventions to align with young people's desires and goals.

In other case planning sessions, where the Commission had not previously sought the young person's views, we frequently observed that the young person's voice or input was not discernible at all in the discussion.

#### Improving Aboriginal children and young people's participation in Youth Justice processes

Currently, Aboriginal children and young people involved in the youth justice system do not feel that they have a say, or that they are heard. Children and young people's effective participation in the youth justice system requires not only giving them the opportunity to express their views on decisions that affect them, but also ensuring that those views are accorded due weight. As outlined above, Youth Justice practice guidelines comprehensively address the former, albeit across several different guidelines. However, they do not sufficiently address the latter. There is currently also a lack of specific guidance on how Youth Justice workers are to foster participation specifically by Aboriginal children and young people who are under their supervision.

In March 2021, the Victorian Government announced funding of \$202,000 for the Koorie Youth Council to lead an initiative called 'Amplifying the voice of Aboriginal children and young people' to ensure that Aboriginal children and young people have a voice in the design and delivery of Youth Justice services.<sup>626</sup> This is a welcome initiative.

Youth Justice should be accountable for creating an environment where:

- children and young people feel secure and able to express their views
- children and young people feel that their views will be taken seriously
- workers value the views of children and young people and, where appropriate, act on those views.

Participation by Aboriginal children and young people in Youth Justice processes should be based on a cultural framework, led and designed by Aboriginal people, including Aboriginal young people.

<sup>626</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people*.

## Erin

Erin is a young woman who is the mother of a bright young girl. Erin is strong, caring and independent, and loves her family very much. She takes good care of her daughter. Erin moved around a bit growing up and Child Protection was involved in her life. She experienced difficulties in her younger years with family violence, mental illness and, at times, drugs.

Along with being a full-time parent, Erin was the carer for her niece and grandfather. While this arrangement was informal, Erin told the Commission that the financial stress of this arrangement weighed heavily on her. When Erin spoke to the Commission before her case planning session, she was very clear about what she wanted from case management. She said she would like the case planning session to focus on:

- assistance with childcare for her daughter
- assistance with getting a job
- financial assistance to alleviate the financial stress of caring for her daughter, niece and grandfather
- stable housing
- accessing a cultural mentor – Erin said that this would help with her mental health.

When speaking about the future, Erin said that she hoped for guidance and protection to help her to move forward. In her case planning session, the actions that were agreed upon focused on housing, childcare, mentoring, education, family violence and child protection supports.

When the Commission received progress updates on Erin's Taskforce case plan actions from Youth Justice, we were concerned that none of the actions that she had raised had been completed. Instead, the updates indicated that the care team had disregarded Erin's voice and clear requests, deeming them unimportant. For example, childcare was deemed unnecessary, as Erin did not yet have a job. Further, financial support was not considered necessary because the care team deemed that Erin had all the essentials and a secure Centrelink income.

Child Protection commenced an investigation into Erin's daughter and, as a result of the scrutiny, Erin's informal caring arrangements with her niece and grandfather ceased. Her overwhelming fear that Child Protection would again become involved in her life was realised. This fear had been expressed in the case planning session, and attendees had agreed that family support should be provided without formal intervention.

Youth Justice should create mechanisms to ensure that Aboriginal children and young people have meaningful input into, and influence on, the decisions that affect them in the youth justice system. This should include:

- working with the Koorie Youth Council or another Aboriginal youth organisation to develop Aboriginal youth participation principles specific to Youth Justice
- regular and ongoing Aboriginal youth participation training for Youth Justice workers and executives

- establishing youth justice family group conferencing, as recommended in Chapter 7.2 'Youth Justice practices and family involvement'.

### Recommendation 19

That Youth Justice ensure that Aboriginal children and young people have meaningful input into, and influence on, the decisions that affect them in the youth justice system. This should include working with the Koorie Youth Council or another Aboriginal youth organisation to develop Youth Justice youth participation principles, and implementing regular and ongoing training for staff on effective youth participation.

#### Aboriginal children and young people's participation in systems-level decisions about youth justice policy and procedure

According to the Koorie Youth Council in *Ngaga-dji*:

*To solve systemic problems like those affecting Aboriginal communities, we need solutions from the people who live through them. By using youth participation, we actively listen and include children's voices in decision-making processes. This helps provide relevant and effective solutions that change children's and communities' lives for the better.*<sup>627</sup>

The right of Aboriginal children and young people to participate in the matters that affect them encompasses their participation in civil and community life.<sup>628</sup> This includes the opportunity to participate in systemic policy formulation in relation to the youth justice system.

The Youth Justice Review observed that young people have 'important insights into youth offending' and should be regularly consulted in the development of youth justice programs, policies and services.<sup>629</sup> It recommended the establishment of a Youth Advisory Group to provide insights and advice to the head of Youth Justice.<sup>630</sup> This would include reviewing systems data, trends and outcomes, identifying areas of reform and systems improvement, testing policy and legislative reform directions, and advising on funding and budget prioritisation across the continuum of the youth justice system.

<sup>627</sup> Koorie Youth Council, *Ngaga-dji*.

<sup>628</sup> Youth Affairs Council Victoria, *Youth participation*; Convention on the Rights of the Child, articles 12, 13, 15.

<sup>629</sup> Armytage and Oglhoff, *Youth justice review and strategy*, Part 1, p 219.

<sup>630</sup> Recommendation 5.1.

A Youth Justice Reference Group was established in December 2017. It is chaired by the Deputy Secretary, Youth Justice, and its members include senior experts and key service partners. The Youth Justice Strategic Plan describes this group as 'the primary advisory and consultation body on the Youth Justice reform program'. This does not appear to be the kind of group envisaged by the Youth Justice Review 'to enable structured and regular avenues for young people to shape and influence the directions of Victoria's youth justice system'.

As noted above, the Youth Justice Strategic Plan commits to strengthening the voice and participation of young people and their families in the youth justice system. A 'key action' in this respect is to 'engage with Aboriginal children and young people in policy, practice and program design and implementation', using the findings from the *Ngaga-dji* project.<sup>631</sup> Another is to engage with children and young people in Youth Justice through the Parkville Youth Congress and the Youth Leadership Council.

#### Increasing Aboriginal children and young people's systemic participation

Aboriginal young people told the Commission that all parts of the Youth Justice system need to listen to them.

*What does the system need? It needs more young people... Government should have to listen [to young people]. – Joel, 22*

The Aboriginal Justice Caucus submitted to the inquiry that 'hearing and valuing the voice of Aboriginal young people in safe spaces in which they can be engaged and empowered to speak up is important to build self-esteem and cultural connections'. This principle was echoed by Aboriginal organisations with which the Commission consulted. It is key to achieving self-determination for Aboriginal people, as discussed in Chapter 4.1 'Advancing self-determination'.

This was also a central theme at every Taskforce regional forum, where increased youth participation was identified as a key factor in achieving positive outcomes for Aboriginal children and young people in the youth justice system. Participants in every region

<sup>631</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 39.



expressed the view that youth voice and participation are imperative to a functioning youth justice system. Regions spoke about the need to include youth voices in the delivery of their services, and to treat Aboriginal young people as future community leaders.

*Youth leaders can provide the voice for young people throughout formal meetings and forums to ensure decisions are informed by young people and are responsive to their needs. As emerging leaders, their attendance (in both a professional and community context) serves as a powerful development opportunity.*

– Loddon Mallee (Mildura) regional forum

*The region is seeing clear evidence of the next generation of youth becoming future leaders of the community. – Gippsland (Morwell) regional forum*

*Young people are putting services on notice – we are not standing for [not being heard] anymore. – Youth attendee at Grampians (Ballarat) regional forum*

*We need to keep the young person – their story, their culture – in the centre of the services web. Then the rest of this will disappear.*

– Gippsland (Bairnsdale) regional forum

*We cannot talk for young people. Let them talk for themselves about what they need and want. Services must be open and transparent with the young people they work with.*

– Hume (Shepparton) regional forum

Two regions – Hume (Wodonga) and Barwon South West (Geelong) – agreed to create and facilitate youth advisory groups as part of their Regional Action Plans.

In 2016, the Victorian Government launched its *Youth policy: building stronger youth engagement in Victoria*, which includes a *Youth Engagement Charter* to guide engagement with young people on policy and reform. According to the first principle of this charter:

*Policies that impact on Aboriginal young people must promote self-determination, self-governance, connection to land and culture, and build on the strengths and resilience of Aboriginal communities and their young people. Aboriginal young people are the current and future leaders in their communities and beyond. Listening to their voices and hearing what is important to them is the foundation of working together to create new ways to design programs and deliver services.*<sup>632</sup>

As noted above, in March 2021, the Victorian Government announced funding for the Koorie Youth Council to lead an initiative aimed at ensuring that Aboriginal children and young people have a voice in the design and delivery of Youth Justice services.<sup>633</sup>

Increasingly, government departments, working groups and forums are seeking an Aboriginal youth voice to guide their work. For instance, working groups for *Wungurilwil Gapgapduir*, the Aboriginal Children's Forum and the Aboriginal Justice Forum have recognised the need to include the views of Aboriginal children and young people in their work. Incorporating Aboriginal youth voices across government requires a coordinated approach.

As the representative body for Aboriginal young people in Victoria, the Koorie Youth Council should be funded to work in partnership with the government to design, implement and lead a whole-of-government Aboriginal youth engagement strategy. This would enable the government to systematically consider how Aboriginal children and young people can meaningfully be involved in, and provide advice on, policy and systems that affect them, including the youth justice system.

## Recommendation 20

That the Victorian Government fund and partner with the Koorie Youth Council to design, implement and lead a whole-of-government Aboriginal youth engagement strategy.

<sup>632</sup> Department of Health and Human Services (DHHS), *Youth policy: building stronger youth engagement in Victoria*, DHHS, Victorian Government, 2016, p 8.

<sup>633</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people*.

## 6.4 Responding to individual needs

### Finding 10

The youth justice system often fails to adequately respond to the individual needs of Aboriginal girls and young women, children and young people with disability, and LGBTQI+ young people.

As outlined at the beginning of Chapter 6, a child-centred system is one that meets the needs of Aboriginal children and young people with flexible and individualised responses. This requires the youth justice system to be responsive to the unique experiences, circumstances and strengths of each Aboriginal child and young person who comes into contact with it. This means being sensitive to the multiple aspects of a young person's identity, and the cumulative risks of discrimination and marginalisation that some young people experience because of other aspects of their identity, including gender, disability and LGBTQI+ status. This can impact on access to services and supports in the community, as well as experiences in the youth justice system.

As noted above, the Youth Justice Strategic Plan adopts an individualised approach to service delivery, 'cognisant of young people's age, gender, Aboriginal status, cultural background, family circumstances, health, mental health, disability and social needs, and sexuality and gender identity'.<sup>634</sup> This strategic direction is commendable; however, it remains to be seen what impact it will have at an operational level, particularly for children and young people at the intersection of these groups. Implementation must be closely monitored to ensure it is serving the specific interests of Aboriginal girls and young women, Aboriginal children and young people with disability, and Aboriginal LGBTQI+ children and young people.

<sup>634</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 16.

### Aboriginal girls and young women in the youth justice system

Many Aboriginal girls and young women are exposed to a unique combination of racialised and gendered interactions and experiences.<sup>635</sup>

In December 2020, the Australian Human Rights Commission published the *Wiyi yani u thangani (women's voices): securing our rights, securing our future* report on the rights and experiences of Aboriginal women and girls.<sup>636</sup> The report found that poverty, family violence, trauma and poor mental health are leading Aboriginal girls and women into incarceration and entrenching them in the criminal justice system.<sup>637</sup> As a result, across Australia, Aboriginal women are 21.2 times more likely to be incarcerated than non-Aboriginal women, making them the fastest growing prison population.<sup>638</sup>

Although the numbers are small, Victorian Youth Justice data shows that Aboriginal girls and young women are substantially disproportionately remanded in custody and sentenced to custodial orders compared to their non-Aboriginal peers, and this rate is even higher than for Aboriginal boys and young men. In 2019, 15 Aboriginal young women received a custodial order (comprising 48% of all custodial orders received by young women), and 77 Aboriginal young women received a remand order (comprising 19% of all remand orders giving to young women).<sup>639</sup>

<sup>635</sup> Aboriginal Health Council of South Australia Ltd and the Lowitja Institute, *The Aboriginal gender study: final report*, Adelaide, 2019, p 5.

<sup>636</sup> Australian Human Rights Commission (AHRC), *Wiyi yani u thangani (Women's voices): securing our rights, securing our future report*, AHRC, 2020, accessed 4 January 2021.

<sup>637</sup> AHRC, *Wiyi yani u thangani*, p 210.

<sup>638</sup> AHRC, *Wiyi yani u thangani*, p 43.

<sup>639</sup> This number is down from 118 in 2018. Over the past 10 years, Aboriginal females made up, on average, 26% of all females on remand orders. The proportion has varied greatly over the 10 years, ranging from 16% (2012) to 43% (2017). In 2019, the proportion of Aboriginal girls and young women

The monthly average Youth Justice custodial population for Aboriginal girls and young women is 5 (3 on remand and 2 sentenced).<sup>640</sup> Over the past 10 years, most Aboriginal young women on sentenced custodial orders were aged 15 years (compared to 17 years for non-Aboriginal young women).<sup>641</sup> In 2019, most Aboriginal young women on custodial orders were aged 18 years.<sup>642</sup>

Numerous studies suggest that surveillance by police and corrections in the lives of Aboriginal women is significant, despite the fact that their sentences may be short and are usually in relation to minor offending.<sup>643</sup> Research indicates that Aboriginal women and girls can experience cruel and indecent treatment in custody, as well as inferior facilities and conditions.<sup>644</sup> This includes forced strip searches, assaults and inappropriate touching; disproportionate confinement in high risk cells; and inadequate health care.<sup>645</sup> Although these findings are not specific to Victoria, they are indicative of the particular risks Aboriginal girls and young women face when exposed to the youth justice system.

In addition, research published by the Sentencing Advisory Council in 2019 found that Aboriginal girls in Victoria were the subject of a higher median number of child protection reports than non-Aboriginal girls and Aboriginal boys, and that Aboriginal girls and young women who were the subject of a child protection report had the highest rates of investigation, substantiation, child protection orders and out-of-home care compared to other justice system-involved children.<sup>646</sup> The crossover between Child Protection and Youth Justice involvement is discussed further in Chapter 8.1 'Child Protection involvement'.

This points to the need for a tailored response to Aboriginal girls and young women in the youth justice system. According to the Youth Justice Strategic Plan:

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was lower than the 10-year average, at 19%: DJCS data provided to the Commission on 19 February 2020.

<sup>640</sup> Compiled from DJCS data provided regularly to the Commission.

<sup>641</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>642</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>643</sup> Blagg and Anthony, *Decolonising criminology*, p 211.

<sup>644</sup> Blagg and Anthony, *Decolonising criminology*, pp 211–212. See also AHRC, *Wiyi yani u thangani*, pp 198–202.

<sup>645</sup> Blagg and Anthony, *Decolonising criminology*, pp 211–212.

<sup>646</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 76.

*Although young women make up a small percentage of young people who offend, they typically have more significant trauma histories, higher rates of mental illness and a particular risk profile. Their offending pathways and trajectories are distinct. These differences highlight the need for a gender-responsive approach to meet the specific needs of girls and young women in the Youth Justice system.*<sup>647</sup>

The Commission spoke to 23 Aboriginal girls and young women during the inquiry.<sup>648</sup> These young women, their family members and service providers told us that there is a lack of early intervention, diversionary and rehabilitative programs that are designed to meet the specific needs and interests of Aboriginal girls and young women. The Commission also heard that the interests of Aboriginal girls and young women, especially those who have experienced trauma, poverty and social dislocation, are not necessarily served by programs designed for young women generally, or for Aboriginal boys and young men.<sup>649</sup>

### **Inadequate access to support services and programs in the community**

The Commission heard about positive examples of programs which are working well for Aboriginal girls and young women in the community. For example:

*Young Luv (YL) is an early intervention and prevention program delivered by Djirra in a two hour workshop to provide information about and reinforce the concept of healthy, positive relationships for Aboriginal teenagers. The aims of YL are to provide a culturally safe space for young women aged from 13–18 years to talk, reflect on and better understand important issues affecting their lives. YL fills a gap in meeting the needs of young Aboriginal women who are at a stage in their lives when destructive patterns in relationships may have already been experienced or are becoming normalised.*<sup>650</sup>

However, many young people, their families and service providers spoke about the need for more accessible and age-appropriate supports specifically designed for

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<sup>647</sup> DJCS, *Case Management Evidence Base*, p 25.

<sup>648</sup> In addition, the Taskforce case file review included 71 Aboriginal girls and young women.

<sup>649</sup> See also Aboriginal Health Council of South Australia Ltd and the Lowitja Institute, *The Aboriginal gender study*, p 23.

<sup>650</sup> Aboriginal Justice Caucus, Submission to *Our youth, our way* inquiry, p 4.

## 6.4 Responding to individual needs

Aboriginal girls and young women. This is also discussed in Chapter 9.3 'Mentoring', in relation to mentoring programs for Aboriginal girls and young women. Early intervention is examined in Chapter 5.1 'Early intervention'.

*More programs would be good, just things to get out of the house. All the programs they got here in [town] are mainly for boys. I think that boys get more support than the girls. I know a few girls in [my town] that are like me. I want to go on excursions and stuff like that and sort of learn at the same time. – Rhea, 16*

*There's nothing to do, that's why we get in trouble with the police. I'd like more things to do... There should be more youth groups. – Lilliana, 15*

*There's not a lot of services out here... [ACCO] tries their hardest but trying to keep everyone entertained is hard and that's probably why I was such a troubled kid – no programs, nothing to do, no people to engage with. The skate park and stuff is all boys' stuff; there's nothing for girls unless they're tomboys. We need a dance studio or some sort of program for young women. It's really hard, like it would be good for females to have a place to go; bring groups together and mix Indigenous and non-Indigenous girls together. They do women's business at [ACCO] every now and then and they do girls' night every second week. – Taylah, 20*

*[Young Aboriginal girls] struggle to access family violence programs through Djirra because of their age. When we've wanted a young person to engage in creative ways it gives them an avenue to connect with people who are influential role models. We have difficulties with young girls accessing those programs. Sometimes we've had a worker who can take them and sit with them. But there's nothing in community we can connect these complex, high-risk behaviour young people with because of the perception of their behaviour that they might be deemed not the right fit. – Aboriginal Youth Justice worker*

Many stakeholders referred to the absence of drug and alcohol programs for Aboriginal girls and young women. This is also discussed in Chapter 9.2 'Substance use'.

*What do we do with a 13 year old who has been using drugs?... Dardi has access to behaviour change, but none for girls to engage in that can do healing of their trauma. We can connect to VAHS for mental and spiritual health, but what they need is intensive, therapeutic rehab programs – behavioural change, but also substance use and long-term treatment. They're only masking all their trauma with drugs. – Youth Justice worker*

The Commission also heard that there is a need for more female Aboriginal workers to support girls and young women.

*I have never seen an Aboriginal girl worker and I think that would be good because they can relate, and we understand. – Gabrielle, 15*

*We need to change the ratio of male to female workers. We need new funding to try and get workers of 2 genders. – Aboriginal Youth Justice worker*

## Inadequate access to support services and programs in custody

In Chapter 13.1 'Cultural safety and support in custody', we examine the experience of Aboriginal children and young people in custody and find that, despite some positive endeavours, Victoria's youth justice centres are not culturally safe environments. The Commission also heard that there is inadequate access to support services and programs to meet the specific needs of Aboriginal girls and young women in youth justice custody.

*... the girls' programs are a bit tokenistic and gender-specific, and sometimes they just want to get out and kick the footy like the boys would or play some sport... And a bit more mixing with the boys. I know why they're separated, but they're not going to be separated when they're out; they need to learn about respecting themselves and their bodies now. The young Koori girl working at the STREAT cafe was so excited about it and that set her up, now she's got a sense of purpose and knows what she's doing and what she wants to do when she gets out. I think the programs need to be tailor-made to their interests. With smaller numbers they fly under the radar a bit and there's a lot more focus on the boys, especially the younger boys who just bounce off the walls. It seems to be just girls are only interested in dancing and artwork and getting their nails done and yeah, they might be into that, but they might be interested in other stuff too and I don't think it's captured.*  
– Aboriginal Independent Visitor

Youth Justice has taken some steps to implement programs designed for Aboriginal girls and young women detained in Parkville youth justice centre. In 2019, the Aboriginal Youth Justice unit and Korin Gamadji Institute partnered to pilot a 6-week cultural program for girls and young women in Parkville. Although identified as a leadership program for Aboriginal girls and young women, participation was open to all young women (4 participants identified as Aboriginal, out of 24) with focus areas and activities co-determined with facilitators and participants.<sup>651</sup> The

<sup>651</sup> Korin Gamadji Institute, *KGI & Parkville Youth Justice women's cultural program 6 week report*, Korin Gamadji Institute, unpublished, accessed 4 January 2021.

program report noted a major concern for mentors was the need for ongoing support and wellbeing for young women leaving Parkville, which was not captured by the program.<sup>652</sup>

While there is clearly value in program offerings like this, on its own as a one-off program without consistent follow-up and ongoing mentoring and support, it is inadequate to meet the specific and most pressing needs of Aboriginal girls and young women in custody.

## Improving responses to Aboriginal girls and young women

Gender must be a key consideration in all policies for Aboriginal people, 'recognising that the impacts of public policy are often gendered, and have the potential to either perpetuate inequality or advance gender equity'.<sup>653</sup> This is particularly important in the youth justice context, given the disproportionate numbers of Aboriginal girls and young women in youth justice custody.

There is an increasing recognition by Youth Justice that young women in the youth justice system should not be treated as a homogenous group,<sup>654</sup> and that Aboriginal girls and young women in particular 'have higher levels of complexity and vulnerability through socio-economic disadvantage and exposure to the effects of intergenerational trauma'.<sup>655</sup> A more empirically based review of the data is warranted to better understand the causal factors driving the involvement of Aboriginal girls and young women in the youth justice system in Victoria and how to mitigate these.<sup>656</sup>

<sup>652</sup> Korin Gamadji Institute, *KGI & Parkville Youth Justice women's cultural program 6 week report*. Support for children and young people leaving custody is also discussed in Chapter 13.3 'Leaving custody'.

<sup>653</sup> Aboriginal Health Council of South Australia Ltd and the Lowitja Institute, *The Aboriginal gender study*, p 8.

<sup>654</sup> DJCS, *Case Management Evidence Base*, p 24.

<sup>655</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 32.

<sup>656</sup> Research produced by the Georgetown Law Centre on Poverty and Inequality (R Epstein, JJ Blake and T Gonzalez, *Girlhood interrupted: the erasure of Black girls' childhood* [PDF], Georgetown Law, Centre on Poverty and Inequality, 2017, accessed 4 January 2021) presented data in the United States context showing that 'adults viewed Black girls as less innocent and more adult-like than their white peers' (p 1). The study found that this differential treatment arose from stereotypes linked to a legacy of racial discrimination and dehumanisation, and potentially contributed to the disproportionate rates of young women's exposure to the youth justice system, and their adverse experiences within it (p 12). This included more punitive exercise of discretion by those in positions of authority, greater use of force and

## 6.4 Responding to individual needs

The Commission is pleased to see that Youth Justice is developing ‘a new operating model for girls and young women to support gender-responsive interventions and their equal access to education, health, recreation and treatment services’.<sup>657</sup> DJCS has also advised that a specific practice guideline titled ‘Working with young women’ is being developed.<sup>658</sup>

At the time of writing, these initiatives had yet to be fully operationalised, with many Aboriginal young women still reporting a lack of dedicated and accessible services to meet their specific needs and interests, both in their communities and in custody. In particular, there is a pressing need for community drug treatment and rehabilitation services for Aboriginal girls and young women. In Chapter 9.2 ‘Substance use’, we recommend the establishment of new healing centres across Victoria, including one specifically for Aboriginal girls and young women.

In addition, in Chapter 9.3 ‘Mentoring’ we recommend the expansion of strengths-based cultural mentoring programs across the state, including dedicated programs for girls and young women. In Chapter 5.2 ‘Age-appropriate responses to Aboriginal children and young people’ we recommend the establishment of early intervention programs and services for Aboriginal girls under the age of 14 years.

However, additional services and programs for Aboriginal girls and young women in the youth justice system are required. The design and delivery of these must be driven by Aboriginal communities. As identified by *The Aboriginal gender study*, ‘gender is intertwined with culture, the foundation of Aboriginal identity’.<sup>659</sup> More female Aboriginal Youth Justice workers are also

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harsher penalties. These findings were congruent with past research in the United States showing that African American girls were less likely to have their cases dismissed by prosecutors (3 out of 10 cases, compared to 7 out of 10 for their peers), less likely to be offered diversion, and more likely to be removed from their homes and placed in state custody, and that they consistently received more severe dispositions even after accounting for seriousness of the offence, prior record and age (p 12).

<sup>657</sup> Information provided to the Commission by DJCS on 17 July 2020. In addition, the Youth Justice Strategic Plan, custodial operating philosophy, Case Management Framework and Case Management Evidence Base all recognise the need for a gender-responsive approach to meet the specific needs of girls and young women in the youth justice system.

<sup>658</sup> Information provided to the Commission by DJCS on 7 August 2020.

<sup>659</sup> Aboriginal Health Council of South Australia Ltd and the Lowitja Institute, *The Aboriginal gender study*, p 6.

required to support Aboriginal girls and young women in the youth justice system.

The Victorian Government’s announcement in March 2021 of \$4.5 million to expand the CBKYJP and provide additional Koori Youth Justice workers, with a focus on providing support to Aboriginal young women, is a positive step towards meeting these needs.<sup>660</sup>

### Aboriginal children and young people with disability

Aboriginal children and young people with disability can face unique challenges. For those involved in the youth justice system, these challenges can be magnified by systemic failures and the cumulative impacts of discrimination and marginalisation on the basis of race and disability.<sup>661</sup> This is particularly problematic for Aboriginal children and young people with non-apparent disabilities (such as neurodevelopmental disability), which may give rise to behaviours misinterpreted as inattention, disrespect or defiance.<sup>662</sup> Conscious and unconscious racial biases can also affect how these behaviours are interpreted.<sup>663</sup>

A disproportionate number of Aboriginal people live with disability,<sup>664</sup> and Aboriginal children and young people with disability are over-represented in the youth justice system.<sup>665</sup> The 2019 annual Youth Justice survey found that 49% of Aboriginal young people involved with Youth Justice on 31 December 2019

<sup>660</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people*.

<sup>661</sup> Law Council of Australia, *People with disability: the Justice Project, final report, part 1* [PDF], Law Council of Australia, 2018, accessed 4 January 2020, pp 4, 13.

<sup>662</sup> S Calero et al., *On the problematization and criminalization of children and young adults with non-apparent disabilities*, Ruderman Family Foundation, 2017 accessed 11 February 2021; Law Council of Australia, *People with disability*, p 5.

<sup>663</sup> Law Council of Australia, *People with disability*, pp 41-42.

<sup>664</sup> Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander health survey 2018-19*, Catalogue number 4715, 26 May 2020, Table 4.3, accessed 4 January 2021; Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *The experience of First Nations people with disability in Australia: issues paper* [PDF], 2020, accessed 4 January 2021, p 1; S Avery, *Culture is inclusion: a narrative of Aboriginal and Torres Strait Islander People with a disability*, First Peoples Disability Network Australia, 2018. Aboriginal young people also have higher levels of neurocognitive disability, intellectual disability and fetal alcohol spectrum disorder: S Hamilton et al., ‘Putting “justice” in recovery capital: yarning about hopes and futures with young people in detention’, *International Journal of Crime, Justice and Social Democracy*, 2020, 9(2):20-36, p 21.

<sup>665</sup> Law Council of Australia, *People with disability*, p 21.

'presented with cognitive disabilities or disability (which impacts on daily functioning)', compared to 28% of non-Aboriginal young people.<sup>666</sup> Data from the Victorian Social Investment Integrated Data Resource indicates that, of children and young people who were involved in Youth Justice between 2017 and 2018, Aboriginal children and young people made up 24% of those involved with disability services.

Notably, the Youth Justice Review found that it is likely that there were also many other young people in Youth Justice with an undiagnosed disability due to poor assessment tools and systemic screening at the time of the review.<sup>667</sup>

The Youth Justice Case Management Evidence Base notes that Aboriginal young people in custodial settings have higher rates of intellectual disability than the general population, and that approximately half of young men in the Youth Justice population have a clinically significant language disorder.<sup>668</sup> Youth Justice practice guidelines also recognise that many young people in custody have a diagnosed or undiagnosed disability, but may not be registered for Disability Justice.<sup>669</sup>

Youth Justice now requires that all children and young people under the age of 18 years be screened for potential intellectual disability using the Child and Adolescent Intellectual Disability Screening Questionnaire (CAIDS-Q) shortly after they enter youth justice custody.<sup>670</sup> There are different timelines for when the CAIDS-Q must be completed. Children and young people aged between 12 and 18 years will receive a CAIDS-Q within 3 business days. Those aged 10 or 11 will not receive a CAIDS-Q unless they are remanded for a minimum of 10 consecutive days, in which case the CAIDS-Q will be completed within 21 days of entry into custody.<sup>671</sup>

<sup>666</sup> DJCS, *Young people involved with Youth Justice in 2019*, p 6.

<sup>667</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 157.

<sup>668</sup> DJCS, *Case Management Evidence Base*, p 21.

<sup>669</sup> Department of Justice and Community Safety (DJCS), *Working as one system: community and custody: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 4 January 2021, p 11.

<sup>670</sup> Department of Justice and Community Safety (DJCS), *Custodial assessment: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 4 March 2021, p 7.

<sup>671</sup> DJCS, *Youth Justice Case Management Framework*, pp 40–41.

The CAIDS-Q takes approximately 10 minutes and does not need to be completed by a clinician. While scoring 'yes' on the CAIDS-Q indicates that the child or young person is likely to have initial indicators of an intellectual disability, it is not a definitive assessment of disability. However, the Youth Justice practice guidelines are not sufficiently clear about how and when to refer a child or young person for further assessment, or to access the NDIS and other support services.<sup>672</sup>

The Taskforce case file review revealed that among the children and young people in the cohort:

- 27% (n = 77) had an identified disability, and 77% (n = 59) of those were identified as having an intellectual disability
- 33% (n = 91) had had a disability assessment
- 37% (n = 103) presented with cognitive difficulties but of those, only 42% (n = 43) had been assessed by a neuropsychologist
- only 11% (n = 29) were a client of the NDIS or receiving support from disability services.

Three per cent (n = 23) of actions arising from the Taskforce case planning sessions related to disability.<sup>673</sup> Of these, 8 actions were acquitted, 2 were closed due to changed circumstances, and 13 were still open at the time of writing. Most actions related to disability concerned the NDIS (n = 20). In several case planning sessions, it was also identified that young people with disability would be eligible to apply for NDIS support;

<sup>672</sup> The only clear direction is in an appendix to a practice guideline relating to youth control orders, which directs that 'If a young person scores YES ("likely to have initial indicators of an intellectual disability") on the CAIDS-Q for potential intellectual disability, the Youth Justice Case Manager must refer the young person to Disability Justice. They may also refer the young person to a private psychologist for cognitive assessment if immediate clarification of cognitive status is required before Disability Justice completes its assessment.' The same guideline provides advice about referring the child or young person to the NDIS alongside a community support organisation who could help the child or young person complete the NDIS application. It appears that the Youth Justice worker should not help complete the application – 'If a young person requires assistance to access the NDIS, Youth Justice staff can refer the young person to other organisations that support people to complete NDIS access request forms.': Department of Justice and Community Safety (DJCS), *Youth control order practice guideline 5 – Engaging with other service providers. Appendix 3 – Disability*, DJCS, Victorian Government, unpublished, accessed 4 March 2021, pp 4, 8.

<sup>673</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

## 6.4 Responding to individual needs

however, appropriate assessments and applications had not been progressed.

The Commission heard from stakeholders that Aboriginal children and young people with disability face additional barriers and prejudicial stereotypes that can have negative impacts on wellbeing and increase the risk of coming into contact with the youth justice system, as well as adverse experiences within it. Service providers reported that many Aboriginal children and young people presented with undiagnosed disability that was not identified until Youth Justice involvement had commenced.

*Young people may not have even been assessed until they come to Youth Justice because the focus has been on behaviour or truancy, not on disability. The young person may have been behaving this way because they're not understanding. – Aboriginal Youth Justice worker*

*There is a big gap in Aboriginal young people being diagnosed and for families to understand how to navigate the NDIS... it shouldn't have to wait until they've come to Youth Justice to access the system. – Aboriginal Youth Justice worker*

*I believe she has a learning disability, but Education and Child Protection failed her because they never got an assessment. – Nan*

### Improving responses to Aboriginal children and young people with disability

The Youth Justice Strategic Plan recognises that children and young people with disability 'need specialised services and supports so they can participate in a way that they understand, supports their rehabilitation and reduces their risk of reoffending'.<sup>674</sup> It includes the following key actions to better identify and support young people with disability:

- Support the operation of the Forensic Disability Program to support young people with cognitive impairment to address their offending behaviour, including through specialist assessment, intake, referral, accommodation and services.
- Employ a Youth Justice senior disability adviser so young people are supported in custody to address their disability needs. This role provides information and advice to staff on disability issues and services.
- Maximise the benefits of the National Disability Insurance Scheme (NDIS) by referring young people with disability to the NDIS Complex Support Needs pathway. This will also involve piloting a specialist service response to facilitate access to the NDIS and to maximise supports.
- Improve coordination and integration of NDIS processes and funded supports with the justice system.<sup>675</sup>

The Strategic Plan also includes key actions to respond to young people's complex health and mental health needs in custody. These are discussed in Chapter 9.1 'Mental health'. They include every Aboriginal young person receiving a health and mental health screen within 12 hours of entering a youth justice centre, and a comprehensive health and mental health assessment within 3 days.<sup>676</sup>

DJCS has also advised that a practice guideline titled 'Working with Disability Justice and the National Disability Insurance Scheme' is being developed.<sup>677</sup>

While these initiatives are welcome, it remains to be seen what impact they will have at an operational level for the specific needs of Aboriginal children and young people with disability.

A recent report from the Victorian Office of the Public Advocate recommended that all adults entering correctional facilities be screened for cognitive disability, which includes 'mental health and neurological disabilities, which may affect their ability to make decisions without support'.<sup>678</sup> The Human Rights Law Centre submitted to this inquiry that all children and young people entering detention be systematically screened for all types of disability 'upon entry and to

<sup>674</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38.

<sup>675</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, pp 38–39.

<sup>676</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 29.

<sup>677</sup> Information provided to the Commission by DJCS on 7 August 2020.

<sup>678</sup> Office of the Public Advocate (OPA), *Decision time: activating the rights of adults with cognitive disability*, OPA, Melbourne, 2021, p vii.



ensure their diversion from a custodial setting to appropriate community based services'.<sup>679</sup>

Youth Justice should ensure that all Aboriginal children and young people, including those over 18 years, are screened for disabilities when they commence an order under Youth Justice supervision, or enter youth justice custody. If the result indicates the likelihood of a disability, they should be referred for a further assessment, and assisted to access appropriate supports.

Youth Justice should also ensure that disability screening and assessment tools are culturally appropriate, and implemented in a holistic way that recognises and incorporates Aboriginal perspectives of health and disability, cultural practices (such as yarning and storytelling) and familial and communal roles of caring.<sup>680</sup>

## Aboriginal LGBTQI+ young people

Young people at the intersections of race, sexuality and gender identity face increased risks of experiencing discrimination, violence and mistreatment in all aspects of their lives – whether in the community, seeking access to services and supports, or in custody.<sup>681</sup> The particular vulnerabilities of LGBTQI+ young people in custodial settings and transgender, gender nonconforming and intersex young people in particular, are well documented.<sup>682</sup> International research also shows that Youth Justice professionals often greatly underestimate the number of LGBTQI+ youth in their care and control.<sup>683</sup>

<sup>679</sup> HRLC, Submission to *Our youth, our way* inquiry, p 7.

<sup>680</sup> Hamilton et al., 'Putting "justice" in recovery capital: yarning about hopes and futures with young people in detention'. In the context of eligibility for the NDIS, see also A Ferdinand et al., *Understanding disability through the lens of Aboriginal and Torres Strait Islander People – challenges and opportunities* [PDF], Centre for Health Policy, Melbourne School of Population and Global Health, The University of Melbourne, 2019, accessed 4 January 2021, p 16.

<sup>681</sup> S Wilber and J Szanyi, *Model policy: transgender, gender nonconforming, and intersex youth in confinement facilities* [PDF], National PREA Resource Centre, 2019, accessed 4 January 2021, p 4; M Wishart, C Davis, A Pavlis and K Hallam, 'Increased mental health and psychosocial risks in LGBQ youth accessing Australian youth AOD services', *Journal of LGBT Youth*, 2020, 17(3):331-349, p 332.

<sup>682</sup> Wilber and Szanyi, *Model policy*, p 4.

<sup>683</sup> The Fenway Institute: The Center for Prisoner Health and Human Rights, *Emerging best practices for the management and treatment of lesbian, gay, bisexual, transgender, questioning, and intersex youth in juvenile justice settings* [PDF], The Fenway Institute, 2018, accessed 4 January 2021, p 5.

The Youth Justice Strategic Plan recognises that LGBTQI+ children and young people can experience higher rates of substance misuse and self-harm, and are at higher risk of family disruption, homelessness and disengagement from education.<sup>684</sup> It also notes that LGBTQI+ children and young people experience poorer physical and mental health outcomes and that these differences are 'not inherent to their sexuality or gender diversity, but stem from family, community or structural responses to LGBTIQ young people'.<sup>685</sup>

The Youth Justice Case Management Evidence Base notes that international research has demonstrated that LGBTQI+ young people are more likely to be stopped by police and to experience particular vulnerabilities in custody.<sup>686</sup> It also acknowledges that 'data regarding the prevalence of young people who identify as LGBTIQ is not routinely collected within the Victorian criminal justice system',<sup>687</sup> and that 'young LGBTIQ people are not always placed according to their gender identity, with a range of harmful consequences'.<sup>688</sup>

The Commission found that there is currently inaccurate recording of affirmed gender descriptors in CRIS and the Client Incident Management System database. Inconsistent approaches and incorrect records undermine the integrity of data and also potentially reflect poor, possibly harmful responses to these children and young people under Youth Justice supervision.

Eight children and young people in the Taskforce case file review (3%) identified as LGBTQI+. The Taskforce and inquiry did not focus on the specific experiences of Aboriginal LGBTQI+ young people, and issues particular to this cohort were rarely raised during consultations. Where issues were raised, they concerned access to support services in the community.

<sup>684</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 34.

<sup>685</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 34.

<sup>686</sup> DJCS, *Case Management Evidence Base*, p 21.

<sup>687</sup> DJCS, *Case Management Evidence Base*, p 21.

<sup>688</sup> DJCS, *Case Management Evidence Base*, p 21.

## 6.4 Responding to individual needs

*They [denominational rehabilitation facility] wouldn't let me in when I wanted help because of my homosexuality. I didn't think I would ever get into rehab... When I got here [different rehabilitation facility] I didn't think I would fit in because of my fair skin. I didn't think anyone would like me, especially the boys, because I'm homosexual. – Joel, 22*

There is a need for targeted services and spaces for Aboriginal LGBTQI+ young people to safely come together in the community to reduce isolation, counteract homophobia and promote cultural connections.<sup>689</sup>

### Improving responses to Aboriginal LGBTQI+ young people

The Youth Justice Strategic Plan recognises that 'young people who identify as sexually or gender diverse may have unique health, mental health and support needs' and that '[t]here is a need for Youth Justice to ensure that all diverse young people and staff feel comfortable, safe and appropriately supported'.<sup>690</sup> The Youth Justice Strategic Plan includes actions to review custodial policies and procedures to reflect the needs of LGBTQI+ young people and to work with custodial health and support services to ensure that the needs of LGBTQI+ young people are recognised and accommodated.<sup>691</sup>

Youth Justice custodial procedures acknowledge 'the potential additional risks and vulnerabilities for young people in custody who identify as LGBTI' and state that 'Youth Justice Policy and Service Design are developing a policy for YJCS to provide clear guidance about our work with young people who identify as LGBTI'.<sup>692</sup> DJCS has advised that a practice guideline to be titled 'Working with LGBTIQ young people' is

currently being developed.<sup>693</sup> While there are elements of current Youth Justice training programs that refer to issues affecting LGBTQI+ children and young people,<sup>694</sup> there is currently no comprehensive, dedicated training provided to Youth Justice community or custodial staff on working with LGBTQI+ young people, nor is such training identified in the Youth Justice workforce plans.<sup>695</sup>

Youth Justice must ensure that gender descriptors are accurately recorded. Further work is also required to better understand the experiences and needs of Aboriginal LGBTQI+ young people in contact with the youth justice system, whether in custody or under Youth Justice supervision in the community.

<sup>689</sup> Aboriginal Health Council of South Australia Ltd and the Lowitja Institute, *The Aboriginal gender study*, p 68.

<sup>690</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 34. The Strategic Plan also acknowledges that LGBTQI+ young people in custody 'may have particular medical or accommodation considerations that need to be met' (p 34).

<sup>691</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 35.

<sup>692</sup> Department of Justice and Community Safety (DJCS), *Working with lesbian, gay, bisexual, trans and gender diverse, and intersex (LGBTI) young people: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 4 January 2021, p 2.

<sup>693</sup> Information provided to the Commission by DJCS on 7 August 2020.

<sup>694</sup> DJCS advised the Commission that supporting LGBTQI+ young people is addressed in induction training for both community and custodial workforces. This training covers respect in the workplace, including identifying and responding to discrimination and unacceptable behaviour. This includes client relationships and covers understanding of discrimination based on sexual orientation. DJCS also referred to training for custodial staff on communication, teamwork and professionalism, which covers processes for conducting searches on LGBTQI+ young people.

<sup>695</sup> Department of Justice and Community Safety (DJCS), *Youth Justice community workforce plan*, DJCS, Victorian Government, 2021, accessed 17 January 2021; Department of Justice and Community Safety (DJCS), *Youth Justice custodial workforce plan*, DJCS, Victorian Government, 2021, accessed 21 January 2021.

## Recommendation 21

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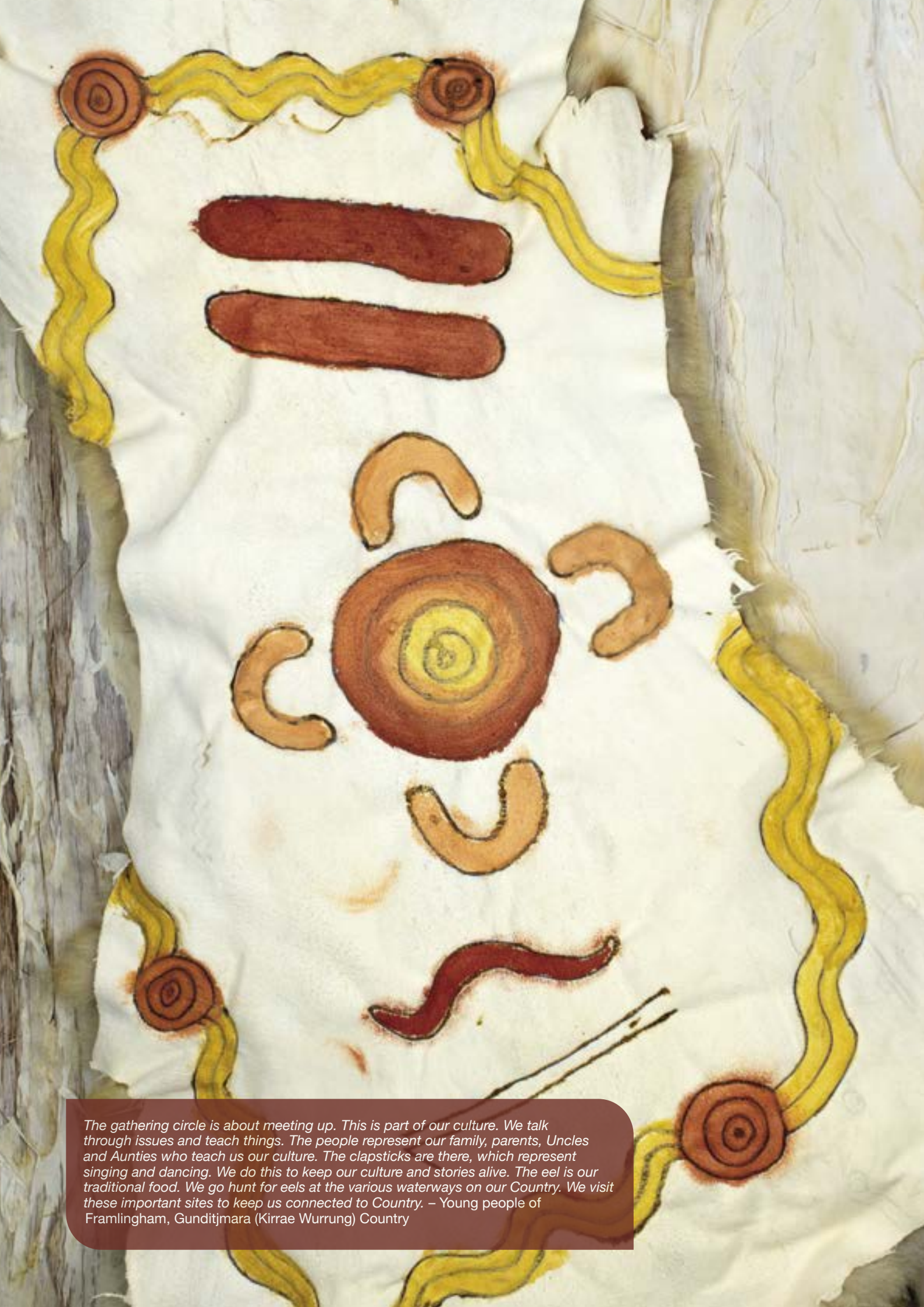
That DJCS ensure that the youth justice system is responsive to the specific needs of all Aboriginal children and young people, including young women, young people with disability and LGBTQI+ young people. This should include:

- a) resourcing more Aboriginal-led, designed and delivered programs for Aboriginal girls and young women
- b) employing more female Koori Youth Justice workers
- c) ensuring that all children and young people entering Youth Justice supervision or youth justice custody are screened for disability, referred for a further assessment if the result indicates the likelihood of a disability, and assisted to access appropriate supports
- d) ensuring that disability screening and assessment tools and processes are culturally appropriate
- e) implementing specific training for all Youth Justice staff in relation to working with LGBTQI+ children and young people
- f) reviewing policies, procedures and accommodation options to ensure that the needs of transgender and gender-diverse children and young people are met, including by amending databases so that they can accurately record gender descriptors.



# Family, community & culture

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*The gathering circle is about meeting up. This is part of our culture. We talk through issues and teach things. The people represent our family, parents, Uncles and Aunties who teach us our culture. The clapsticks are there, which represent singing and dancing. We do this to keep our culture and stories alive. The eel is our traditional food. We go hunt for eels at the various waterways on our Country. We visit these important sites to keep us connected to Country. – Young people of Framlingham, Gunditjmarra (Kirrae Wurrung) Country*

## Our way

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*A child-centred and culturally based justice system takes into account the child's experiences of family, community, culture, Country. If they are not connected to their community and accepted into their community, then that is an indicator that colonisation has had a more profound impact on their quality of life than perhaps another child who has had the benefit of community around them. – Community member*

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*Our kids need to know our position in this country, that our socio-economic status, poverty, is a legacy from colonisation. It's not because we are Aboriginal. We need to celebrate who we are as Indigenous peoples. This happens through cultural practices, and ensuring they know our history, know our leaders and what the struggles have been. – Elder and RAJAC Chair*

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The practice and understanding of culture are crucial to building Aboriginal children and young people's identity and resilience.<sup>696</sup> Their primary means of accessing culture is through their families and communities. Every Aboriginal child and young person deserves to grow up connected to their family and community, and in turn, to their culture. Aboriginal family, community and culture are inextricably intertwined. This is the way things have been since time immemorial.

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<sup>696</sup> Culture is defined in different ways (for example, the shared practices, knowledge, values, beliefs and customs of a social group), but is 'essentially about how we collectively make sense of things in the universe and how we express our sense of meaning and engage with that world as communities of peoples': M Bamblett, J Harrison and P Lewis, 'Proving culture and voice works: towards creating the evidence base for resilient Aboriginal and Torres Strait Islander children in Australia', *International Journal of Child and Family Welfare*, 2010, 13(1-2):98-113, p 100.

As Aboriginal communities expressed to the Commission, there is a collective desire that Aboriginal children and young people follow Aboriginal ways of *knowing, being and doing*, and that they be taught and find pride and strength in Aboriginal culture, identity, history and spirituality. The wellbeing of communities is dependent on their young peoples' connection to family, community and culture.

These essential connections can be severed through government interventions. The youth justice system must play its part in keeping these connections alive, and recognise the centrality of family, community and culture to the wellbeing of Aboriginal children and young people. Where government systems intervene, they must support families and communities to nurture Aboriginal children and young people in their culture.

## Kirrae's story

Kirrae<sup>697</sup> grew up in a close-knit but disadvantaged regional community. At home, his family members loved and cared for him, and experienced significant challenges. Without effective family supports to address these challenges, Kirrae faced similar issues. Services did not meet his needs at an early age.

*I grew up thinking that I didn't have a purpose in this life, I didn't have a culture. I come from a big family, but dad wasn't really around much. I grew up thinking he didn't love me. I got to know my father a bit and learnt he had a rough patch growing up too. When I was only small, mum and dad were drinking and fighting. I remember getting hit by dad.*

*In primary school, I didn't know what was going on. I was always listening, putting my hand up, but I remember thinking there must be something else going on out there that I should be a part of. I knew a bit about my totem but I didn't know much. There's not much teaching for culture in my home town.*

*In my home town it was easy to see someone you know take drugs. That can be confusing, especially when culture's not taught as much as it could be. I knew in my heart and mind and soul I needed culture... but I tried to find connection through drugs. My family wasn't happy about that.*

Involvement with the youth justice system negatively affected Kirrae's wellbeing and connection with his family, particularly when he was placed in custody.

*Police were scary. They were chasing us, ready to run us over for robbing a store. I was 12. And before I knew it the police are there, roughing up my [relatives]. I started carrying a brick around in the house, just in case anyone came for me. I started feeling myself disappearing inside.*

*I had 12 months as a 12 year old. It's hard getting locked up because I miss family, miss looking at the stars. I pretended I wasn't there.*

*I didn't spend much time with my Nana growing up because I was always getting in trouble. I was inside when she got sick, so I couldn't go see her and she passed away. I have a lot of questions I'll never get to ask her.*

A lack of effective supports for Kirrae and his family pushed him through the youth justice system and into the adult system. During this time, Kirrae's family were his greatest supports.

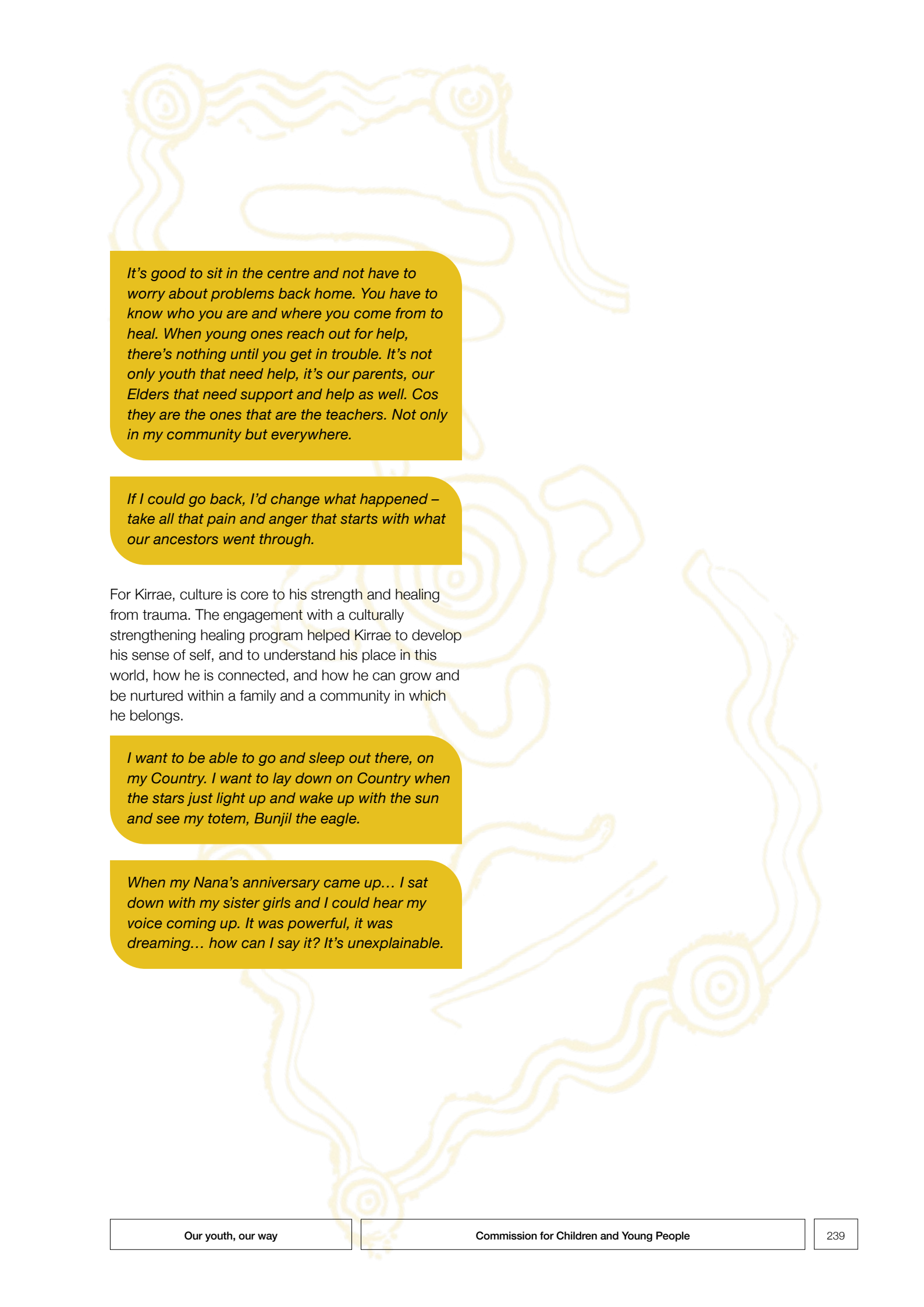
*Mum and my [sibling] were big supports. I was looked at as nothing in the community, just a drunk and a drug addict. Mum visited in the police cells a couple of times. She didn't come all the time.*

In the adult system, Kirrae gained access to holistic, culturally based support for the first time and was able to begin healing.

*In this healing centre program we do artwork and cultural practice, kup murri [traditional cooking], and we play music, like Archie Roach and hip hop. Dancing is my key and my way of expressing myself. It's my meditation, my sense of freedom.*

<sup>697</sup> Kirrae is a pseudonym meaning 'blood' in Kirrae Wurrung.





*It's good to sit in the centre and not have to worry about problems back home. You have to know who you are and where you come from to heal. When young ones reach out for help, there's nothing until you get in trouble. It's not only youth that need help, it's our parents, our Elders that need support and help as well. Cos they are the ones that are the teachers. Not only in my community but everywhere.*

*If I could go back, I'd change what happened – take all that pain and anger that starts with what our ancestors went through.*

For Kirrae, culture is core to his strength and healing from trauma. The engagement with a culturally strengthening healing program helped Kirrae to develop his sense of self, and to understand his place in this world, how he is connected, and how he can grow and be nurtured within a family and a community in which he belongs.

*I want to be able to go and sleep out there, on my Country. I want to lay down on Country when the stars just light up and wake up with the sun and see my totem, Bunjil the eagle.*

*When my Nana's anniversary came up... I sat down with my sister girls and I could hear my voice coming up. It was powerful, it was dreaming... how can I say it? It's unexplainable.*

## Chapter at a glance

- Aboriginal family, community and culture are inextricably intertwined; for Aboriginal children and young people, connection with family and community provides positive foundations for identity, culture and Country.
- The youth justice system does not facilitate meaningful connections to culture for many Aboriginal children and young people, and, in many cases, fails to adequately involve their families in planning, decision-making, programs and supports.
- Contact with families for Aboriginal children and young people in custody is often inadequately planned, communicated and supported.
- Aboriginal families and communities are strong and resilient; however, many Aboriginal families also experience disadvantage in various forms.
- Youth Justice, Child Protection and other agencies often do not provide adequate support to address the needs of Aboriginal families whose children are involved in the youth justice system, increasing the risk that they will become entrenched within the system.
- Youth Justice often fails to recognise and support the caring responsibilities of the many Aboriginal young people in the youth justice system who are themselves parents or carers. This can contribute to intergenerational harm and youth justice system involvement.

### Key data

- Only 31% of children and young people in the Taskforce case file review for whom responses were given had a cultural support plan.
- 61% of children and young people in the Taskforce case file review had at least one family member with current or past involvement in the criminal justice system.
- 79% of children and young people in the Taskforce case file review had a history of trauma and abuse.
- 17% of children and young people who were the subject of a Taskforce case planning session had experienced the death of one or more immediate family members.
- 10% of young people in the Taskforce case file review were parents.

## Current context

Family is ‘the cornerstone of Aboriginal and Torres Strait Islander culture, spirituality and identity’.<sup>698</sup> Aboriginal concepts of family extend beyond mainstream definitions, and include grandparents, aunts, uncles, cousins, nieces, nephews and members of the community who are involved in children’s lives and helping to raise them.<sup>699</sup> For many Aboriginal children and young people, their relationship with a cousin or great-aunt may be just as strong as that with a sibling. In this report, ‘family’ refers to immediate family, extended family and kinship ties.

Aboriginal family, community and culture are inextricably connected. According to the Secretariat of National Aboriginal and Islander Child Care (SNAICC):

*As an Aboriginal or Torres Strait Islander child grows up, maintaining their connections to family and community forms the basis of the development of the child’s identity as an Aboriginal or Torres Strait Islander person, their cultural connectedness and their emerging spirituality.*<sup>700</sup>

Recognising the importance of family, community and culture is particularly important for Aboriginal children and young people who are involved in the youth justice and child protection systems. For Aboriginal children and young people who have been removed from, and have little contact with, their immediate family, connections with extended family, kin or Aboriginal community members are crucial.

Victorian youth justice legislation, policy and procedures recognise the importance of family, community and culture for Aboriginal children and young people. A strong focus on connection to family, community and culture underpins a number of Victorian Government policy frameworks, including *Burra Lotjpa Dungaludja* (the Aboriginal Justice Agreement Phase 4),<sup>701</sup> *Wungurilwil Gaggapduir* (Aboriginal Children and

Families Agreement),<sup>702</sup> *Korin Korin Balit-Djak* (Aboriginal Health, Wellbeing and Safety Strategic Plan 2017–2027),<sup>703</sup> and *Balit Murrup* (Aboriginal Social and Emotional Wellbeing Framework 2017–2027).<sup>704</sup>

The Youth Justice Review recognised the importance of family involvement in the youth justice system and recommended that Youth Justice ‘develop a strategy for engaging with the families of those young offenders who can benefit from increased contact and support from their families’.<sup>705</sup> In response, in 2019, Youth Justice implemented a new Case Management Framework and a new Case Management Evidence Base, which acknowledge the particular importance of connection to family, community and culture for Aboriginal children and young people in contact with Youth Justice.<sup>706</sup>

In addition, the Youth Justice Strategic Plan recognises that Aboriginal young people ‘who commit offences should be dealt with in a way that upholds their cultural rights and sustains their ties to family, community, culture and country’.<sup>707</sup> The Aboriginal Youth Justice Strategy, which is being developed under the Strategic Plan, also aims to strengthen young people’s connection to family, community and culture.<sup>708</sup>

Current sentencing principles under the CYFA require the Children’s Court to have regard to a number of factors in determining a sentence, including the need to strengthen and preserve the relationship between the child and the child’s family, the desirability of allowing the child to live at home, and the desirability of allowing the child’s education, training or employment to continue without interruption.<sup>709</sup>

<sup>698</sup> Secretariat of National Aboriginal & Islander Child Care Inc. (SNAICC), *Working and walking together: supporting family relationship services to work with Aboriginal and Torres Strait Islander families and organisations*, SNAICC, Melbourne, 2010, p 19.

<sup>699</sup> SNAICC, *Working and walking together*, p 19.

<sup>700</sup> SNAICC, *Working and walking together*, p 19.

<sup>701</sup> State of Victoria, *Burra Lotjpa Dungaludja*, pp 7, 28, 33–34.

<sup>702</sup> DHHS, *Wungurilwil Gaggapduir*.

<sup>703</sup> Department of Health and Human Services (DHHS), *Korin Korin Balit-Djak: Aboriginal health, wellbeing and safety strategic plan 2017–2027*, DHHS, Victorian Government, 2017, pp 10, 25, 34, 55.

<sup>704</sup> DHHS, *Balit Murrup*, p 8.

<sup>705</sup> Recommendation 6.12: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 32.

<sup>706</sup> DJCS, *Youth Justice Case Management Evidence Base*, pp 45–46.

<sup>707</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 22.

<sup>708</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 22.

<sup>709</sup> CYFA, s 362(1).

## Current context

The CYFA also provides that children detained in youth justice custody are entitled to receive visits from parents and relatives,<sup>710</sup> and to have reasonable efforts made to meet their 'cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community'.<sup>711</sup>

The Australian Children's Commissioners and Guardians have also developed a model charter of rights for children and young people detained in youth justice facilities.<sup>712</sup> These rights are drawn from the United Nations Convention on the Rights of the Child, the Beijing Rules and the Havana Rules. The model charter includes the rights to have regular contact with family and friends through visits and phone calls, and to participate in cultural activities and celebrations with other Aboriginal people.<sup>713</sup>

The Victorian Charter of Human Rights and Responsibilities recognises the distinct cultural rights of Aboriginal people to enjoy their identity and culture, maintain and use their language, and maintain their kinship ties and distinctive spiritual, material and economic relationship with the lands and waters with which they have a connection under traditional laws and customs.<sup>714</sup>

This chapter considers a range of issues related to Aboriginal children and young people's connection with their family, community and culture while in contact with the youth justice system. It is divided into 4 parts:

- 7.1 'The importance of family and community connection' explores the importance of family and community connection for Aboriginal children and young people.
- 7.2 'Youth Justice practices and family involvement' examines Youth Justice practices in relation to the involvement of family, and the impact of these practices on family relationships.
- 7.3 'Challenges experienced by Aboriginal families' identifies and explores the challenges experienced by Aboriginal families, including intersecting forms of disadvantage and young people's own caring

responsibilities, and the absence of support for these challenges.

- 7.4 'Connection with culture' examines the responsibility of the youth justice system to facilitate meaningful connections to culture for Aboriginal children and young people.

The Commission's recommendations in this chapter are aimed at strengthening connections to family, community and culture for Aboriginal children and young people in the youth justice system. The cultural safety of youth justice centres is examined in Chapter 13.1 'Cultural safety and support in custody'.

<sup>710</sup> CYFA, s 482(2)(b).

<sup>711</sup> CYFA, s 482(2)(c).

<sup>712</sup> Australian Children's Commissioners and Guardians, *A model charter of rights for children and young people detained in youth justice facilities*, Australian Human Rights Commission, 2018, accessed 2 December 2020.

<sup>713</sup> Australian Children's Commissioners and Guardians, *A model charter of rights for children and young people detained in youth justice facilities*.

<sup>714</sup> Charter of Human Rights and Responsibilities, s 19(2).

# 7.1 The importance of family and community connection

## Finding 11

Family and community are strong supports for Aboriginal children and young people in contact with the youth justice system, and are critical to creating lasting and positive change in their lives.

Every child needs family and community to thrive. For Aboriginal children and young people, connection with family provides the foundations for identity, culture, Country and Aboriginal community.<sup>715</sup> These connections are widely recognised as fundamental to effective, culturally safe practice for working with Aboriginal children and young people, and are particularly important for Aboriginal children and young people in the youth justice system.<sup>716</sup> The Youth Justice Review found that ‘strong, prosocial connections with family and parents are core protective factors for young people’.<sup>717</sup> Without the involvement and engagement of those who are most invested in a child’s care and future, behaviour change and successful outcomes are likely to be limited.<sup>718</sup>

<sup>715</sup> V McLennan, ‘Family and community resilience in an Australian Indigenous community’, *Australian Indigenous Health Bulletin*, 2015, 15(3):1–7.

<sup>716</sup> VACCA, Submission to *Our youth, our way* inquiry, p 4.

<sup>717</sup> Armitage and Ogloff, *Youth justice review and strategy*, Part 1, p 164.

<sup>718</sup> The Australasian Juvenile Justice Administrators’ *Juvenile Justice Standards* state that ‘effective outcomes are more likely if links with family and significant others are sustained and community partnerships developed’: Australasian Juvenile Justice Administrators, *Juvenile Justice Standards 2009*, Australasian Juvenile Justice Administrators, 2009, accessed 25 February 2021, p 3.

## The strength of family connection for Aboriginal children and young people in the youth justice system

*Having family in their corner advocating for them and supporting them can be the difference between successfully exiting Youth Justice and a life of reoffending. – Aboriginal community member*

During the inquiry, the Commission asked Aboriginal children and young people who their most significant supports were. Almost all (66 out of 74) children and young people identified their family and/or Elders as their most significant supports. This is noteworthy given the high proportion of Aboriginal children and young people in the youth justice system who are also involved in the child protection system and have limited contact with their immediate family (see Chapter 8.1 ‘Child Protection involvement’).

Many children and young people recognised the strengths of their families as being that they loved and cared for them, and provided cultural connection, despite facing significant barriers.

*Nan is one of my main supports. She raised me from the age of 5 when mum gave me up. – Pearl, 19*

*My dad keeps me strong in culture. – Jack, 19*

*All you really need is family. – Leroy, 14*

## 7.1 The importance of family and community connection

In many cases, families supported young people when Youth Justice and other services were unavailable or inadequate. Many accounts identified family as the key to preventing further contact with the youth justice system.

*There was no one there to support me to come back into community, only my mum. – Jamie, 18*

*If mum and dad weren't here I wouldn't be here, to be honest. Mum, I can just call her whenever I want. She just says, 'Be honest. I'm not gonna judge you.' We just help each other. We are both going through struggles. – Leroy, 14*

*The magistrate just used lawyer words. I didn't understand what was happening. If mum hadn't been there, I wouldn't have understood what anything means. – Nataya, 21*

*Mum is always happy to have me back. I've got a lot of support from family. – Watanom, 19*

*It doesn't matter how bad things get or the worse predicament I'm in, Nan just wants what's best for me. – Karrwin, 20*

Taskforce case planning sessions similarly demonstrated the importance of involving family in a child or young person's Youth Justice planning, case management and supports. In Frances's case, family support during involvement with Youth Justice was vital and transformative.

### Frances

Frances had no priors and was remanded to Parkville youth justice centre for a very serious offence. Her family organised themselves to support her intensively. For many young people, detention in Parkville means disconnection from family support; however, Frances's family was able to travel to be near her, and stayed in constant contact.

When Frances's case went to court, the magistrate recognised the presence and strength of her family and the support they provided. This indicated that Frances would present a low risk of reoffending, and enabled her to receive bail and avoid a long period of remand in Parkville.

When Frances returned home on bail, her family sat down together to talk about respect and Frances's behaviour, and to show her that the

whole family was present to support her. Frances understood that she was supported, and that people cared about her wellbeing.

By successfully completing bail, Frances showed the court that she could continue engaging in positive behaviours. She was sentenced to a community-based order, during which she completed some studies and got a job. Participants at the case planning session attributed this success to her caring family, who were able to keep Frances in a safe space, surrounded by people who cared for her, with boundaries. With crucial family and community supports, Frances was able to build a bright future and avoid ongoing involvement in the youth justice system.

Frances's case demonstrates the importance of considering the young person's family context, and in particular, the supports they can provide to keep young people safe in the community. For children and young people who have connections to Aboriginal family and/or community, Youth Justice must recognise and foster these vital connections throughout their contact with the system, as they are likely to be a child or young person's best supports.

Frances's family had the ability to support her with minimal assistance from Youth Justice. However, this case also demonstrates that, with the right supports from Youth Justice, more families could assist their children on bail, community-based orders or parole. This could significantly reduce the number of Aboriginal children and young people in custody.

Participants at every Taskforce regional forum emphasised that family must be involved for children and young people to be able to heal and leave the youth justice system. Participants also highlighted the importance of Youth Justice considering the young person and their family together, rather than focusing solely on the young person. This is discussed further in Chapter 7.3 'Challenges experienced by Aboriginal families'.

Some Aboriginal children and young people in the youth justice system have been disconnected from their families and communities through Child Protection intervention, custodial stays or other circumstances. The Taskforce case file review showed that 21% of the cohort were not connected to their family or community, and for a further 8%, the extent of the child or young person's family or community connection was unknown. For these children and young people, the youth justice system plays an important role in facilitating family and community connection. This is discussed further in Chapter 7.2 'Youth Justice practices and family involvement'.

### **Aboriginal organisations and connection with family and community**

The Commission spoke to Aboriginal organisations that conduct a range of youth programs, including programs for early school leavers, homework support, youth groups and drug and alcohol rehabilitation. As noted throughout this report, these organisations embed family and community involvement in their operating model. Community and culture are also embedded at a foundational level through community-

controlled governance, program design and the presence of Aboriginal staff (see Chapter 4.1 'Advancing self-determination'). The strengths of Aboriginal workers and their ability to build trusting relationships with Aboriginal children and young people are examined in Chapter 6.2 'Relationships with workers' and Chapter 9.3 'Mentoring'.

Aboriginal workers told the Commission that family involvement was essential for building and protecting children and young people's wellbeing and engagement in programs (see also Chapter 5.1 'Early intervention').

*If kids have parents around, we will work with parents as well. We can't do it without engagement with families. We can't do it without mum and dad engaged. – Manager, BWAYS*

*A good-practice case study in the Western District involved an Aboriginal justice worker engaging actively with families, doing proactive intervention. The worker stated it wasn't him alone doing the diverting, it was the families. Working with the families was a way to divert the young people from the youth justice system. – Aboriginal Youth Justice worker*

*One of the most important things is to work with the young person's family. In my lifetime of seeing kids go to school I could probably count on 2 hands the kids who can get themselves up early and get to school. For everyone else who passed, or got through school, it was their family who got them through – not just buying them the books, but helping them with homework, or just the encouragement. Even if they weren't physically involved in the schooling, it was the straight and narrow of being able to get the kid up every morning and say that going to school is important. – Aboriginal Youth Justice worker*

Flexibility in roles and programs at Aboriginal organisations enables workers to involve family, rather than focusing on the child alone. This also means that workers can be responsive to family circumstances, which can sometimes involve specific healing work to promote family involvement.

## 7.1 The importance of family and community connection

*[Workers at the healing centre] were the first to show me and teach me about Aboriginal culture. [Elder] is teaching me to reconnect to parents and people who you haven't got along with or who haven't been around. – Joel, 22*

*[On working with families] It can vary because sometimes, depending on the relationships the family has in community, if it's fractured, family and young people might choose not to access those supports. Sometimes our workers have had to do that repair work so families can reconnect to community and culture. – Aboriginal Youth Justice worker*

One Aboriginal organisation told the Commission about a child who was regularly attending a youth group with her father and siblings, but stopped attending without explanation. Through dialogue with the father, the organisation discovered that the child did not feel comfortable attending alone, and was reliant on him to attend. In response, the Aboriginal organisation built its relationship with the father and addressed his needs, in order to facilitate the child's involvement.

Aboriginal workers are also key to providing cultural and community connection in order to build a young person's sense of belonging.

*[Aboriginal workers] can play the Aunty or the Uncle with the young person. But for others they respond to the cousin or brother vibe of a young worker – some will open up in that relationship, some won't. Same with responding to someone with a motherly or fatherly vibe. – Aboriginal Youth Justice worker*

*An Aboriginal worker has the ability to engage with the family, parents and carers even when other agencies cannot. – Aboriginal community member*

In the next chapter we examine Youth Justice practices in relation to the involvement of family, and the impact of these practices on family relationships.



# 7.2 Youth Justice practices and family involvement

This chapter focuses on:

- the involvement in Youth Justice planning and decision-making of Aboriginal families with children and young people under community-based supervision
- connection with family and community for Aboriginal children and young people in youth justice custody.

## Community supervision

### Finding 12

Youth Justice fails to meaningfully involve the families of many Aboriginal children and young people under community supervision in planning, decision-making, programs and supports.

*Positive outcomes in Youth Justice strongly depend on the capacity of workers to engage and develop relationships with young people, their families and significant others.*<sup>719</sup>

The Youth Justice Case Management Framework and Youth Justice Case Management Evidence Base, developed following the Youth Justice Review, recognise the vital role of family in the lives of children and young people, and the impact that connection to family and community can have on the overall wellbeing of Aboriginal children and young people in particular.<sup>720</sup>

Youth Justice practice guidelines provide directions for Youth Justice workers to engage with a young person's

family during the case management process. This ranges from informing family about key decisions and plans to inviting family to provide input and participate in meetings.<sup>721</sup> Involving family and significant others (as a key part of a young person's social system) is encouraged to sustain behaviour change<sup>722</sup> and enhance protective factors that can assist young people to desist from offending behaviour.<sup>723</sup>

In particular, practice guidelines direct case managers to invite family and significant others to participate in key meetings during the case management process, including care team meetings.<sup>724</sup> If families do not wish to participate, or if participation is inappropriate, the

<sup>721</sup> See for example *Allocation and intake* practice guideline: DJCS, *Allocation and intake: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 6.

<sup>722</sup> For example, DJCS, *Care teams*, p 16; Department of Justice and Community Safety (DJCS), *Community intervention: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 6; Department of Justice and Community Safety (DJCS), *Custodial case review: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 6.

<sup>723</sup> DJCS, *Case planning*, p 15; Department of Justice and Community Safety (DJCS), *Home visits and assessing the home environment: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 4. Specific reference is also made to working with family and significant others in many other practice guidelines including *Care teams*; *Community case review*; *Community intervention*; *Custodial case review*; *Engagement*; *Exiting custody, transition and reintegration*; *Managing non-compliance*; *Trauma-informed practice*; *Understanding and responding to family violence*; *Working as one system (community and custody)*; *Working with Aboriginal young people and cultural support plans*; and *Working with mental health*.

<sup>724</sup> See for example, Department of Justice and Community Safety (DJCS), *Planning for youth parole: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 7; Department of Justice and Community Safety (DJCS), *Preparing for case closure: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 5; Department of Justice and Community Safety (DJCS), *Safety planning: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, pp 3, 9–10; DJCS, *Trauma-informed practice*, p 10.

<sup>719</sup> DJCS, *Engagement*, p 4.

<sup>720</sup> DJCS, *Youth Justice Case Management Evidence Base*, p 42.

## 7.2 Youth Justice practices and family involvement

case manager must ensure that the family is informed about meeting discussions and decisions, and that 'their views and wishes are considered'.<sup>725</sup>

### The experiences of families

Despite the strong emphasis on family involvement in Youth Justice policies, throughout the Taskforce and the inquiry the Commission observed a lack of engagement by Youth Justice with the families of Aboriginal children and young people under community supervision, and a failure to acknowledge family members' crucial role in informing case management and the identification of options to support children and young people to succeed.

Tooran's story, at the beginning of Chapter 6 'A child-centred system', describes the difficulties she encountered in seeking support from Youth Justice for her sister, Wawal. This included not being able to get in touch with Wawal's case manager, and not being given clear information about the supports being put in place for her.

Similarly, other family members told us that Youth Justice case managers failed to communicate or create a working relationship with families to facilitate their engagement and involvement.

*[The Youth Justice worker] thinks she is helping, although only calls and asks where [my granddaughter] is when she is locked up, and nothing in between... I need someone to call when she mucks up and I am worried about her.*  
– Nan

*They need to work closely together... workers need to be more confident in telling parents what their kids are doing.* – Auntie

*There's a lack of relationship between my granddaughter and Youth Justice workers, but also between workers and the family.* – Nan

*I would change Youth Justice not being transparent. How would you change that? I guess just work closely with families.* – Sibling

<sup>725</sup> DJCS, Care teams.

Children and young people identified similar issues.

*[My Youth Justice worker] doesn't say hello to Nan or have a cuppa. I look at my Nan as an Elder and she doesn't even say hello to her.*  
– Peyton, 16

In some cases, engaging the families of Aboriginal children and young people in the youth justice system is complex. Families are often facing intersecting forms of disadvantage, trauma and family conflict (see Chapter 7.3 'Challenges experienced by Aboriginal families') that create barriers to involvement in Youth Justice processes and services. In these cases, family engagement and involvement may only be possible after these barriers are addressed. For example, parenting courses, counselling, assistance with substance misuse, housing support or the involvement of an Aboriginal support worker or an ACCO, may be necessary. Healing to repair family relationships may also be required. This support must be provided by Youth Justice in collaboration with relevant agencies, including Child Protection.

One Aboriginal Youth Justice worker acknowledged the need to provide better support for family relationships, particularly for Aboriginal children and young people in out-of-home care (see also Chapter 8 'A caring & stable home'):

*In community we should provide more family support. The majority of those young people are going back to family when they're missing from care or out and about... There may be legitimate reasons they're not with family, but we need to strengthen relationships with family so young people can be connected to them, even if they're living separately. We're not investing enough resources in it. Young people are consistently going back to parents and siblings from resi care.* – Aboriginal Youth Justice worker

However, Youth Justice practice guidelines do not acknowledge this complexity or provide guidance as to the further work that may be required to facilitate meaningful family participation in planning and case management processes for children and young people under supervision.

It is therefore unsurprising that during Taskforce case planning sessions the Commission saw little evidence that such support was being provided to families, or that family restoration work was occurring. Of all actions made in Taskforce case planning sessions, 10% related to family, family access, carer support and relationship strengthening.<sup>726</sup> Most of those actions were for young people under community supervision. These included actions designed to build family relationships, for example, facilitating increased family contact and return to Country trips with family.

In one region, all of the children and young people for whom Taskforce case planning sessions were held had experienced a breakdown of a significant relationship with a parent or guardian prior to the commencement of their offending behaviour. It was unclear what steps were being taken by Youth Justice or other services to restore these relationships to ensure that the children and young people had a support network.

The impact of Youth Justice's failure to prioritise connection with families is clearly demonstrated in a Taskforce case involving a young person who breached parole to attend a family member's funeral interstate. This family member had been his primary carer since he had been removed from his parents at the age of 6. Youth Justice denied the young person permission to attend the funeral, citing behavioural reasons. The young person told the Commission, 'My family is everything to me... my [family member] was the one that raised me.' During the Taskforce case planning session, workers connected Youth Justice's refusal of leave to the young person's subsequent distress, increased drug use and further offending behaviour.

Despite the recognition of the vital role of families and support networks for children and young people in Youth Justice policies, significant gaps remain in policy and practice. This undervalues the crucial role of families in Aboriginal children and young people's lives. There is scope for Victoria to learn from New Zealand's approach to family involvement in the youth justice system.

<sup>726</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

## New Zealand's approach to family involvement in the youth justice system

New Zealand's Oranga Tamariki Act recognises the crucial role of family in youth justice processes, stating that:

*any measures for dealing with offending by children and young persons should be designed to strengthen the family, whānau, hapū, iwi<sup>727</sup> and family group of the child or young person concerned.<sup>728</sup>*

One of the principal measures for engaging and involving families in the New Zealand youth justice system is family group conferencing, which is discussed below.

### Family group conferencing

Family group conferencing was introduced in 1989 as a key feature of the youth justice and child protection systems. In the youth justice context, it provides a statutory forum where the child or young person, their family, *whānau*, *hapū*, *iwi*, the victim of the alleged offence, and state and community representatives come together to decide how to respond to offending behaviour.<sup>729</sup> As outlined in Chapter 4.1 'Advancing self-determination', family group conferencing involves a partial transfer of judicial power from the state to the community.

According to the New Zealand Children's Commissioner, family group conferences (FGCs) were:

*prompted and inspired by some aspects of Māori methods of dispute resolution with a clear goal to improve a system which had failed Māori; they were an attempt to incorporate tikanga Māori<sup>730</sup> into a process that remains a product of coloniser law and is convened by state officials.<sup>731</sup>*

<sup>727</sup> The *iwi* (tribe) is the largest of the groups that form Māori society. Each *iwi* is made up of various *hapū* (clans or descent groups), which might have up to several hundred members. Each *hapū* is made up of *whānau* (extended families): Te Ara – the encyclopedia of New Zealand, *Tribal organisation*.

<sup>728</sup> Oranga Tamariki Act, s 208(2)(c)(i).

<sup>729</sup> Manaakitia a Tātou Tamariki – Children's Commissioner, *Family Group Conferences: still New Zealand's gift to the world?* [PDF], Children's Commissioner, 2017, accessed 25 November 2020.

<sup>730</sup> Māori practices or lore.

<sup>731</sup> Manaakitia a Tātou Tamariki – Children's Commissioner, *Fulfilling the vision: improving Family Group Conference preparation and participation*, Children's Commissioner, 2017, accessed 25 November 2020, p 2.

## 7.2 Youth Justice practices and family involvement

FGCs must occur in several situations:

- Where the police wish to lay a charge against a child or young person who has not been arrested, an ‘intention to charge FGC’ must be held to seek to reach an agreement that would enable the child or young person to address the effects and causes of their behaviour without recourse to prosecution and court proceedings.
- Where a child or young person has been arrested and does not deny the charge, the court must order an FGC, the aim of which is to decide on a plan for approval by the court. Usually the plan involves an apology, reparation, community work, curfew and/or undertaking to attend school or not to associate with co-offenders.
- Where a child or young person denies the charge and the charge is found to be proved by the Youth Court, an FGC must be convened to formulate an appropriate plan for the child or young person.
- Where the child or young person denies the charge and is remanded in custody, an FGC must be convened to look at other options for the child or young person’s care.
- Where a child aged 10 to 13 years may be in need of care and protection by virtue of the number, nature or magnitude of alleged offences, a ‘care and protection FGC’ must be convened.<sup>732</sup>

FGCs are held by an Oranga Tamariki–employed convenor, who is responsible for bringing together all relevant people and organisations, preparing the young person, their family and community representatives and running the FGC.

The FGC has 4 stages:

- Getting the facts – The police summary is read out, and if the child agrees with the summary, the discussion commences.
- Group discussion – Participants discuss the circumstances of the offence and its impact on the victim and the child’s family.
- Family only time – The child and their family come up with a clear, realistic plan to take back to others at the family group conference.
- The plan – If the wider group agrees, a legally binding plan is created and must be completed.

<sup>732</sup> Manaakitia a Tātou Tamariki – Children’s Commissioner, *Family Group Conferences: still New Zealand’s gift to the world?*

This relies on family and professionals providing ongoing support, working together and keeping each other informed about progress and problems. If things go off track, the youth justice coordinator or social worker will talk to the family about what they can do to stick more closely to the plan.<sup>733</sup>

The FGC process is informal, ideally allowing all parties, including and especially family members and any victims who attend, to express their views about how the offending behaviour should be addressed. In the case of Māori children and young people, Māori organisations or *iwi* leaders should be involved, and the plan will likely include learning about themselves as Māori, and the responsibilities and knowledge flowing from that identity.<sup>734</sup>

As around 75% of offending by children in New Zealand is dealt with by police in the community, rather than by a court, family group conferences are generally used for mid-range to serious offending, with the exception of murder and manslaughter.<sup>735</sup>

In 2016, New Zealand’s Office of the Children’s Commissioner reviewed FGC practices across different sites and found that they varied considerably. The review found examples of poor FGC facilitation, for example, where facilitators did not believe in or practice *whānau*-led decision-making, where *whānau* did not understand what was happening, and children and young people’s voices were not adequately represented.<sup>736</sup> This prompted new efforts by Oranga Tamariki to refrain from scheduling FGCs until all family, *whānau* and *hapū* members who should attend are able to do so.<sup>737</sup>

### ***Iwi*-led FGCs**

In January 2017, Oranga Tamariki and Te Rūnanga o Ngāti Porou (the tribal authority for the Ngāti Porou *iwi*) agreed to pilot *iwi*-led family group conferences.<sup>738</sup>

<sup>733</sup> Oranga Tamariki, Ministry for Children, *Youth justice family group conferences*, Oranga Tamariki website, 2020, accessed 25 November 2020.

<sup>734</sup> C Henwood, J George, F Cram and H Waititi, *Rangatahi Māori and Youth Justice*, Research paper prepared for Iwi Chairs Forum, 2018, p 42.

<sup>735</sup> Sentencing Advisory Council, *Crossover kids*, Report 3.

<sup>736</sup> Manaakitia a Tātou Tamariki – Children’s Commissioner, *Fulfilling the vision*, pp 7–8.

<sup>737</sup> Manaakitia a Tātou Tamariki – Children’s Commissioner, *Fulfilling the vision*; Manaakitia a Tātou Tamariki – Children’s Commissioner, *Family Group Conferences: still New Zealand’s gift to the world?*

<sup>738</sup> Pipi et al., *Summary report*.

Under the agreement, 2.5 full-time equivalent *iwi* FGC coordinators were appointed, and Ngāti Porou youth and *whānau* referred to FGCs could choose between participating in an *iwi*-led FGC or an Oranga Tamariki FGC. This was the first *iwi*-led FGC program.

An evaluation completed in mid-2018 found that the presence of *tikanga* Māori throughout the FGC process when led by an *iwi* coordinator strengthened the engagement of the young person, their *whānau* and victims (when they attended), and that *iwi* coordinators emphasised face-to-face time with the young person and their *whānau*.<sup>739</sup> *iwi* coordinators reported that the FGC process worked better when they were able to meet the young person as early as possible. This allowed them to build the trust of the young person and *whānau*, ultimately leading to more engagement in the FGC process and better outcomes for the young person and *whānau*.

## Implementing family group conferencing in Victoria

Group conferencing is currently available in the Victorian youth justice system as a restorative justice measure. Under the CYFA, following a finding of guilt, the Children's Court may defer the sentencing of a child to enable the child to take part in a group conference.<sup>740</sup> The child must agree to the deferral of sentencing and to participate in the group conference.<sup>741</sup>

The purpose of a CYFA group conference is to facilitate a meeting between the child and other persons (including the victim), with the objective of negotiating an 'outcome plan' to assist the child to take responsibility and make reparations for their actions and reduce the likelihood of reoffending.<sup>742</sup> Family members may attend a group conference; however, this is not compulsory and a group conference may proceed without any family involvement.<sup>743</sup>

Formal group conferencing is not currently available at any other stage of a criminal proceeding against a child or young person.

The Youth Justice Review recommended the expansion of restorative justice programs, including family group

conferencing, across the continuum of youth justice.<sup>744</sup> For Aboriginal children and young people, the Youth Justice Review recommended further work to identify areas where restorative justice could be used to address common issues, such as restoring family relationships.<sup>745</sup> DCJS advised the Commission that implementation of this recommendation is in progress.

In its third report on crossover children, the Sentencing Advisory Council examined New Zealand family group conferencing as a possible measure to 'bridge the gap between child protection and youth justice responses' and to reduce the over-representation of crossover children in the Victorian youth justice system.<sup>746</sup> The Sentencing Advisory Council proposed the introduction of pre-hearing (pre-charge and/or pre-prosecution) family group conferencing:

*to develop a plan for the child that integrates (where appropriate) child protection, health and justice responses to their offending, with provision for the conference to recommend against prosecution while putting in place supports to address the causes of the child's offending.*<sup>747</sup>

According to the Sentencing Advisory Council, this approach would provide 'a responsive, integrated, welfare-based response to children's offending' earlier in the process than is currently possible.<sup>748</sup> The focus of youth justice family group conferencing would be:

*principally therapeutic, aimed at holistically addressing the underlying causes of offending behaviour, using the resources of the youth justice system and, where appropriate, child protection, education, family support, health and other service systems.*<sup>749</sup>

The Sentencing Advisory Council noted several advantages of this approach, including the provision of an earlier and more coordinated systemic response to children and young people's offending behaviour (compared with the time required for a criminal

<sup>739</sup> Pipi et al., *Summary report*.

<sup>740</sup> CYFA, s 414(1).

<sup>741</sup> CYFA, ss 414(1)(b) and (c).

<sup>742</sup> CYFA, s 415.

<sup>743</sup> CYFA, ss 415(6) and (7).

<sup>744</sup> Recommendation 6.33: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 35.

<sup>745</sup> Recommendation 6.33: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 35.

<sup>746</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 41.

<sup>747</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p xiv.

<sup>748</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 41.

<sup>749</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 41.

## 7.2 Youth Justice practices and family involvement

prosecution and sentence or diversion), and an increased ability to keep vulnerable children with complex needs away from the youth justice system.

These advantages are consistent with many aspects of the *Our way* vision, including responding to Aboriginal children and young people's needs when they first arise through a coordinated and integrated youth support system (see Chapter 5.1 'Early intervention'), and ensuring that a child or young person's first contact with the youth justice system is their last.

Another significant advantage of youth justice family group conferencing would be to provide a formal mechanism for family involvement in addressing the needs of Aboriginal children and young people, and formulating responses to their offending behaviour. This would recognise the vital role of families in supporting Aboriginal children and young people in the youth justice system.

Accordingly, the Commission recommends that youth justice family group conferencing based on the New Zealand model be introduced in Victoria for all children and young people in respect of whom the Children's Court Criminal Division has jurisdiction.

The overarching purpose of youth justice family group conferencing in Victoria should be to provide a planning and decision-making forum in which children and young people, their families, community members, and representatives of Youth Justice and other support services (including Child Protection, if necessary) come together at an early stage to develop a coordinated plan – the FGC plan – to meet children and young people's needs and address the underlying causes of their offending behaviour. While family group conferencing could also have a restorative justice component, this should not be its principal purpose, and the attendance of victims should not be compulsory.

The FGC plan could facilitate access to youth supports, family supports and cultural or community programs. DFFH, DET and other departments would need to work closely with DJCS to support this process.

For Aboriginal children and young people, youth justice FGCs should be designed by the Aboriginal community, and led by Aboriginal FGC coordinators based within ACCOs or Aboriginal organisations. There should be at least one FGC coordinator in every ACCO. Aboriginal FGC coordinator positions should be identified. Cultural

support planning (discussed under Finding 16) could be initiated as part of the FGC process.

The Sentencing Advisory Council identified several matters that would need to be addressed in considering how to implement family group conferencing in Victoria, for example:

- whether to include a mechanism for coordinators to refer a child to Child Protection if there were grounds to do so, and/or refer the child and their family to other support services in place of further youth justice system involvement
- whether, and if so, how, family group conferencing would be integrated with Children's Court diversion and the existing group conferencing scheme under the CYFA
- how to protect children's rights in criminal proceedings under the family group conferencing scheme, for example, ensuring that conference discussions are private and disclosures cannot be used against a child if they ultimately exercise their right to plead not guilty.

In addition to these matters, consideration would need to be given to the stages at which a youth justice FGC should occur, and whether an FGC should be mandatory or optional at each stage.

Consistent with the New Zealand model and the Sentencing Advisory Council's proposal, the Commission is strongly in favour of a mandatory pre-charge youth justice FGC for all children and young people for whom a warning, caution or other less intensive diversionary option is not appropriate. The pre-charge FGC would have the authority to recommend against prosecution, where appropriate, in favour of a plan to address the needs and offending behaviour of the child or young person.

In addition, the Commission is open to the possible use of family group conferencing at later stages in the youth justice process, for example pre-sentencing (as in New Zealand) to inform the sentencing process, or pre-parole to inform parole planning. However, this requires further work with the Aboriginal Justice Caucus to clarify the primary purposes of family group conferencing at these later stages, and the role of restorative justice, including participation by the victim, if any.

The Commission's view is that the primary purpose of family group conferencing at any stage should be the

involvement of the child's family or extended family in decision-making regarding appropriate interventions and supports for the child, based on their unique needs and the underlying causes of their offending.

Finally, consideration would need to be given to ensuring that a child or young person had access to legal representation in relation to all youth justice family group conferencing.

## Recommendation 22

That DJCS work with DFFH, DET and other agencies, and in partnership with the Aboriginal community, to implement mandatory pre-charge family group conferencing, based on the New Zealand model, for all children and young people whom police are considering charging, and for whom a warning, caution or other less intensive diversionary process is not appropriate.

Without limiting the purposes of the pre-charge family group conference, its primary purpose should be to provide:

- a) integrated and coordinated welfare responses to address the holistic needs of children and young people and the underlying causes of their offending behaviour
- b) a formal mechanism for family involvement in planning and decision-making regarding appropriate interventions and supports for the child and their family.

## Recommendation 23

That DJCS convene a working group of Aboriginal organisations to design Aboriginal-led family group conferences for Aboriginal children and young people, informed by *iwi*-led conferences in New Zealand.

## Custody

### Finding 13

Youth Justice fails to keep many Aboriginal children and young people in custody connected to their families and communities. Contact with families is often inadequately planned, communicated and supported. This can harm the wellbeing of Aboriginal children and young people and their families.

*The most important thing for us is connection. Breaking connections is pursuing the policies that made the Stolen Generation, and that has to be a part of this conversation too. You can't go down the road of disconnection – that's genocide. – Elder*

Other parts of this report describe the frequently harmful effects of youth justice custody on the wellbeing of Aboriginal children and young people (see Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people', Chapter 9.1 'Mental health' and Chapter 13.2 'Conditions in youth justice custody').

Sentencing or remanding children and young people to custody separates them from their families and communities. This can have a profoundly damaging effect on Aboriginal children and young people's identity, sense of belonging and development. It also carries an additional level of trauma due to the historical context of the Stolen Generations and ongoing high rates of removal of Aboriginal children from their families:

*The detention of Aboriginal youth is a form of child removal. This cannot be denied or ignored.*

## 7.2 Youth Justice practices and family involvement

*Incarceration and its ensuing deprivation of liberty is a destructive and dehumanising experience.*<sup>750</sup>

The *Our way* vision is that no Aboriginal child or young person is incarcerated. Where custody is used, Youth Justice has a responsibility to ensure that Aboriginal children and young people retain connections with their family, community and culture, by working with communities and support services to maintain, improve or facilitate these connections.<sup>751</sup> This is the best way to increase the likelihood of behavioural change, connection and successful reintegration into the community.

The United Nations Convention on the Rights of the Child requires every child deprived of liberty to be 'treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age'. This includes the right to maintain contact with the child's family through 'correspondence and visits', save in exceptional circumstances.<sup>752</sup> As noted above, these rights are reflected in the model charter of rights for children and young people detained in youth justice facilities.<sup>753</sup>

However, the Youth Justice Review found that 'there was very limited evidence that young people and their families are supported to keep in close contact during the [custodial] order'.<sup>754</sup> This is consistent with the findings of the Taskforce and this inquiry, discussed in the following sections.

### The importance of family connection in custody

One of the most common feelings reported during the inquiry by children and young people in custody was that they missed their family. This was the experience of Kirrae, whose story is described at the beginning of this chapter.

<sup>750</sup> Aboriginal Legal Service of Western Australia submission quoted in Human Rights and Equal Opportunity Commission, *Bringing them home*, Part 6, Chapter 24.

<sup>751</sup> Youth Justice has a responsibility under the Victorian Charter of Human Rights and Responsibilities to maintain the family unit: s 17(1).

<sup>752</sup> Convention on the Rights of the Child, article 37(c).

<sup>753</sup> Australian Children's Commissioners and Guardians, *A model charter of rights for children and young people detained in youth justice facilities*.

<sup>754</sup> Armytage and Oglloff, *Youth justice review and strategy*, Part 2, p 53.

For many young people, custody meant missing out on important nurturing experiences and key family milestones, like being hugged by their mum, seeing their baby's first steps, or saying goodbye to a loved one who had passed. Even those who had experienced multiple stays in custody spoke of their need for more family and community contact.

*I've been locked up 10 times. It's shit. I'll do time, but I miss my family... I need my cousins here and family. They respect me a bit more.*  
– Jasper, 17

*You can't talk to anyone... you can't call anyone... you can't talk to your mum.* – Jamie, 18

Children and young people told the Commission about the negative impact on their wellbeing of a lack of contact with family while in custody.

*If some of the boys got kids, they can't see their kids. They can't see their mums. That's why they go off.* – Djiran, 19

The impact of custody on the wellbeing of Aboriginal children and young people is discussed further in Chapter 9.1 'Mental health'.

Family disconnection brought about by incarceration also has significant effects on siblings, parents and other family members' wellbeing. Families reported feeling worried for the young person, missing them and feeling 'out of the loop'.

*I need family. That's all I care about. All I need right now is my mum and my little brother, but I can't have 'em because they're both locked up.*  
– Sibling

One young person told the Commission that his brother was in custody and he missed him so much that he engaged in offending behaviour in order to join him.



*My brother was locked up for like 8 months. I visited him just before Christmas, maybe once or twice, but not really. I wanted to be with him. It got addictive and I just kept going. Once my brother got arrested and I started crime, I never really stayed home. I'd always stay at my mates' house. I'd get bail and stay at mum's house one night, then leave. She'd want me to stay though.*  
– Otis, 14

In the Taskforce case planning session for this young person, participants recognised that appropriate family supports to maintain contact between the brothers could have prevented the second brother entering custody.

Several children and young people reported being separated from other sentenced or remanded Aboriginal children and young people, including family, while in Parkville and Malmsbury, due to being placed in separate units and programs. In the case mentioned above, the brothers were placed in separate cultural programs, so had to choose between seeing each other and participating in the cultural program:

*There was one [a cultural program] yesterday but I didn't go cos my brother wasn't in the same one as me... So me and my brother just had a visit instead.* – Otis, 14

Throughout the Taskforce case planning sessions, the Commission observed that many Aboriginal children and young people had inconsistent family contact while in custody, and that contact with family was often perceived by Youth Justice as being too complex or difficult to arrange, or was otherwise not prioritised. Actions regarding family and access were made for 36 of the 69 children and young people for whom Taskforce case planning sessions were held, 14 of whom were in custody. Actions for those in custody included arranging access to family visits and phone calls, and communicating and planning with families.

### **Inconsistent application of custodial guidelines and procedures**

The *Custodial intake* practice guideline acknowledges the importance of Aboriginal children and young people maintaining their kinship ties through connection to

family, culture and community.<sup>755</sup> When an Aboriginal child or young person is admitted to custody, staff should notify parents, guardians or close relatives.<sup>756</sup> Staff must also add appropriate family members to phone lists and inform family about visitation requirements.<sup>757</sup>

A booklet entitled *What I need to know... about my time in youth justice custody* is provided to children and young people on admission.<sup>758</sup> It includes information for children and young people on their entitlements to visits and phone calls.

Several other practice guidelines and procedures contain directives designed to enable children and young people to maintain connections with family while in custody.<sup>759</sup> These cover visits, phone calls and temporary leave and are discussed in more detail in the following sections. The Commission found that these guidelines and procedures were often applied inconsistently and ineffectively. This detracts from the cultural right of Aboriginal children and young people in custody to maintain kinship ties,<sup>760</sup> and undermines the entitlement of families to be protected by the state as the fundamental group unit of society under the Victorian Charter of Human Rights and Responsibilities.<sup>761</sup>

Difficulties accessing family are one of the most common concerns raised by Aboriginal children and

<sup>755</sup> Department of Justice and Community Safety (DJCS), *Custodial intake: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 5.

<sup>756</sup> Department of Justice and Community Safety (DJCS), *Admission: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 4 December 2020, pp 11–12.

<sup>757</sup> DJCS, *Custodial intake*, p 6.

<sup>758</sup> The *Orientation to custody* procedure (Department of Justice and Community Safety (DJCS), *Orientation to custody: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 1 March 2021) refers to a booklet entitled *What I need to know: rights and rules in youth justice custodial precincts*. This appears to be an outdated version of *What I need to know... about my time in youth justice custody*. The *Orientation to custody* procedure requires custodial staff to explain the contents of the booklet 'page by page verbally in simple language', including children and young people's entitlements in relation to phone calls and visitors. The orientation session must be tailored to the young person's age and developmental level: DJCS, *Orientation to custody*, pp 2, 3.

<sup>759</sup> Youth Justice custodial procedures (practice instructions) do not appear to have been updated since the introduction of the new Youth Justice Case Management Framework in 2019.

<sup>760</sup> Charter of Human Rights and Responsibilities Act, s 19(2)(c).

<sup>761</sup> Section 17(1).

## 7.2 Youth Justice practices and family involvement

young people in custody with the Commission through its Independent Visitor Program (IVP).<sup>762</sup> Between July 2016 and February 2020, Aboriginal children and young people frequently requested the Commission's assistance in relation to issues such as having family members added to phone lists, arranging family visits, and seeking leave to attend funerals. In many cases, children and young people had initially raised these issues with custodial staff, but received little or no response.

### Family visits

Youth Justice practice guidelines direct case managers to strengthen connections between young people and their families and communities by supporting families to maintain regular visits while the young person is in custody.<sup>763</sup>

On a young person's admission to custody, Youth Justice staff are directed to work with them to identify the important people in their lives and formulate a list of proposed visitors.<sup>764</sup> Approved visitors must be recorded in the Client Relationship Information System (CRIS) within 72 hours of a child or young person's admission to custody.<sup>765</sup> If a potential visitor is refused, workers must inform the refused person and provide an explanation for the decision.<sup>766</sup>

Staff are also directed to inform potential visitors that 100 points of identification are required when visiting and explain that visitors under 18 years of age must be supervised by an approved adult visitor.<sup>767</sup>

Various procedures apply for approved visitors to schedule a time to see a child or young person in Parkville or Malmsbury youth justice centres.<sup>768</sup> Scheduling requirements and visiting hours vary

depending on whether a child or young person is on remand or sentence at Parkville, or on sentence at Malmsbury.<sup>769</sup>

The *Personal visits* procedure acknowledges that 'exceptional circumstances' such as work, illness or transport limitation may prevent family visiting sentenced children and young people on weekends.<sup>770</sup> In these circumstances, the unit manager is responsible for liaising with the family to make alternative arrangements to ensure that contact with the family is maintained.<sup>771</sup>

The booklet provided to young people on admission (referred to above), indicates that families experiencing financial difficulties can request assistance with travel costs and transport to support visits. The booklet directs young people to discuss this with their unit manager.

Youth Justice records of visits from February 2019 to February 2020 indicate that Aboriginal children and young people were less likely than non-Aboriginal children and young people to receive visits from their family and community members.<sup>772</sup> On average during this period, Aboriginal children and young people made up approximately 15% of the custodial population.<sup>773</sup> However, only 13% of personal (onsite) visits across both custodial sites were for Aboriginal children and young people.<sup>774</sup>

The data also shows that Aboriginal children and young people at Malmsbury youth justice centre were 5% less likely to receive visits than those at Parkville. The regional location of Malmsbury youth justice centre may pose an additional barrier to visits for Aboriginal children and young people.

During the inquiry, several children and young people described barriers in seeking access to family while in custody.

<sup>762</sup> Issues raised by children and young people with Independent Visitors are followed up with Youth Justice by the Commission in writing.

<sup>763</sup> DJCS, *Exiting custody, transition and reintegration*, p 9.

<sup>764</sup> Department of Justice and Community Safety (DJCS), *How does the Key Worker develop an approved visitors list for a young person?*, DJCS, Victorian Government, unpublished, accessed 2 December 2020. If a child or young person is a Child Protection client, workers must consult with the Child Protection case manager and seek their opinion on each proposed visitor: Department of Justice and Community Safety (DJCS), *Personal visits: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 3.

<sup>765</sup> DJCS, *Admission*, p 10.

<sup>766</sup> DJCS, *Personal visits*, p 2.

<sup>767</sup> DJCS, *How does the Key Worker develop an approved visitors list for a young person?*

<sup>768</sup> DJCS, *Personal visits*, p 7.

<sup>769</sup> Children and young people on remand at Parkville can receive personal visits during the week and on weekends, while sentenced young people at Parkville and Malmsbury can only receive visits on weekends or public holidays: DJCS, *Personal visits*, p 9.

<sup>770</sup> DJCS, *Personal visits*, p 8.

<sup>771</sup> DJCS, *Personal visits*, p 8.

<sup>772</sup> DJCS data provided to the Commission on 19 August 2020.

<sup>773</sup> Average over 2018–19 and 2019–20: Productivity Commission, *Report on Government Services 2021*, data table 17A.5.

<sup>774</sup> DJCS data provided to the Commission on 19 August 2020.

*My son was 6 months old and he came in twice, and the other time they denied him because they didn't bring any ID, so they wasted that whole time travelling all the way out there, even though the staff said that it would be ok. – Monica, 17*

*Everything has changed. I missed my daughter's first birthday. The screws refused to give me a contact visit with my daughter. I haven't seen my daughter since... I can't video link because it has to go through operations and coordinators. – Karrwin, 20*

*I had no visitors. No one saw me. I was there by myself. – Jamie, 18*

One family member also referred to a father being unable to visit his son in custody:

*[Families need] more support... his father can't visit him cos he had one charge 35 years ago, so now he can't visit his son... He gets rejected at the gate and that's mentally hard for the child. – Aunty*

The experiences of children and young people examined through this inquiry and the IVP indicate that visit policies are often applied inflexibly or in an ad hoc manner, and access decisions are often not adequately explained to children and young people and their families. In addition, Youth Justice's responses to requests by Aboriginal children and young people for family and community visits were often not timely, as illustrated in the following examples.

## Ngawee

Ngawee asked Youth Justice for a visit with her dad to be arranged. She was concerned that he would need support to pay for transport and assistance navigating the youth justice centre and visit system. One month later, Ngawee was still waiting for the visit to be organised.

## Ian

Ian requested support for his mum to visit. He knew she could not afford to travel and had to look after his siblings. Ian had already made the request to Youth Justice staff before raising it with an Independent Visitor. Contact was not arranged before Ian was released from custody weeks later.

Support for family visits is discussed further below.

The Commission heard of a number of cases where family contact was treated as a privilege which could be revoked as a punishment or granted as a reward. Two such examples were reported through the IVP. In one example, 2 cousins were placed in separate units. Over 4 months, both cousins requested to have more regular contact with each other. Youth Justice responded that the cousins' ability to see one another was dependent on good behaviour, not just their willingness to see one another.<sup>775</sup>

The second example concerned a young person at Parkville who had only seen his younger brother 3 times since the brother's arrival there, and who was seeking more regular contact with him. The young person was distressed by the lack of contact and worried for his brother, as he could hear incidents occurring in his brother's unit. Youth Justice responded by advising that they had organised some visits between the brothers; however, during one visit with their mother, she brought in contraband. As a result, Youth Justice continued to support separate visits for each brother with their mother, but stopped visits between the brothers.

Limiting contact with family, or using family visits as a reward or punishment, is inconsistent with Youth Justice practice guidelines and procedures emphasising the critical importance of family support for children and young people in custody. It is also

<sup>775</sup> The new Youth Justice practice guidelines include *The ACE model: a rewards and consequences approach in custody*, which sets out a framework for staff to 'recognise and foster positive behaviour, while also using strategies to address inappropriate behaviour': DJCS, *The ACE model*, p 3. The behavioural levels under the ACE model are Gold, Silver and Bronze. The ACE model practice guideline states that each ACE level has incentives attached, including 'extended family visits': p 5. However, this guideline does not specify that family contact can be denied in connection with a behavioural level under the ACE model.

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inconsistent with the requirement to protect the family unit under the Charter of Human Rights and Responsibilities.<sup>776</sup> The Northern Territory Royal Commission recommended that restrictions on contact with family associated with security classification and behaviour management systems be removed.<sup>777</sup>

Chapter 7.3 'Challenges experienced by Aboriginal families' describes the multiple forms of disadvantage experienced by the families of many Aboriginal children and young people in the youth justice system. This includes trauma caused by intergenerational incarceration. These factors combine to create barriers for many Aboriginal families in visiting and otherwise supporting their children in custody. Many Aboriginal families thus require intensive support from Youth Justice and other agencies to visit and maintain contact with children and young people in custody. However, such support is often lacking. This is discussed further in Chapter 7.3.

### Phone calls

The Youth Justice *Phone calls* procedure specifies the process for identifying the phone contact list for each child or young person in custody.<sup>778</sup> In general, children and young people can have a maximum of 10 phone contacts, 7 of whom are family or friends and 3 of whom are 'legal or professional'.<sup>779</sup> Specific permission is required for phone contact with co-offenders, current Youth Justice clients and victims of crime.<sup>780</sup>

All children and young people in custody must be allowed a minimum of one 10-minute phone call each day to those people on their approved list. This can only be denied by the unit coordinator or manager 'if there is a significant threat to security'.<sup>781</sup>

At Parkville, the maximum number of weekly phone calls is determined by the young person's level on the custodial behaviour management system, with a maximum of 15 calls per week for young people at

'Gold level'.<sup>782</sup> All young people at Malmsbury have a maximum of 14 calls per week.<sup>783</sup> There are no restrictions on the number of professional calls.<sup>784</sup> Additional or extended calls can be approved for a young person if this is important 'to support them, assist them to address their offending behaviour, or meet client service planning goals'.<sup>785</sup>

The behaviour management system, while offering some clear benefits, in this instance limits children and young people's ability to contact family members, thereby undermining the support that family is able to provide to children and young people in custody.

Children and young people consulted during the inquiry referred to other barriers in relation to phone calls with family.

*Dad's locked up – he's in [adult prison]. Even when I was on the outers, I had to be at the right place at the right time to be able to speak to him. But in [Parkville], it's way harder... and mum said to ring at 6, but that's what time me and dad get locked down. – Leroy, 14*

Several issues raised through the IVP concerned phone contact with family. Youth Justice's responses to these requests from young people were often not timely, even for relatively simple matters. For example, one young person was not given any phone access for at least 5 days during his custodial stay, despite requesting contact with his family on arrival. It was his first time at Parkville. The Independent Visitor noted that he eventually 'gave up worrying about it'. The Commission raised the matter with Youth Justice, which noted a gap in the system in relation to providing phone access for children and young people who enter custody after hours and without a community Youth Justice worker. Current custodial procedures have not been amended to address this issue.

Another young person raised concerns about trying to contact his father in prison before Christmas. The

<sup>776</sup> Charter of Human Rights and Responsibilities, s 17(1).

<sup>777</sup> Recommendation 11.3: Northern Territory Royal Commission Final Report, Volume 2A, p 132.

<sup>778</sup> Department of Justice and Community Safety (DJCS), *Phone calls: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 4 December 2020. This procedure has not been updated since 2016.

<sup>779</sup> DJCS, *Phone calls*, p 5.

<sup>780</sup> DJCS, *Phone calls*, p 5.

<sup>781</sup> DJCS, *Phone calls*, p 6.

<sup>782</sup> DJCS, *Phone calls*, p 6. The *Phone calls* procedure refers to the 'Going for Gold' system, which would appear to be out of date. As noted above, custodial procedures have not been updated in some time. The practice guideline on the ACE model does not refer to phone calls: DJCS, *The ACE model*.

<sup>783</sup> DJCS, *Phone calls*, p 6.

<sup>784</sup> DJCS, *Phone calls*, p 6.

<sup>785</sup> DJCS, *Phone calls*, p 6.

young person had requested this through custodial staff. Youth Justice took 24 days from the young person's initial request to resolve the issue. This did not occur in time for them to speak before Christmas.

Of the 51 children and young people who raised issues with the IVP from 2018 to 2019 about access to phone calls, 11 (22%) were Aboriginal.

### Temporary leave from custody

Children and young people in youth justice custody have access to the temporary leave (also known as 'offsite visits') program, which is designed to support their gradual transition into the community.<sup>786</sup> Types of leave include day, overnight and weekend leave, which may be granted at regular intervals 'to maintain family contacts and strengthen community networks'.<sup>787</sup>

Leave can also be granted on other grounds, including compassionate reasons (when a family member or close friend is seriously ill or dying, or for a young person to attend a funeral or the birth of their child),<sup>788</sup> for holidays of cultural or religious importance,<sup>789</sup> for sporting, recreational or community service involvement,<sup>790</sup> and for employment, education or training.<sup>791</sup>

Youth Justice case managers are directed to strengthen connections between young people in custody and their families and communities by assisting eligible young people to access temporary leave.<sup>792</sup> The *Temporary leave* procedure was recently updated to include a broad Aboriginal definition of 'family'.<sup>793</sup> This is the only guideline that specifically recognises the inclusion of kin and extended family.

Youth Justice data indicates that Aboriginal children were slightly under-represented in temporary leave from Parkville and Malmesbury youth justice centres, with only 12% of offsite visits from February 2019 to February 2020 involving Aboriginal children and young people (see Table 7.1).<sup>794</sup> During this period, no offsite visits

occurred for Aboriginal children and young people at Malmesbury.

**Table 7.1** Offsite visits by location and Aboriginal status, February 2019 – February 2020

Location	Young people undertaking offsite visits	
	Aboriginal (%)	Non-Aboriginal (%)
Malmesbury youth justice centre	0	100
Parkville youth justice centre	14	86
<b>Total</b>	<b>12</b>	<b>88</b>

Source: DJCS data provided to the Commission on 19 August 2020.

Temporary leave is important for young people's reintegration into the community. It allows them to build connections to family, community and culture that may otherwise be damaged by a custodial stay. However, some children and young people told the Commission that they had been denied leave to attend funerals, which caused them significant distress. Attendance at funerals is an important part of fulfilling family and cultural obligations and maintaining family connection.

*They wouldn't let me go to my [relative's] funeral, or my uncle that passed away last year, or my cousins, and they wouldn't let me fucking go. They said that my behaviour was bad, but my behaviour has been fucking mickey. They said I couldn't go. You can't bury people twice, man. I ended up bashing somebody. It's fucking hard for me. – Watjpa, 21*

*Heaps of my family have been dying, and I can't go to their funerals. – Zeke, 18*

<sup>786</sup> Department of Justice and Community Safety (DJCS), *Types of leave: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 2 December 2020, p 1.

<sup>787</sup> DJCS, *Types of leave*, p 2.

<sup>788</sup> DJCS, *Types of leave*, p 3.

<sup>789</sup> DJCS, *Types of leave*, p 4.

<sup>790</sup> DJCS, *Types of leave*, p 3.

<sup>791</sup> DJCS, *Types of leave*, p 3.

<sup>792</sup> DJCS, *Exiting custody, transition and reintegration*.

<sup>793</sup> Interview with Director, Custodial Standards and Quality of Care, Youth Justice on 8 May 2020.

<sup>794</sup> DJCS data provided to the Commission on 19 August 2020.

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According to an Aboriginal Independent Visitor, temporary leave opportunities for Aboriginal children and young people in youth justice custody are limited.

*There's nothing for them [young people in custody] to look forward to, and connecting to community before you get out is imperative, but I've never seen anything like that... It would be good if they could have a bit more leave and join in on NAIDOC activities when that happens, and surely they could do cultural activities at schools... just get out and connect to their schools so they're not forgotten. – Aboriginal Independent Visitor*

Opportunities for connecting to culture in custody are discussed further in Chapter 13.1 'Cultural safety and support in custody'.

### Inadequate planning, communication and support for family contact

Youth Justice has a responsibility to plan and support visits with family for children and young people in custody.<sup>795</sup> Case managers are directed to seek assistance from the care team to support families to visit the young person in custody.<sup>796</sup> This may be through practical or financial support, such as transport, accommodation, childcare and other costs.<sup>797</sup> It might also include seeking support from ALOs to help mediate interactions between families and young people during visits to ensure they are positive, and to provide practical and financial support.<sup>798</sup>

As noted above, the booklet provided to children and young people on admission to youth justice custody refers to possible assistance with travel costs and transport for families experiencing financial difficulties, and directs young people to discuss this with their unit manager. Despite this, it would appear that many young people and their families are unaware of the support available for family visits. For example, one young person in custody at Parkville told the IVP that he would like his mum to visit, but she lives in regional Victoria and can't afford to travel to Melbourne all the

time. He was not aware of Youth Justice support for families to travel to visit their children.

Other IVP reports indicate that young people do not understand the procedures in relation to family visits. For example, one young person indicated that he would like to receive visits from all members of his family. He said that his younger brother had visited once at Malmsbury youth justice centre, but was unable to visit at Parkville due to a lack of identification. He was concerned that his older brother, who had been in contact with the justice system, may not be allowed to visit, and asked that this be clarified.

IVP reports also indicate that visits are often dependent on Aboriginal children and young people requesting them, rather than being proactively planned by Youth Justice case managers and care teams as required by practice guidelines.<sup>799</sup>

*I think there needs to be a lot more support getting families to the centres. The boys and families don't know about the support and Youth Justice workers need to be communicating that – a bit more awareness for families on how often they can access these services. Some families can only visit once a month. There needs to be more work on connecting families and communities. That's where they're getting released to. I don't think they [Youth Justice] think it's that important. It's just an 'if you ask, you get it'. – Aboriginal Independent Visitor*

However, even where a child or young person requests assistance to facilitate a family member's visit, this may not always be accommodated or supported. Ngawee and Ian's stories (above) demonstrate that when an Aboriginal child or young person requests support for family to visit them, Youth Justice does not always respond in a timely manner.

Several family and community members also referred to the need for more support for families to visit children and young people in custody.

In some circumstances, shame or fear of a family member's disappointment in their behaviour or situation could prevent an Aboriginal child or young person accepting a family visit:

<sup>795</sup> DJCS, *Custodial intake*, p 5; DJCS, *Exiting custody, transition and reintegration*, p 9.

<sup>796</sup> DJCS, *Exiting custody, transition and reintegration*.

<sup>797</sup> DJCS, *Exiting custody, transition and reintegration*.

<sup>798</sup> DJCS, *Exiting custody, transition and reintegration*.

<sup>799</sup> DJCS, *Custodial intake*, p 5; DJCS, *Admission*, pp 11–12.

*A lot of young people knock them [visits and calls] back, shitting themselves, and don't want family to see them in there because of shame. They don't want to see their dads because they know they're going to get their arse kicked or disappointment. The disappointment of their parents hurts most. Once kids go back to a cell after that feeling, nothing can undo it, so the visit is not constructive for them. – Youth Justice worker*

*There's a shame factor [in asking for visits]. – Aboriginal Independent Visitor*

The provision of adequate information, increased communication and engagement with families, and proactive efforts by Youth Justice to plan and facilitate family visits would increase and improve family connection for Aboriginal children and young people in custody.

### **Positive connection with family in custody**

Though rare, the Commission heard of some cases where meaningful family connections in custody assisted children and young people to maintain and heal protective relationships and their own wellbeing. In these cases, ALOs were heavily involved in responding to young people's needs in a culturally responsive way.

One young person said that he felt culturally strong at Malmsbury because he was granted unlimited phone calls to family. Another noted that ALOs responded quickly when his grandmother passed away and brought him together with his cousin, also in the youth justice centre.

When contact is encouraged and properly supported, it can occasionally begin a healing process for families. A Youth Justice custodial staff member told the Commission that sometimes custody can be the catalyst for Aboriginal children and young people finally reaching out and choosing to re-engage with family members, referring to one young person who said, 'I'm speaking with my dad now.'

Youth Justice staff also told the Commission that the advocacy of the Aboriginal custodial team in care team meetings is often crucial in assisting Aboriginal children and young people to gain access to family. However, all

Youth Justice staff should take responsibility for facilitating family connection for Aboriginal children and young people in custody. This should not be the sole responsibility of Aboriginal staff.

In addition, the introduction of virtual visits during COVID-19 as an alternative to face-to-face visits has provided a new means for maintaining family connection.<sup>800</sup> Youth Justice staff reported a significant increase in the number of visits at Malmsbury since the introduction of virtual visits. While virtual visits cannot compare to connecting in person, they are a practical solution to facilitate family connection when in-person visits are not possible.

*Young people who didn't have family visiting them in person now have visits over iPad. – Youth Justice worker*

### **Improving connection to family and community in custody**

The Youth Justice Review recommended that Youth Justice facilitate access to family and community through 'a generous visits program' as part of a structured day for young people in custody.<sup>801</sup> In response to this recommendation, Youth Justice is progressing work to scale up to a 'fully structured day', to be underpinned by the new Youth Justice Case Management Framework. DJCS reported that the fully structured day will include family, community and cultural connections to promote engagement that builds positive connections and prepares young people for reintegration into the community.<sup>802</sup>

While a fully structured day is a welcome initiative, on its face this response does not equate to implementation of a generous visits program. Evidence from the Taskforce and this inquiry indicate that further work is required to strengthen and maintain family and community connection for Aboriginal children and young people in youth justice custody.

<sup>800</sup> Department of Justice and Community Safety (DJCS), *Director's instruction 3.12: Management of young people. Personal and professional visits using electronic devices*, DJCS, Victorian Government, unpublished, accessed 2 December 2020.

<sup>801</sup> Recommendation 8.11: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 47.

<sup>802</sup> Information provided to the Commission by DJCS on 17 July 2020.

## 7.2 Youth Justice practices and family involvement

Youth Justice should implement a new visits program to increase the frequency and flexibility of contact between Aboriginal children and young people in custody and their families.

Family connection should not be dependent on requests or concerns raised by children and young people. Youth Justice should proactively communicate with children and young people and their families to provide information about opportunities for contact, plan regular visits and leave, and arrange funding and other practical support where necessary to facilitate contact.

Virtual visits should be formally incorporated into a revised visits program and continue to be available beyond COVID-19. They should be an accessible addition that should not replace regular in-person visits and leave, but should be used to increase the likelihood of and opportunity for more frequent contact between Aboriginal children and their families. They could also be used when in-person visits are not possible.<sup>803</sup>

Contact with family should not be contingent on, or linked with, children and young people's behaviour in custody, and denial of contact should be prohibited as a behaviour management tool. In particular, the number of phone calls to which children and young people in Parkville are entitled should not be linked to their ranking in behaviour management systems.

Finally, Youth Justice custodial guidelines and procedures should adopt a consistent, expanded definition of 'family' for Aboriginal children and young people, to ensure that extended family, kin and Aboriginal community members can be included as approved visitors or phone contacts.

## Recommendation 24

That Youth Justice strengthen family and community connection for Aboriginal children and young people in custody by:

- a) expanding the definition of 'family' for Aboriginal children and young people in all practice guidelines, instructions and procedures to include extended family, kin and Aboriginal community members
- b) implementing a generous visits program to increase the frequency and flexibility of visits, leave, and phone and virtual contact
- c) providing adequate information to children and young people and their families about visits and other contact opportunities, and proactively planning regular visits and communication with family
- d) amending practice guidelines and procedures to ensure that contact (including through phone calls) is not linked to, or limited by, children and young people's behaviour or ranking in behaviour management systems
- e) continuing the availability of video visits post-COVID-19 to enable more frequent contact, or to facilitate contact when physical visits are not possible.

<sup>803</sup> In response to the draft report, DJCS advised the Commission that virtual visits continue to be made available to offer choice for families who find it difficult to attend youth justice centres in person.



## 7.3 Challenges experienced by Aboriginal families

This chapter examines:

- the disadvantage experienced by many families of Aboriginal children and young people in the youth justice system and the inadequate support to address this
- the caring responsibilities of Aboriginal young people in the youth justice system
- how to address family needs with the rights supports.

### Inadequate support for families experiencing disadvantage

#### Finding 14

The families of Aboriginal children and young people in the youth justice system experience multiple forms of disadvantage. Youth Justice, Child Protection and other agencies often do not provide adequate support to address the needs of Aboriginal families whose children are involved in the youth justice system.

Aboriginal families and communities are strong and resilient. However, many Aboriginal families also experience disadvantage in various forms, including poverty, housing instability, family violence and mental illness. Systemic racism and intergenerational trauma – legacies of colonisation and the forced removal of Aboriginal children from their families – contribute to this disadvantage and impair the ability of some

Aboriginal families to nurture Aboriginal children and young people.

Thus, while families have the potential to be a child's greatest source of strength, resilience and protection against contact with the youth justice system,<sup>804</sup> they can also be a source of trauma for children and young people. Without meaningful support for families to address the many challenges they face, Aboriginal children and young people are at increased risk of coming into contact with the youth justice system or becoming entrenched within it.

The Taskforce and this inquiry revealed that many Aboriginal families with children and young people in the youth justice system face considerable challenges in supporting their children to attend court and comply with Youth Justice orders, in addition to meeting basic needs such as providing safe housing and putting food on the table each day.

When Youth Justice, Child Protection and other responsible agencies fail to address family disadvantage, Aboriginal children and young people remain in or return to disadvantaged home circumstances. This can make it extremely difficult for them to be supported to turn their lives around and avoid prolonged contact with the youth justice system.

Children need the support of their family and community to thrive. It is only by addressing disadvantage for Aboriginal children and young people and their families together that support systems can facilitate lasting, positive change for children and young people, thereby reducing their involvement with the youth justice system.

<sup>804</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 43.

## 7.3 Challenges experienced by Aboriginal families

### Economic disadvantage

Poverty and economic disadvantage contribute to the over-representation of Aboriginal people in Victoria's criminal justice system.<sup>805</sup> A Victorian Council of Social Service study published in 2018 found that the poverty rate for Aboriginal people in Victoria was 25.4%, almost double the overall poverty rate in Victoria of 13.2%.<sup>806</sup> According to 2016 census data, Aboriginal households in Victoria had a lower median weekly income (\$1,200) than Victorian households overall (\$1,419), and 14% of Aboriginal people in Victoria aged 15 years and over were unemployed, compared with 6.6% of Victorians overall aged 15 years and over.<sup>807</sup> Research indicates that poverty and disadvantage tend to become entrenched in families across generations.<sup>808</sup>

Aboriginal children and young people told the Commission about their experiences of poverty, and their families struggling to meet basic needs such as housing and food. For some, poverty drove their early offending behaviour, including stealing essentials such as food and clothes.

*I had nowhere to stay. I had to break into houses to find a place to stay. – James, 18*

*My first contact with police was when I was 12. I got caught stealing from a shop to feed my little brother – I was stealing formula. The policeman let me off cos I was stealing formula. He arrested me, but saw my bag with formula and nappies and shit. He let me off. It's a small town – he knew us... I'd have to walk like 4 km into town to go get food and that. Mum would leave me with my little brother. – Dilynne, 17*

*We were kids. We didn't have any money so I was stealing food for us to eat, and one of the other kids ran out of iron and couldn't walk. – Toby, 15*

*I wouldn't do crime unless I was starving. Only when I was really hungry, I would do crime. Or if it was miserable, I would go and do a bottle run and drink and drink it away. Go through cars for money. – Zaine, 19*

*I was with mum and I had no money and had to steal clothes, and yeah, here we are [in custody]. – Jamie, 18*

Children and young people and family members spoke about economic disadvantage contributing to a lack of stability at home. This can pose significant challenges for families in supporting children and young people to comply with Youth Justice obligations.

*We had a lot of family there, so we had a bit of support, but then mum just got up and moved to [regional town] and cut that off, and dad took off and had a baby to another woman... Things like power would get cut off and it would get hectic. – Karrwin, 20*

*Her mum has a new partner and a new baby – 5 kids in a 3-bedroom house. There's not enough room. She sleeps on the couch there. It's leaving her in limbo there. There is an application for a bigger house, but we're waiting. I work on the weekends and she doesn't like being alone, so she goes back there. She loves being at home, but it's too full on for her without a room or a place to stay. I'm trying to redo the room in my house – the carpet and paint hasn't been updated in 10 years and I have to do that myself... She [granddaughter] hasn't got no workers. DHHS cut her off. She needs a female [Youth Justice] worker helping her and taking her to appointments and it's hard for me because my car is broken. – Nan*

<sup>805</sup> State of Victoria, *Burra Lotjpa Dunguludja*, p 18.

<sup>806</sup> R Tanton, D Peel and Y Vidyattama, *Every suburb every town: poverty in Victoria*, Victorian Council of Social Service, 2018, p 10. This report found that approximately 11,200 Aboriginal people in Victoria live in poverty (p 38).

<sup>807</sup> ABS, *2016 Census: Aboriginal and/or Torres Strait Islander peoples QuickStats and 2016 Census QuickStats*.

<sup>808</sup> Victorian Council of Social Service (VCOSS), *Communities taking power: using place-based approaches to deliver local solutions to poverty and disadvantage* [PDF], VCOSS, 2016, p 7.

Housing and homelessness are discussed in more detail in Chapter 8.3 'Housing and homelessness'.

Community members and youth workers also referred to the additional financial strain that supporting children and young people in contact with Youth Justice can pose for families, emphasising the need for family supports to address poverty and economic disadvantage.

*Every family we work with has food insecurity. The majority of our budget moves to food.*  
– Dardi Munwurro

Every child or young person for whom a Taskforce case planning session was held belonged to a family experiencing economic disadvantage. This resulted in a number of actions to support families, including accessing housing, food and income support, and services such as the NDIS.

In one Taskforce case planning session, a carer had to reduce her shifts at work and allocate significant time and resources to care for the young person and support her to meet Youth Justice requirements. Youth Justice recognised this increased financial strain on the household and provided food vouchers for the family. However, more consistent support was required.

## Regional disadvantage

According to Australian Bureau of Statistics data, just over half of Aboriginal people in Victoria live in regional Victoria.<sup>809</sup> In 2018, the Victorian Council of Social Service found that regional Victoria has a higher poverty rate than Melbourne (15.1% compared with 12.6%),<sup>810</sup> and more Aboriginal people live in poverty in regional Victoria than in Melbourne (6,200 people compared with 5,000 people).<sup>811</sup> Research indicates that people living in disadvantaged areas have poorer outcomes across almost every social indicator.<sup>812</sup> Children have

<sup>809</sup> Australian Bureau of Statistics (ABS), *Estimates and projections, Aboriginal and Torres Strait Islander Australians*.

<sup>810</sup> Tanton et al., *Every suburb every town*, p 6.

<sup>811</sup> Tanton et al., *Every suburb every town*, p 38.

<sup>812</sup> VCOSS, *Communities taking power*, p 7. In 2015, the Victorian Ombudsman found that half of Victoria's prisoners come from only 6% of its postcodes: Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, Victorian Ombudsman, Melbourne, 2015, p 32.

lower rates of school completion and young people have higher rates of unemployment.<sup>813</sup>

The Taskforce and the inquiry revealed that many Aboriginal families living in regional areas experienced significant barriers to accessing culturally safe and local services, including drug and alcohol, family violence, health and housing services. This contributes to the marginalisation of Aboriginal families.

Children and young people from regional areas spoke to the Commission about the impact of a lack of accessible cultural support, health, employment, transport and Youth Justice services in their areas.

*I grew up in [small regional town]. It was shit – not really many things to do, not much Aboriginal support. And a lot of people on drugs.* – Daniel, 17

*People need help finding jobs, but it's harder to keep it and it's harder to get there. Sometimes getting public transport to work is harder than actually working. The hours of transport burns people out, especially in summer or winter. It's fucking hard.* – Karl, 21

*There's a lot of people who find it hard to get to certain services, like if their kid has autism or needs speech therapy, and having to go all the way to [nearest regional centre].* – Taylah, 20, on accessing supports for her child

Participants at Taskforce forums held in regional Victoria identified a lack of local services as a key challenge, usually necessitating travel and often resulting in time away from family, delays in accessing support, and increased costs (for example, accommodation and travel costs).

*We need assessment services in Horsham rather than being expected to travel to Melbourne... Goolum Goolum [local ACCO] needs funding for a dedicated drug and alcohol worker.*  
– Grampians (Ballarat) regional forum

<sup>813</sup> VCOSS, *Communities taking power*, p 7.

## 7.3 Challenges experienced by Aboriginal families

*We currently need to travel to Melbourne for services – mental health, cultural programs, drug and alcohol programs, etc. The money goes to Melbourne, so people have to go to Melbourne. – Hume (Wodonga) regional forum*

*For an Aboriginal rehab centre we have to go to other regions. It's not working for the young people being taken far from family. – Grampians (Ballarat) regional forum*

*There are limited transportation options and outreach programs, especially for young people with driving related offences. – Hume (Wodonga) regional forum*

In addition, not all Koori Youth Justice programs are available statewide – the Koori Intensive Support Program is only available in 5 regions (see Chapter 12.2 'Bail and remand') and the Aboriginal Early School Leavers program is only provided by 2 ACCOs (see Chapter 10.1 'Engagement in education'). This means that Aboriginal children and young people in some regions have access to fewer Youth Justice services and programs.

*In [one region] there are 3 positions, so it's different from the rest of the state. So we have more opportunities to guide and capacity to share our roles and requirements... Budget restraints are key. Resourcing in this region is good but others don't have those resources at all. – Youth Justice worker*

The following Taskforce case illustrates the challenge of poor service delivery in regional areas and its impact on young people.

### Charlie

Charlie was seeking support for drug and alcohol misuse. As there are no alcohol and drug services in his town, he was taken to the closest regional centre. This regional centre only has one child psychiatrist, who visits once a month on a circuit. This means that if a young person is unable to get an appointment, their treatment will be delayed another month. As Charlie could not access the support he needed in the regional centre, Child Protection took him to a second regional centre, further from home, where he was admitted to hospital. Unable to provide the services Charlie needed, this hospital transferred him to another hospital further still from his town. Youth Justice workers reported that the time and distance of travel to access appropriate alcohol and drug supports was traumatic for Charlie and resulted in a long period away from home.

Such experiences are not isolated. The Youth Affairs Council Victoria (YACVic) has observed that young people in rural and regional areas of Victoria are unable to consistently access mental health services because of barriers including distance to services, waiting times, stigma, physical and social isolation and low numbers of services.<sup>814</sup> These issues are examined further in Chapter 9.1 'Mental health'.

While service delivery and disadvantage are significant challenges, regional areas also provide strong opportunities for supporting Aboriginal children and young people. Many children and young people from regional areas referred to the connection to family, community and Country that their home town provides.

*I like swimming in the river to feel connected, but there's some places in the river with trollies and garbage. It needs to be cleaned up because the river is important here. – Dean, 15*

<sup>814</sup> Youth Affairs Council Victoria (YACVic), *Beyond access: youth mental health in rural and regional Victoria*, Submission to Royal Commission into Victoria's Mental Health System, YACVic, 2019, accessed 4 December 2020.

*Everyone that lived on the mission was my family. All my family lived there. There were parks and churches and everyone can get together and go for a swim. If you leave your house, your cousins' house is just over there, and we all looked out for each other. – Pakap, 16*

*My family's there [in my home town]. My Aboriginal family is there. Mum's adopted family's up there. – Otis, 14*

Taskforce regional forums also identified the strengths of services in regional areas to support Aboriginal children and young people. Regional areas with more positive outcomes for children and young people, such as lower rates of Youth Justice involvement, also tended to have more local services, with links to local families and communities, demonstrating the benefits of place-based approaches (see also Chapter 5.1 'Early intervention').<sup>815</sup>

Improvement of service accessibility and delivery in regional areas would enable Youth Justice to harness the strengths of Aboriginal organisations in these areas to support Aboriginal children and young people and their families.

### **Family violence, trauma and grief**

As noted above, many Aboriginal families are affected by family violence, trauma – including intergenerational trauma – and grief. These issues can affect the capacity of families to support the children and young people in their care, and increase the risk of those children and young people becoming involved in the youth justice system. It is only by addressing these issues in the context of the entire family that children and young people can be supported to heal and thrive.

*Aboriginal Elders, Aunties and kin take on the parenting role in the absence of parental role models. Carers have their issues with trauma and need to be supported in order to support the young people they take care of. – Elder*

This is an approach taken by many Aboriginal organisations in order to assist children and young people.

*Definitely family trauma – a lot of kids don't have mothers or fathers or positive role models. We can start here with the future, but it comes back to the parents and grandparents. They need to come in and sit down so that we can sort it all out. It's intergenerational. Kids pick up on habits like smoking, drinking, fighting. It would be messy if it was mob that didn't talk to each other, but it needs to happen. – MDAS*

*The cultural sensitivity and respect is really critical to what we do. We have a good understanding of the trauma and we don't pigeonhole it. – VACCA*

As outlined in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people', the experience of trauma, including family violence, abuse and neglect, is a key driver of offending behaviour in many children and young people in the youth justice system.<sup>816</sup>

The Taskforce case file review indicated that 79% of Aboriginal children and young people in the cohort had a history of trauma and abuse, and 66% had experienced family violence as a victim/survivor or a witness. Every child and young person who was the subject of a Taskforce case planning session had experienced trauma. As outlined in Chapter 6.1 'Collaboration' and Chapter 9.2 'Substance use', for most of these children and young people, there was a clear link between unresolved trauma and mental health issues, substance misuse and offending behaviour.

Taskforce case planning sessions also highlighted the issue of grief among Aboriginal children and young people in the youth justice system. Twelve of the 69 children and young people for whom a session was held had experienced the death of one or more

<sup>815</sup> VCOSS, *Communities taking power*.

<sup>816</sup> Aboriginal and Torres Strait Islander Healing Foundation, *Growing our children up strong and deadly*, pp 2–3. See also Bryant and Willis, *Risk factors in Indigenous violent victimisation*; Wundersitz, *Indigenous perpetrators of violence*; Allard, *Understanding and preventing Indigenous offending*.

### 7.3 Challenges experienced by Aboriginal families

immediate family members – principally parents or primary carers, but also siblings. This is consistent with research indicating a connection between the trauma of parental death and offending behaviour in children and young people.<sup>817</sup> For many of these 12 children and young people, unresolved grief from the loss of a family member resulted in Taskforce actions to address effects on their mental health and behaviour.

Children and young people consulted for the inquiry also told the Commission about the death of family members and the impact on their wellbeing.

*My dad kept going in and out of jail and my sister died and then my [relative] was getting too sick, so I would stay with my Aunty. [My relative] died, and I didn't know what I had until it was gone.*  
– Djiran, 19

*My mum passed away because of suicide... A day after, I went to school, and as soon as my mum died I got angry and took it out on other kids at school. I still do it.* – Lachie, 12

The grief associated with the loss of a family member is also experienced by other members of the child or young person's family.

Participants at every Taskforce regional forum identified high rates of trauma among Aboriginal children and young people in contact with the youth justice system. Most regional forums also identified high rates of family violence among families with children involved in Youth Justice. Several regions indicated that trauma is not adequately addressed by the youth justice and child protection systems, and that supports and services to respond to trauma would make a significant difference in the lives of Aboriginal children and young people and their families.

In Chapter 9 'Wellbeing', we make a series of recommendations aimed at improving the social and emotional wellbeing of Aboriginal children and young people in the youth justice system. These include the establishment of new healing centres, and fast-tracking plans to introduce mandatory training for Youth Justice community staff to enable them to identify, understand and respond to trauma and mental health concerns

<sup>817</sup> Baidawi and Sheehan, 'Crossover kids', p 16.

experienced by Aboriginal children and young people. Additional supports for families are recommended at the end of this chapter.

### Failure to address disadvantage experienced by Aboriginal families

Despite the interconnectedness of the needs of Aboriginal children and young people and their families, submissions to this inquiry indicated that the youth justice system is more focused on individual case management of children and young people than on addressing families' needs.<sup>818</sup>

The Youth Justice Case Management Framework and various practice guidelines recognise that young people are part of social systems, including families, which are key drivers in increasing pro-social behaviour, reducing anti-social behaviour and improving functioning.<sup>819</sup>

*There is clearly an important role for families to play in Case Managers' efforts to bring about positive change in young people's behaviour. Depending on young people and their families' needs, Case Managers must either work directly with families or refer them to specialised family intervention services.*<sup>820</sup>

However, beyond this, there is very little reference in Youth Justice policies to addressing the needs of families experiencing disadvantage. At the time of writing, a Youth Justice practice guideline on working with families was in development.

Brokerage is available for children and young people under the supervision of Youth Justice<sup>821</sup> to fund a variety of supports and services including accommodation, health and medical needs, counselling, alcohol and drug rehabilitation, travel, cultural wellbeing activities, educational needs, vocational assistance, recreational programs and material aid such as food, clothing, toiletries and assistance with childcare.<sup>822</sup> However, brokerage is 'for

<sup>818</sup> Jesuit Social Services, Submission to *Our youth, our way* inquiry, p 5; VACCA, Submission to *Our youth, our way* inquiry.

<sup>819</sup> DJCS, *Care teams*, p 16.

<sup>820</sup> DJCS, *Care teams*, p 12.

<sup>821</sup> Brokerage is available for young people involved in the Children's Court Youth Diversion Service, and to support young people on youth control orders: Department of Justice and Community Safety (DJCS), *Brokerage: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 4 December 2020.

<sup>822</sup> DJCS, *Brokerage*, p 5.

immediate or short term expenses and should not be used to support a young person's ongoing needs'.<sup>823</sup> It is also not clear how the use of brokerage to secure emergency housing for a young person is affected by the needs of the young person's immediate family.<sup>824</sup>

The Taskforce and the inquiry revealed many examples where Youth Justice and other responsible agencies failed to recognise or respond to the needs of families. Many young people and family and community members referred to a lack of support for families (see also Chapter 6.1 'Collaboration' for a discussion of the failure of agencies to collaborate effectively in providing support for Aboriginal children and young people).

*Youth Justice put them back with the families and there's no supports. They put them back with the families and forget about them. They promise you things like beds and help and they just don't do anything. – Elder*

*[A community service organisation] has been helping with transport, food and petrol vouchers, helping to get a job... helping to get a fridge – doing more than DHHS. – Darcy, 17*

*My nephew was in Parkville... nothing was ever dealt with. Back in court, remand in Parkville, then to Fulham... nothing is fixed. Some families need extra support on how to deal with things when they come home. – Aunty*

**Q: What did your family need?**  
**A: Probably just a family counsellor. – Felix, 21**

*YJ processes are too slow to be responsive to a young person's travel needs. This creates barriers to accessing services. – Aboriginal community member*

Taskforce case planning sessions similarly revealed failures by Youth Justice and Child Protection to provide adequate family supports to address disadvantage. More than half of the case planning sessions (n = 36) identified actions in relation to the young person's family, including family counselling, relationship repair, financial support, and actions to address family welfare needs and ensure safe family environments. Ten per cent of all actions concerned family.<sup>825</sup>

The following case study illustrates the importance of addressing family needs in order to make positive change for Aboriginal children and young people, and the risks of failing to do so.

<sup>823</sup> DJCS, *Brokerage*, p 6.

<sup>824</sup> Department of Justice and Community Safety (DJCS), *Working with housing services: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 4 December 2020, p 10.

<sup>825</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

### The Kakay siblings

The Kakay siblings, Tait (16), Gavin (14) and Claire (10), are close. They live with their Uncle, who is loving and committed to their care, and another child. They sometimes visit a relative for respite. Each sibling has had contact with police.

A Taskforce case planning session was held for each of the siblings. Participants noted that the children have 'respect for Elders', and that their Uncle 'has heart and love for these kids but there are concerns'. These concerns related to the Uncle's workload, marijuana use, and ability to afford food and maintain accommodation. One participant noted that the children often 'parented each other'.

The Uncle wanted assistance to support the children better. However, due to a traumatic history, he distrusts government systems, preferring Aboriginal services. He was worried that asking for help with the children's care would result in their removal and separation from one another.

Participants in the case planning sessions agreed that it was in the best interests of the siblings to

stay with their Uncle, but that there was a clear need for more practical family supports in the home. Accordingly, the session identified several actions to achieve this, including arranging an Aboriginal Family Led Decision Making (AFLDM) meeting to manage family support in an inclusive and culturally safe manner, and to support the Uncle to care for the children.

Youth Justice and Child Protection's implementation of the case planning session actions was extremely poor. The AFLDM meeting was convened without the Uncle or the family's knowledge, and involved only professionals. This denied the family the opportunity to be involved in decisions about the supports they needed. It also reinforced the Uncle's previous experience of services making decisions about Aboriginal families without their involvement.

Without a voice in the AFLDM process, the family could not express their needs and did not receive the supports they required. As a consequence, the Uncle indicated that he was 'struggling' and Child Protection removed the youngest sibling from his care and placed her in residential care.

This case demonstrates a failure of Youth Justice and Child Protection to involve family in decision-making, to respond to the family's needs, and to provide or facilitate effective family supports. These failures resulted in Child Protection action to remove the youngest sibling – an outcome that is likely to push her further into the youth justice system (see Chapter 8.1 'Child Protection involvement') and disconnect the family through the trauma of removal.

### Supporting families in order to support children and young people

Community members and workers highlighted the need to support families in order to effectively support Aboriginal children and young people to end their involvement in the youth justice system. They also

referred to the cycle of Youth Justice involvement that can be perpetuated by the failure to do so.

*How do parents turn their lives around for young people? You can't expect young people to change without families changing. The whole environment needs to change. They're comfortable in offending – it's normal, it's ok. Families need more support on how to deal with it... We need workers to work with family and look at their lifestyle. My nephew went back to his parents – they were still drinking and fighting, so he did that. It all starts again. It's intergenerational. The cycle needs to stop.*  
– Auntie



*I don't know why we invest so much in workers to fix young people, but we put Aboriginal young people back into the same environment they came from, only for them to repeat the cycle. This makes young people feel like it's their problem. – Youth Justice worker*

*There doesn't seem to be a lot of work done with mum or family because of her own history and Child Protection. We need to be better at getting in there and doing the hard yards [of family support]. It's a statewide problem. – Youth Justice worker*

The need to support the families of Aboriginal children and young people in the youth justice system was raised at every Taskforce regional forum. Participants emphasised the importance of family supports to enable children and young people to successfully complete Youth Justice orders and build strong support networks, and expressed concern about the absence of such supports in Youth Justice service delivery.

*We need to keep the family central and supported. Workers come and go but family stays... There is a lack of support for whole families – we need to be proactive and not reactive, and work with them before things get to crisis point. – Gippsland (Bairnsdale) regional forum*

*Family support and reunification-focused work is a challenge in the East. – Eastern Metropolitan regional forum*

*We need to increase work with the whole family as the young person can't be supported just in isolation. – Gippsland (Morwell) regional forum*

Clearly, a change in Youth Justice practice is required to better support the families of Aboriginal children and young people in the youth justice system. The Commission's recommendations to address this are set out at the conclusion of this chapter.

## Young people as carers

### Finding 15

Youth Justice often fails to recognise and support the caring responsibilities of the many Aboriginal young people in the youth justice system who are themselves parents or carers. This can contribute to intergenerational harm and youth justice system involvement.

Aboriginal young people who are parents or carers have responsibilities that significantly affect their interaction with the youth justice system. Ten per cent of Aboriginal young people in the Taskforce case file review were parents, and 3% were pregnant or had a pregnant partner at the time of the review.

In addition, Taskforce regional forums and consultations with young people, community members and services revealed that many Aboriginal children and young people have ongoing caring responsibilities for members of their family and community. Despite this, Youth Justice practice guidelines only make one reference to caring responsibilities, namely that brokerage may be used for childcare.<sup>826</sup>

### The experiences of Aboriginal children and young people

The Commission heard from many young people with caring responsibilities, whether for their own children, or for their parents, grandparents or siblings. Young people were committed to the wellbeing of those in their care, despite facing multiple challenges, and showed that they were caring, responsible and community-minded.

*I want to go back to my kids and that, and I want to be a good role model for them. I just found out today that I'm gonna be a dad again.  
– Watjpa, 21*

<sup>826</sup> DJCS, *Brokerage*, p 6.

### 7.3 Challenges experienced by Aboriginal families

*I want a straight life... I wouldn't want my kids to struggle like me. – James, 18*

*At the moment I'm just trying to look after my missus, and we got Christmas coming up – the first Christmas with my daughter. I was inside for last Christmas and her birth, so I'm trying to make up for that. – Djiran, 19*

*I was always in and out on remand. I want to do better for myself. I think it's time to change. I've got a little one on the way. – Seth, 16*

*I want my own house where my siblings can live, and to be working as a mechanic and getting back to my culture. – Daniel, 17*

*I got a lot of things at home. I got my sister – I need to set a good example for her. – Ronan, 15*

The Taskforce case planning sessions also revealed the strengths of Aboriginal young people in the youth justice system who take on challenging caring loads at a young age. Participants noted, for example, that young people often take on responsibility for younger siblings by providing care and practical supports such as food, indicating strong bonds between siblings and young people's sense of responsibility.

Aboriginal young people also told the Commission that complying with Youth Justice obligations while balancing caring loads often involves conflicting responsibilities and places young people under significant pressure. In some cases, a young person may be forced to choose between meeting a Youth Justice obligation and attending to caring responsibilities. This can make caring more difficult, limit young people's ability to participate in rehabilitation programs, and damage family relationships.

*I go to school, but it's hard going with 2 kids... I'm on a single parent income and I've had my sister's [child] for a couple of months now and I'm supporting him financially, and I'm just doing it for my dad but that puts stress on me. I don't have time [for Youth Justice obligations]. I need to look after my baby and my family. – Monica, 17*

Young people with caring responsibilities identified the need for Youth Justice to better understand and recognise the challenges they face to enable them to complete community orders while supporting those they care for.

*I've got a lot of family to support me with being a mum, but a lot of people don't, and it would be good to have more support for young mums. – Taylah, 20*

*I'm a young Aboriginal mum. I'd like any programs to help you with resilience. Group programs to help kids get off drugs and encourage each other to stay off. – Pearl, 19*

One young person acknowledged support from her Youth Justice worker in court regarding her caring responsibilities; however, she also said that she required more support.

*The judge didn't understand what it was like to be a mum. He made it out like I was always reoffending, and I hadn't reoffended for years. The last time I offended I was 14. He wanted me to do like 10 hours of community work per week, but my Youth Justice worker said I was a mum and I had just got my son back, and that it would be setting me up to fail... I'm in emergency housing but the lease is only 3 months to 3 months... I don't know when I'm going to get permanent housing. I think there's termites or something because the door keeps falling off and the carpet wasn't even done properly before I moved in. – Monica, 17*

The tensions between Youth Justice obligations and caring responsibilities were also apparent in the

Taskforce case planning sessions. Eight of the 69 young people for whom case planning sessions were held were parents. In these sessions, it was clear that Youth Justice, and in many cases DHHS (now DFFH), needed to better support young people in their capacity as carers, both through practical family supports, and by structuring Youth Justice obligations so as to enable compliance alongside the young person's caring responsibilities.

The experience of Erin (described in detail in Chapter 6.3 'Participation in the youth justice system') is illustrative. Erin is a loving mother to a young daughter. Both Erin and the father of their daughter were involved with Youth Justice when she was born. Along with being a full-time parent, Erin was a carer for her young niece and her grandfather. This placed considerable stress on Erin, particularly financially. Erin told the Commission that she wanted to get a job, but wanted to arrange childcare first. She asked for help with navigating the childcare system and accessing the childcare subsidy. These supports would have significantly alleviated Erin's caring responsibilities and enabled her to work.

Youth Justice and DHHS had been aware of Erin's caring responsibilities for a number of years. However, at the time of Erin's Taskforce case planning session, she had not received the supports she needed. Youth Justice and DHHS's inaction on Erin's requests suggests a failure to understand her caring responsibilities and their impact on her ability to meet Youth Justice obligations and build a life outside the youth justice system.

### **Intergenerational contact with the youth justice system**

*My father has been in and out [of prison] my whole life. I grew up without a father. My mother got taken away from me. She's in there... The coppers always follow me around – they search me, they try to harass me, they still watch me like I'm a big time criminal. I'm not like my father. I want to chase a dream and get out of here. – James, 18*

When the disadvantage experienced by Aboriginal children and young people in the youth justice system remains unaddressed, the risk of their continued involvement in the system and future involvement in the adult system increases. Their children are also at increased risk of contact with the youth justice system.

Most children and young people in the Taskforce case file review (61%) had at least one immediate family member (parent, sibling or extended family) with current or past involvement in the criminal justice system. For 14% of the total cohort, both parents had current or past involvement in the criminal justice system.

Many children and young people, including those with their own children, spoke to the Commission about the impact of intergenerational contact with the criminal justice system.

*First day I opened up my eyes, coppers were probably at my house looking for dad for charges. He spent 17 years of his life with them. – Vincent, 17*

*I've watched my mum go in and out of jail since I've grown up. I've watched my step-dad been in and out of jail, my sister, pretty much my whole family has been in jail. I've been looking after my brothers and sisters. – Jamie, 18*

*I have young kids and it's breaking my heart not being with them. I want to get my kids out of the justice system. I have to get them back before they get in and out of prison. That's my mum's history, and mine, and my dad's – he lost his parents when he was 13, and then he just starts thieving, and it all starts and then it all continues, like the same cycle. – Tiana, 25*

In its 2018 *Pathways to justice* report, the Australian Law Reform Commission recognised that incarceration 'has a compounding effect' on the various forms of disadvantage experienced by Aboriginal people, and can lead to 'a cycle of incarceration – both for ex-prisoners, and for their families'.<sup>827</sup>

<sup>827</sup> ALRC, *Pathways to justice*, p 81.

## 7.3 Challenges experienced by Aboriginal families

The Youth Justice Review observed more broadly that:

*Intergenerational offending and exposure to crime, law enforcement and criminal justice systems during childhood and adolescence is a significant risk factor. Of young offenders in custody, 25 per cent had a parent or sibling with current or past involvement in the criminal justice system. Young people discussed wanting to be transferred to adult prison to be with their cousins or brothers.*<sup>828</sup>

Meeting the needs of children, their families and their dependants is therefore crucial for reducing the over-representation of Aboriginal children and young people in the youth justice system not only now, but for future generations.

### Addressing family needs with the right supports

The Youth Justice Review recognised the importance of supporting families to ensure that children and young people have a home environment where they can thrive.<sup>829</sup> It recommended the identification of options to provide young people and their families with support through Child Protection or other relevant support agencies ‘to help them work towards developing stability and supporting the young offender in a pro-social manner’.<sup>830</sup>

In response to this recommendation, Youth Justice has:

- developed the Youth Justice Strategic Plan, which includes supporting the families of children and young people in Youth Justice as a key objective
- engaged Anglicare to deliver Functional Family Therapy and OzChild to deliver Multi-Systemic Therapy to young people on Youth Justice community supervision orders
- allocated \$3.4 million to deliver over 50 accommodation studios from Kids Under Cover to address housing needs and keep young people connected to the family home.

In addition, as part of its 2020–21 Budget, the Victorian Government has committed \$85.8 million in support for

<sup>828</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 165.

<sup>829</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 203.

<sup>830</sup> Recommendation 6.12: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 43.

Aboriginal children and families, including \$11.6 million to establish Aboriginal-led family support teams at 2 pilot sites to assist local families and address the over-representation of Aboriginal children in care.<sup>831</sup> The 2020–21 Budget also includes funding for family preservation and restoration programs under *Roadmap for reform: strong families, safe children*, the Victorian Government’s strategy to transform the children and families system.<sup>832</sup>

Under *Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families*, Aboriginal communities and services and the Victorian Government are working together to ensure that Aboriginal families and communities are stronger, safer, thriving and living free from family violence. Under *Dhelk Dja*, action plans will be developed every 3 years to progress its strategic priorities. These are Aboriginal culture and leadership; Aboriginal-led prevention; Aboriginal family violence support and services; system transformation based on self-determination; and Aboriginal-led and informed innovation, data and research.<sup>833</sup> These initiatives are important steps towards better supporting Aboriginal children and their families. However, the findings of this inquiry indicate that more targeted action is required.

Holistic family supports provided by Aboriginal organisations for Aboriginal children and young people at risk of contact with the youth justice system highlight the importance of working with families rather than focusing exclusively on children and young people. An example is the *Barreng Moorop* program run by VACCA. This program is described in Chapter 4.1 ‘Advancing self-determination’, and its strengths are illustrated in Bobby, Nikita and Richard’s story at the beginning of Chapter 4.

*Barreng Moorop* provides integrated and intensive case management support to Aboriginal children aged 10 to

<sup>831</sup> Minister for Aboriginal Affairs, *A fairer future for Aboriginal Victorians*.

<sup>832</sup> Minister for Child Protection, *Supporting young Victorians – and their future* [media release], Victorian Government, 24 November 2020, accessed 12 December 2020.

<sup>833</sup> In March 2021, more than 45 Aboriginal-led initiatives and services were funded, enabling Aboriginal organisations to deliver support for Aboriginal victim survivors and people who use violence. Funding was provided across 4 streams: Aboriginal frontline family violence services, holistic healing, preventing the cycle of violence, and Aboriginal family violence workforce capacity building. Funded projects include the delivery of therapeutic services and programs to support Aboriginal children: Information provided to the Commission by DFFH on 1 April 2021.

15 years of age who are vulnerable or at risk of becoming involved with the youth justice system. The program is structured to acknowledge the connection between the needs of young people and their families, and aims to address welfare issues which can drive offending behaviour, such as family dysfunction, mental health, intergenerational trauma, attachment difficulties, intellectual disabilities, experiences of violence and abuse, poverty, educational disengagement and a lack of social and cultural connection. These issues require sustained support.

*The kids are too vulnerable to pull out [after the program finishes]. That is a flaw in the system... We might have families that go well for a year and bang, it falls apart – crisis, sorry business, etc. We're trying to break a cycle, which doesn't happen in a year. – Team Leader, Koori Children and Youth Programs, VACCA*

A strength of this model is that it recognises the importance of engaging with all members of the family, including siblings, parents, carers and Elders. Family members and the young person identify the support they require and are linked in with appropriate services, including welfare, housing, family and education services.

More programs like *Barreng Moorop* are required to address the holistic needs of Aboriginal children and young people in the youth justice system, together with the needs of their families. These programs should be available in every region and designed and led by Aboriginal organisations. Youth Justice should coordinate with these programs to ensure that they are available through family group conferencing, recommended in Chapter 7.2.

Family group conferencing should also include a discussion of the child or young person's family circumstances and home environment, with a view to understanding the family's needs and coordinating any necessary support for family members with representatives from family services. This process should provide a mechanism for including the family's voice and choice in relation to services. It should also consider children and young people's own caring responsibilities.

In addition, Youth Justice practice guidelines should be updated to ensure that they clearly address the impact of family disadvantage on the capacity of Aboriginal children and young people to comply with the

obligations of community-based orders, and direct Youth Justice staff to work with relevant agencies to provide any necessary family supports. Practice guidelines should also address the situation of young people with their own caring responsibilities, and ensure that case managers understand the impact of such responsibilities on a young person's abilities to comply with Youth Justice obligations.

## Recommendation 25

That the Victorian Government fund holistic family support programs, including through services delivering multi-systemic therapies, to address disadvantage experienced by the families of Aboriginal children and young people in the youth justice system. These programs should be available in every region and designed and led by Aboriginal organisations. They should be available through youth justice family group conferencing, in addition to other avenues.

## Recommendation 26

That Youth Justice improve its support for Aboriginal children and young people and their families by:

- a) updating its practice guidelines to ensure that they clearly address the impact of family disadvantage on Aboriginal children and young people's ability to comply with Youth Justice obligations, and direct Youth Justice staff to facilitate or provide necessary family supports
- b) ensuring that its practice guideline on working with families addresses the situation of young people with their own caring responsibilities.

## Recommendation 27

That youth justice family group conferencing include consideration of Aboriginal children and young people's family circumstances, home environment and caring responsibilities, with a view to identifying and facilitating all necessary family supports.

## 7.4 Connection with culture

### Finding 16

Connection to culture can be transformative and instrumental in supporting Aboriginal children and young people to avoid contact with the youth justice system. However, the youth justice system does not facilitate meaningful connections to culture for most Aboriginal children and young people.

### Culture as protection, strength and wellbeing

Connection with culture is a powerful protective factor for Aboriginal people:

*For Aboriginal peoples in Australia, culture frames a sense of identity which relates to being the First Peoples of the land. For Aboriginal children, families and communities, culture enhances a deep sense of belonging and involves a spiritual and emotional relationship to the land that is unique. Culture is a protective factor against colonisation and the imposition of an alien dominant culture on all aspects of Aboriginal peoples' lives.*<sup>834</sup>

For Aboriginal children and young people in the youth justice system, culture can assist with healing, protect health and wellbeing, and build a strong sense of identity and connection to community and Country.<sup>835</sup>

<sup>834</sup> Bamblett et al., 'Proving culture and voice works', p 100. See also Closing the Gap Clearinghouse, *Strategies and practices for promoting the social and emotional wellbeing of Aboriginal and Torres Strait Islander people*, Resource sheet no. 19, Closing the Gap Clearinghouse, Australian Government, 2013, p 4. This was echoed by submissions to this inquiry from VACCA, JSS, VALS, and the Victorian Aboriginal Children and Young People's Alliance.

<sup>835</sup> Koorie Youth Council, *Ngaga-dji* and submissions to this inquiry from the Aboriginal Justice Caucus, VACCA and VALS.

This was highlighted at every Taskforce regional forum and by community members throughout the inquiry.

*Embed culture for the young person as a life view, incorporating it into everyday practice and daily realities, so that culture can be used as a strength, rather than 'doing' culture as an activity. This will enable the young person to not have to rely on anyone else for their culture.*  
– Aboriginal community member

Most (n = 68) Aboriginal children and young people who spoke to the Commission emphasised the centrality of culture to their sense of self and ability to heal. Many children and young people had already experienced the positive impact of culture on their lives. Others, who were less connected, expressed the desire to engage in and learn culture.

*Culture means everything to me. It's the only thing I've got left.* – James, 18

*I stay connected [with culture] through family.*  
– Watjpa, 21

*Keep your culture, don't let it die out. It's what's kept me strong.* – Zeke, 18

**Q:** *What do you want to do when you get out?*  
**A:** *Be connected to culture.* – Jasper, 17

The importance of connection to culture for Aboriginal children and young people is highlighted throughout this report. Access to cultural programs and other cultural connections in custody are examined in

Chapter 13.1 ‘Cultural safety and support in custody’, and cultural mentoring is discussed in Chapter 9.3 ‘Mentoring’. The following sections focus on Youth Justice practices in relation to cultural support plans.

### **Inadequate connection with culture in the youth justice system**

The Youth Justice Case Management Framework and practice guidelines make specific provision for working with Aboriginal young people to ensure that they have cultural support and are offered a cultural support plan (discussed below). Aboriginal children and young people must be allocated to an Aboriginal case manager, or to a case manager with ‘established working relationships’ with local ACCOs, and ‘strong cultural competency skills’.<sup>836</sup> Other practice guidelines recognise the unique cultural needs of Aboriginal children and young people.<sup>837</sup>

However, the Taskforce and the inquiry revealed that Youth Justice often fails to facilitate or support meaningful – ongoing and consistent – connections with culture for Aboriginal children and young people. For children and young people in the Taskforce, this included many instances where Youth Justice case managers chose not to prioritise young people’s cultural needs.

The Taskforce case file review asked whether, in the previous 12 months, the child or young person had experienced ‘opportunities to participate in activities that foster knowledge and appreciation of their culture’. The answer to this question was ‘yes’ for 71% of the Taskforce cohort. However, a close analysis of the detail provided in the answers to this question casts doubt on the degree of engagement in cultural activities by Aboriginal children and young people, and on the quality of the activities involved. For example, in more than half of these cases:

- the young person had been referred to, but had not participated in, a cultural activity
- engagement in a cultural activity was minimal or not meaningful (for example, the young person had only been to one session, or engagement had ceased months earlier)

<sup>836</sup> DJCS, *Allocation and intake*, p 5.

<sup>837</sup> These include *Allocation and intake*, *Case planning*, *Planning for youth parole* and *Understanding and responding to family violence* practice guidelines.

- engagement was in custody only, where delivery of cultural programs is inconsistent and ceases once the young person is released (see Chapter 13.1 ‘Cultural safety and support in custody’).

Taskforce case planning sessions also revealed the youth justice and child protection systems’ failure to support Aboriginal children and young people’s connection to culture. Almost three-quarters (n = 51) of the case planning sessions revealed significant gaps in young people’s cultural support, despite most of those young people having previously been in contact with systems that have policies in place to facilitate cultural connection.

In Taskforce case planning sessions, actions related to culture were the most common. Of all actions made, 19% related to culture being Aboriginal-led, building identity, cultural support planning, cultural mentoring and returning to Country. More than half (57%) of the Taskforce case planning sessions identified actions aimed at connecting young people with a cultural mentor (see Chapter 9.3 ‘Mentoring’ for an examination of culturing mentoring programs). After an audit of actions was completed in June 2020, 62% of the actions relating to culture were still incomplete.<sup>838</sup>

Children and young people whose Taskforce case planning sessions revealed strong cultural connections also had powerful family and community connections, and/or intensive support from an Aboriginal organisation. Examples of such support are provided throughout this report (see, for example, Chapter 4.1 ‘Advancing self-determination’).

### **Cultural support plans**

Youth Justice practice guidelines require all Aboriginal children and young people to be offered a cultural support plan,<sup>839</sup> as an ‘important process in strengthening Aboriginal young people’s connection to culture’.<sup>840</sup>

Cultural support plans are designed to connect children and young people to their community, enhance their

<sup>838</sup> These calculations do not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>839</sup> Department of Justice and Community Safety (DJCS), *Working with Aboriginal young people and cultural support plans: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 4 December 2020, p 6.

<sup>840</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, p 5.

## 7.4 Connection with culture

sense of belonging, and provide cultural supports to assist in diverting them from the youth justice system.<sup>841</sup> They include information about the young person's family and kinship ties, their Aboriginal community and Aboriginal services, and contacts for supporting links to culture.<sup>842</sup> Thoughtfully prepared, meaningful cultural support plans have the potential to act as a strong protective mechanism for Aboriginal children and young people.

If an Aboriginal young person consents to the development of a cultural support plan, the Youth Justice case manager is responsible for determining, in partnership with the young person, which Aboriginal people and services are to be involved.<sup>843</sup> This should include family, significant community members and/or Elders, and a Koori Youth Justice worker<sup>844</sup> or a Koori Intensive Support Program worker.<sup>845</sup> The Koori Youth Justice worker may take the lead in developing the plan with the young person.<sup>846</sup> For Aboriginal children and young people in custody, an ALO<sup>847</sup> should be involved.<sup>848</sup>

Cultural support plans must be integrated and consistent with the young person's Youth Justice case

plan. The young person must receive a copy of the cultural support plan when it is completed. The plan must be reviewed at every care team meeting.<sup>849</sup>

Some Aboriginal children and young people who come into contact with Youth Justice may already have a cultural support plan, which has been prepared by DHHS/DFFH (or a delegated organisation) under section 176 of the CYFA. That section requires the Secretary to provide a 'cultural plan' for every Aboriginal child in out-of-home care.<sup>850</sup> Despite this requirement, many Aboriginal children and young people living in out-of-home care do not already have a cultural support plan in place when they become involved with Youth Justice. Aboriginal Children's Forum data indicates that, on 30 September 2020, only 53% of Aboriginal children in care had a cultural support plan.<sup>851</sup>

If a Child Protection cultural support plan already exists, the Youth Justice case manager must obtain a copy of that plan, but is still required to develop a Youth Justice cultural support plan. This must be consistent with, and informed by, the earlier plan.<sup>852</sup> This builds a degree of duplication into the system.

Cultural support plans can only facilitate meaningful cultural connection and operate as a protective mechanism for Aboriginal children and young people if they are completed in a timely manner, of high quality and implemented effectively. The Commission found that this is often not the case. These issues are discussed in the following sections.

<sup>841</sup> Department of Justice and Community Safety (DJCS), *Koori Youth Justice Programs*, DJCS website, 2020, accessed 5 December 2020.

<sup>842</sup> Department of Human Services (DHS), *Aboriginal Cultural Support Plan guide: a balanced approach* [PDF], DHS, Victorian Government, 2008, accessed 18 February 2021.

<sup>843</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, pp 8–9.

<sup>844</sup> Koori Youth Justice workers provide cultural support for Aboriginal children and young people under Youth Justice supervision, and establish and maintain relationships with family and community to strengthen connection to culture. Koori Youth Justice workers and the Community-Based Koori Youth Justice Program are discussed in more detail in Chapter 6.2 'Relationships with workers'.

<sup>845</sup> Koori Intensive Support Program workers provide statutory case management for Aboriginal children and young people under Youth Justice supervision. This program is discussed in Chapter 12 'Pathways out of the youth justice system'.

<sup>846</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, p 9.

<sup>847</sup> The ALO's role is to provide cultural support for Aboriginal children and young people in custody. This role is examined in Chapter 13.1 'Cultural safety and support in custody'.

<sup>848</sup> In response to the draft report, DJCS advised the Commission that it is an ALO's role to take the lead and develop the cultural support plan with the young person and their family. However, this is not clearly reflected in the relevant practice guideline, which places primary responsibility for cultural support plan practice requirements on the Youth Justice case manager and requires that the ALO 'in consultation with the Youth Justice Case Manager, determine the role of the ALO in developing a Cultural Support Plan': DJCS, *Working with Aboriginal young people and cultural support plans*, pp 6, 8.

<sup>849</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, p 8.

<sup>850</sup> Section 176(2) provides that 'the Secretary must provide a cultural plan to each Aboriginal child in out of home care that is aligned with the case plan for the child'. Within 16 weeks of the child or young person entering out-of-home care, the cultural plan must be given to the Senior Advisor – Aboriginal Cultural Planning, who presents the plan to their chief executive officer for approval: DHHS, *Cultural plans – advice*, DHHS website, Victorian Government, 2020, accessed 18 November 2020.

<sup>851</sup> DHHS, *Aboriginal Children's Forum: data pack December 2020 Forum*. It should be acknowledged that this is a considerable increase from 31 December 2018, when only 26% of Aboriginal children and young people in out-of-home-care had a cultural support plan. In October 2019 the Aboriginal Children's Forum noted that the completion rate of cultural plans is 'still not where it should be': Department of Health and Human Services (DHHS), *Aboriginal Children's Forum Report, 1 and 2 October 2019*, DHHS, Victorian Government, 2019, unpublished, p 13.

<sup>852</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, p 8.



## Completion of cultural support plans

The Taskforce case file review indicates that only 31% of children and young people in the cohort for whom responses were given had a cultural support plan, and 3% had one in progress. On 31 December 2018 – the middle of the Taskforce case file review period – only 26% of Aboriginal children and young people in out-of-home-care had a cultural support plan.<sup>853</sup>

For those children and young people in the Taskforce case file review who had a cultural support plan (or one in progress) (n = 127) a Koori Youth Justice worker or an ALO had drafted the plan in 38% of cases and an ACCO had drafted the plan in 15% of cases. Child Protection had prepared the plan in 15% of cases. This is a small proportion given the significant number of Aboriginal children and young people in the youth justice system who are also in out-of-home care (see Chapter 8.1 ‘Child Protection involvement’).

While Youth Justice cultural support plans are not mandatory, this does not fully explain the low completion rate. Of the children and young people in the Taskforce cohort who were identified as not having a cultural support plan, 42% had not been offered a plan, despite this being a Youth Justice practice requirement. Circumstances where the young person was not identified as Aboriginal were excluded from this count.

Half of the children and young people who were identified as not having a cultural support plan had been offered one, but refused. Refusal could be interpreted as indicating a young person’s unwillingness to participate in cultural activities. However, this does not reflect what the Commission heard from children and young people, who consistently expressed their desire to connect with culture. Resistance to Youth Justice cultural support planning and activities may therefore indicate a lack of cultural safety in the youth justice system, or a lack of trust in Youth Justice staff and procedures. In some cases, it may also indicate a young person’s poor or traumatic experiences with a particular family or community member, uncertainty about identity and connection, or fear of being shunned or disowned.

## Poor quality of cultural support plans

The quality of cultural support plans was questioned at most Taskforce regional forums, and by many workers throughout the Taskforce and the inquiry.

*We need processes to ensure that cultural plans are of higher quality and meaningful for the young person. – Gippsland (Bairnsdale) regional forum*

*Cultural connection appears to be ‘tick the box’. If cultural support plans exist, Youth Justice has not made the effort to sight them or familiarise themselves with them. – Aboriginal youth worker*

*Cultural support plans need to be more than just activities and events. They need to be connections into community and family. Youth Justice should start each and every plan with the young person’s dreams and goals and have the young person lead the supports they want in their plans. – Aboriginal youth worker*

*The cultural plans we did before were horrible. I took it upon myself to change the form [to improve it]. – Youth Justice worker*

*I don’t want a cultural plan for anyone. Who has ever had a piece of paper that explains their cultural identity? It’s something you have to feel and breathe. – Aboriginal youth worker*

Cultural support plans should be developed in partnership with the child or young person. The Taskforce case file review indicates that 64% of children and young people in the cohort who had a cultural support plan had been involved in the development of their plan. However, of the 64 children and young people who discussed culture with the Commission

<sup>853</sup> DHHS, *Aboriginal Children’s Forum: data pack December 2020 Forum*.

## 7.4 Connection with culture

during the inquiry, only 2 referred to a cultural support plan, and neither did so in a positive way.

**Q:** *Did you get much input into your cultural support plan?*

**A:** *Nah, I didn't even know it was happening.*  
– Ruan, 14

*[My worker] doesn't even do cultural plans or nothing with me... Seeing as Youth Justice and [ACCO] work together, they should be doing a cultural support plan for me.* – Peyton, 16

This suggests that there is considerable room for improvement in Youth Justice's engagement of children and young people and their families in cultural support planning.

The creation of a meaningful cultural support plan typically relies on the involvement of parents, carers, extended family and community members to provide information about a child or young person's family, kin, Country and culture. Research demonstrates the importance of family and community involvement in creating good quality cultural support plans.<sup>854</sup>

The Taskforce case file review asked whether the child or young person's parents, primary carers, extended family or community members had been involved in the development of their cultural support plan. The high proportion of 'not applicable' or 'unknown' answers in response to these questions made this data unusable.<sup>855</sup> However, it may also indicate very low levels of family and community involvement in Youth Justice cultural support planning, or at least poor recording of information regarding this process.

In addition, the preparation of a meaningful and effective cultural support plan requires considerable skill, care, effort and time. Sensitivity to possible trauma created by information-gathering is also often necessary on the part of the person developing the plan. According to an ACCO worker quoted in a 2017

<sup>854</sup> S Baidawi, P Mendes and BJ Saunders, 'The complexities of cultural support planning for Indigenous children in and leaving out-of-home care: the views of service providers in Victoria, Australia', *Child & Family Social Work*, 2017, 22(2):731–740.

<sup>855</sup> Other case file review questions regarding cultural support also had very high rates of 'unknown' answers.

study on cultural support planning for children in out-of-home care in Victoria:

*There's thousands of phone calls per document. It's exhausting and frustrating, and tiring and it's emotional... you ring the Co-Ops or the other ACCOs around asking, "Do you know this family? Can you tell me a bit about them?"... they've had quite disrupted childhoods, the parents themselves. And for a lot of them ... there's information in there that they don't know either, and there's potentially a lot of trauma there as well. So we could be opening wounds that they don't want to talk about either. So it's got to be very sensitively done as well.*<sup>856</sup>

The Victorian Aboriginal Children and Young People's Alliance has identified similar issues in relation to the creation of Child Protection cultural support plans by non-Aboriginal people who lack the cultural knowledge and skills to prepare plans, and who 'do not always understand the importance of connection to culture and therefore do not see cultural support plans as a priority'.<sup>857</sup>

There are now approximately 30 'Senior Advisors – Aboriginal Cultural Planning' employed by ACCOs across Victoria to prepare cultural support plans for Child Protection, and support Child Protection care teams to develop plans.<sup>858</sup> DFFH also has detailed guidance and instructions for the preparation of cultural support plans for Aboriginal children and young people in out-of-home care.<sup>859</sup>

The Senior Advisors are not employed to assist with the preparation of Youth Justice cultural support plans. There is a detailed Youth Justice guide for the preparation of cultural support plans; however, it has not been updated since 2008.<sup>860</sup>

<sup>856</sup> Baidawi et al., 'The complexities of cultural support planning for Indigenous children in and leaving out-of-home care', p 738.

<sup>857</sup> Victorian Aboriginal Children and Young People's Alliance, *Revisiting 'a new approach' to cultural support plans*, Victorian Aboriginal Children and Young People's Alliance, 2019, accessed 18 November 2020, p 3.

<sup>858</sup> The Commission is also aware of a statewide trial to improve collaboration between Senior Advisors and Child Protection. Under the trial, the Senior Advisors are responsible for providing cultural content in cultural support plans, whereas Child Protection is responsible for completing the remaining elements (consultations with children and young people and family, genograms, actions and other content): Information provided to the Commission by the Statewide Coordinator of Aboriginal Cultural Planning on 11 March 2021.

<sup>859</sup> DHHS, *Cultural plans – advice*.

<sup>860</sup> DHS, *Aboriginal Cultural Support Plan guide*.

## Implementation and sharing of cultural support plans

Participants at Taskforce regional forums commented on the lack of resources available to support the implementation of cultural support plans. Research also demonstrates the need for additional resourcing to support implementation and monitoring of cultural support plans.<sup>861</sup>

Cultural support plans are created and/or used by Youth Justice, Child Protection and DET. The creation of multiple plans by different agencies has caused confusion for some time.

Participants at most Taskforce regional forums and many Aboriginal workers consulted for the inquiry reported that this remains a problem. Workers indicated that plans from different agencies often include duplicated or conflicting activities. In some cases, the existence of multiple plans created confusion about different workers' responsibilities for engaging young people in the cultural activities listed in the plan.

Seven regional forums recommended that children and young people have a single cultural support plan that is shared (with the consent of the young person or their family) between departments. A single cultural support plan would avoid duplication and minimise the trauma experienced by some family members who may otherwise have to tell their story multiple times.

In 2019, Youth Justice established a Cultural Plan Working Group to work towards the strengthening of cultural supports and planning for Aboriginal children in Youth Justice, including the development of a single cultural support plan for children in contact with Youth Justice and Child Protection.<sup>862</sup> At the time of writing, DJCS and DFFH did not have a formal protocol in place for the systematic sharing of cultural support plans.<sup>863</sup>

One region, Wimmera South West, is currently undertaking a 12-month pilot to share cultural support plans. The pilot is supported by a Memorandum of Understanding between DJCS, DHHS (DFFH), DET

and Aboriginal organisations, under which staff members of each department or organisation undertake to ask whether the child or young person consents to the sharing of their cultural support plan. The responsibility then rests with the ACCO, community service organisation or department to share the plan, as requested by the young person. While it is too early to evaluate this pilot, it presents a possible model for reducing the duplication of plans and increasing completion rates. The Commission is also aware that planning is underway for Child Protection to share cultural support plans with DJCS and DET in other regions.<sup>864</sup>

## Strengthening connection to culture in the youth justice system

Strong connection to culture is a protective factor for Aboriginal children and young people, and should be embedded at every point on the youth justice continuum.

In the Taskforce regional forums, the Commission heard that cultural support plans could be an effective mechanism for connecting Aboriginal children and young people to culture. Despite this, most Aboriginal children and young people under the supervision of Youth Justice do not have a cultural support plan. Many have not been offered a plan, contrary to Youth Justice practice guidelines.

An action under *Wungurilwil Gapgapduir* is to establish a framework to regularly evaluate and audit cultural support plans to determine the extent to which Aboriginal children and young people in out-of-home care are connecting with culture and community.<sup>865</sup> The Aboriginal Children's Forum also regularly reports on completion rates of Child Protection cultural support plans for children and young people in Victoria. In addition, a national audit of cultural support plans, led by the Australian Institute of Health and Welfare and SNAICC, is underway.<sup>866</sup> These initiatives will contribute

<sup>861</sup> Baidawi et al., 'The complexities of cultural support planning for Indigenous children in and leaving out-of-home care', p 738.

<sup>862</sup> The working group includes members of the Aboriginal Justice Caucus and representatives from ACCOs.

<sup>863</sup> Information provided to the Commission by DJCS on 2 July 2020.

<sup>864</sup> Information provided to the Commission by the Statewide Coordinator of Aboriginal Cultural Planning on 11 March 2021.

<sup>865</sup> Action 1.32: DHHS, *Wungurilwil Gapgapduir Year 2 (July 2019–June 2020) Action Plan*. This action is being revised as part of the 2021 action plan.

<sup>866</sup> This audit is being carried out under the Fourth Action Plan under the *National Framework for Protecting Australia's Children 2009–2020: Commonwealth Government, Fourth Action Plan 2018–2020: supporting families, communities and organisations to keep children safe*, Department of Social Services, Commonwealth Government, 2018, accessed 18 November 2020.

## 7.4 Connection with culture

to the improvement of completion rates for cultural support plans. In addition, Youth Justice has advised that, during COVID-19 restrictions in 2020, cultural support plans were completed for all Aboriginal children and young people in custody.

Nevertheless, there is considerable scope for improvement in Youth Justice's practices regarding the completion of cultural support plans. A legislative mechanism requiring the Secretary of DJCS to ensure that every Aboriginal child or young person under Youth Justice supervision has a cultural support plan would provide a renewed focus on the importance of cultural support planning in Youth Justice. However, such a mechanism would need to be implemented sensitively, taking into account each child or young person's individual circumstances and needs. In addition, careful consideration would need to be given to the timeframes within which Youth Justice cultural support plans must be prepared, given that high-quality plans take time to prepare, and that children and young people tend to be formally involved with Youth Justice for considerably shorter periods than with Child Protection.

There is also scope for improvement in Youth Justice's practices in relation to the involvement of family and community members in the development of cultural support plans. Youth Justice cultural support planning guidelines should be reviewed and updated.

For those Aboriginal children and young people who do have a cultural support plan, these plans are often lacking in quality. This may be because they have been prepared without sufficient involvement of the young person, their family or Aboriginal community members, or because they have been prepared by a person who lacks the necessary cultural knowledge.

Cultural support plans should be prepared and managed by Aboriginal community members who hold the necessary cultural and community knowledge to develop meaningful and effective plans. To support this, funding will be required for dedicated Aboriginal cultural support planning staff in ACCOs, in addition to the funding for Aboriginal family group conference coordinators (recommended in Chapter 7.2 'Youth Justice practices and family involvement'). This could be achieved by expanding the DFFH-funded Senior Advisors – Aboriginal Cultural Planning program, or through additional DJCS funding for cultural support plan roles.

Where an Aboriginal child or young person in the youth justice system already has a cultural support plan, this plan should be reviewed and improved if necessary, to avoid duplication, overlap or inconsistency. A single, high-quality cultural support plan should follow each Aboriginal child and be shared (with consent) between relevant departments. This is consistent with the principles underlying a child-centred system (see Chapter 6).

### Recommendation 28

That the new Youth Justice Act require youth justice system decision-makers at all points on the youth justice continuum, including police, judicial officers and Youth Justice staff, to:

- a) recognise that strong connections with culture, family and community are essential for Aboriginal children and young people to thrive
- b) have regard to the need to strengthen connection to culture, family and community in decision-making affecting Aboriginal children and young people.

### Recommendation 29

That the new Youth Justice Act require the Secretary of DJCS to ensure that every Aboriginal child and young person under Youth Justice supervision has a cultural support plan.

### Recommendation 30

That Youth Justice review and update its approach to cultural support planning, with a view to improving practice and accountability in complying with practice guidelines and strengthening the role of families. The review should consider the need for additional resourcing for Aboriginal organisations to develop and implement high-quality cultural support plans for children and young people in the youth justice system.

### Recommendation 31

That DJCS ensure that the families of Aboriginal children and young people are meaningfully involved in the Youth Justice cultural support planning process, whether by means of family group conferencing or through the strengthening of existing processes.

## Recommendation 32

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That DJCS, DFFH and DET work together and with Aboriginal organisations to develop protocols for the sharing of cultural support plans with the young person's consent. An Aboriginal child or young person should only have one cultural support plan across all agencies.

## Recommendation 33

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That the Victorian Government implement systems to ensure that there is appropriate monitoring of the quality and implementation of cultural support plans, and the involvement of the young person and their family in the development of plans.



# A caring & stable home

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*The journey of the youth is at the centre, as a reminder that young people matter. The coolamon is a reminder that, no matter what young people do, they were all innocent babies that needed protection. The symbol of the woman is a reminder that the strength of the community comes from our matriarchs – their strength, guidance and protection. The waterway is a reminder to continually wash our anger and troubles away. – Young people of Wodonga, Wiradjuri, Waveroo & Dhudhuroa Country*



## Our way

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*Children are ok when they are safe – that is safe in all kinds of ways, physically, mentally, culturally. Unconditional positive regard builds resilience. The more a child is exposed to that, the less likely they will become exposed to the negative experiences of Youth Justice, so that is where we must start. We must deliver it to children who won't get it naturally, and consider how we deliver it to a child who has developed a stronger startle/reflex response through trauma. – RAJAC Chair*

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Aboriginal children and young people are strong, resilient and capable, but they are still young, and need a caring home environment to live in while they grow up. Ideally, Aboriginal children and young people will find their safe and caring home with their Aboriginal families and caregivers. With the right supports, more Aboriginal children and young people could remain safely with their families, with whom they have a strong connection and who are best placed to determine their needs, including sharing and maintaining their history and culture, and strengthening their community connection. Keeping Aboriginal families together ensures that children grow up immersed in culture and on Country. Aboriginal communities are clear that if it is in an Aboriginal child or young person's best interests to be removed from their family, placement with kin or other members of the Aboriginal community is of utmost importance, and support should be provided to work towards reuniting the family.

In all of these circumstances, Aboriginal children and young people must be provided with a caring home. This includes a home with the stability and safety to ensure that children and young people feel secure, and with caregivers who can connect and build trust with children in their care. Caregivers must also be able to help Aboriginal children and young people maintain and strengthen their connections to community and culture.

A caring home should also provide a strong web of support around a child to prevent them from coming into contact with the youth justice system, and should continue to provide care and support if they slip through the net.

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*Child protection and youth justice systems are currently failing to uphold their core principles of 'protecting' children and exercising 'justice'. Another core principle is 'to do no harm'. Currently, children are neither being protected, nor is the justice system providing them with justice. Both systems must work towards these core principles... Government must set clear expectations that these two systems will work together. We need clearer expectations of everyone's responsibilities. – Aboriginal Justice Caucus<sup>867</sup>*

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A caring home teaches children and young people the skills they need to look after themselves. A caring home also provides the extra support that children and young people who are exiting the child protection and youth justice systems need to become independent.

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<sup>867</sup> Jumbunna Institute for Indigenous Education and Research, *Furthering Aboriginal self-determination in the youth justice system*, pp 10, 11.

## Malkar's story

Malkar<sup>868</sup> is a young man who has spent most of his childhood entangled in both the child protection and youth justice systems. He was removed from his siblings, family and community through the intervention of Child Protection and experienced multiple placements that failed to nurture his cultural identity or adequately address his trauma.

*I was in the DHHS system for 18 years straight. I went from town to town, and suburb to suburb. I went to 6 different schools. I spent time with family for about 4 months. I went through 11 different units, through foster care, to resi and back again, and it didn't change. I just kept going back.*

*Child Protection is a living mess. I got split away from my younger brother. I had no role models growing up. I got caught up with violence... stupid things. That's what the system did to me, it destroyed me. The system shouldn't do that, especially for a young Aboriginal man. It's screwed up but there's not much you can do about the system. It's about the government, they don't know much about Aboriginal people. We were the first people here, but they don't know about our rights.*

Malkar told us about his experience of police brutality and time in Victoria's youth justice centres, which compounded his trauma and challenging behaviours and exposed him to further violence.

*I've been taken behind where there's no cameras, I've been tasered, I've been pepper sprayed.*

*From 13 to 19, I've been in [youth justice custody] about 10 times. The longest time I got sentenced was 2 years. It was pretty easy because I knew the system. I see it as – if you can't fight, the place is not for you. If you have a smart mouth, then the place is definitely not for you. If you respect the staff, you're a snitch, so everyone will bash you.*

Malkar was incarcerated in youth justice centres and an adult prison before he was given the opportunity to attend a facility that could address the root causes of his offending behaviour and trauma needs. It was as a young man that Malkar was accepted into Bunjilwarra, a residential rehabilitation and healing service for Aboriginal young people.

*Feels amazing to be free. You don't have to wake up seeing a steel door at your feet. You don't see concrete walls around you. You can feel fresh air. It's amazing. But then it's also hard because you don't feel like yourself.*

*This place is awesome. There's a man who comes and does men's business with us, making didgeridoos. It's rehabilitation. It's changing me. I'm finding a better version of myself and I didn't even know I had it in me. I'd never heard of this place. It's changing my direction. You've got 2 paths – the bad side and the good side. I am finding my good side. I'm going to go to TAFE and I'm going to be a brickie, it will be the best thing for me. I know I have a strong mind, I have a strong spirit, and I will always.*

*My teen years are over. All I want to do is stay out of the system, and my life will be better. And it will be amazing.*

If Malkar had been given a safe, stable and supportive home, his life trajectory may have been quite different.

<sup>868</sup> Malkar is a pseudonym meaning 'shield' in Kirrae Wurrung.

## Chapter at a glance

- Access to a safe, stable and supportive home environment is fundamental to health and wellbeing.
- A significant proportion of Aboriginal children and young people in the youth justice system experience housing insecurity and there is a severe lack of culturally appropriate accommodation options available. For some children and young people, insecure housing and involvement in the youth justice system are directly linked.
- Most Aboriginal children and young people under Youth Justice supervision in Victoria have also experienced Child Protection involvement, but the child protection system is failing to provide a caring home or to act 'as a good parent would' for too many Aboriginal children and young people involved with both Child Protection and Youth Justice.
- The current residential care system often fails to provide a caring home for Aboriginal children and young people, instead placing them at an unacceptable risk of harm.
- In some cases, the experience of out-of-home care and, in particular, residential care, contributes to offending behaviour, police contact and involvement in the youth justice system for Aboriginal children and young people.

### Key data

- 62% of children and young people who were the subject of a Taskforce case planning session were experiencing homelessness or housing instability.
- From July 2015 to February 2020 transitional housing was only available to 31% of Aboriginal people in Victoria requiring it, and emergency housing was not accessible to 30% of those with an urgent need.
- On 31 December 2019, 64% of Aboriginal children and young people subject to Youth Justice supervision had a previous or current child protection order, compared with 37% of non-Aboriginal children and young people.
- 34% of children and young people in the Taskforce case file review had been placed in a residential care unit at least once.
- 2020 Sentencing Advisory Council research found that over half of crossover children who experienced out-of-home care were found guilty of committing an offence during or after being placed in care.

# Current context

This chapter examines the importance of providing a caring and stable home to children and young people with involvement in the youth justice system, focusing on those who rely on the state for their accommodation and care. This includes Aboriginal children and young people in contact with the child protection system and those who are over 16 years old and experiencing unstable housing or homelessness.<sup>869</sup>

The over-representation of Aboriginal children and young people in the Victorian child protection and out-of-home care system is of significant concern.<sup>870</sup> On 30 June 2020, Aboriginal children and young people accounted for almost a quarter of all children and young people on care and protection orders in Victoria.<sup>871</sup> Alarmingly, the number of Aboriginal children and young people in out-of-home care has almost doubled in the past 5 years.<sup>872</sup> In 2019–20, approximately one in 4 children in out-of-home care in Victoria was Aboriginal, and Aboriginal children and young people were 21 times as likely to be in out-of-home care than non-Aboriginal children and young people.<sup>873</sup>

This over-representation is closely linked to the social disadvantage generated by the dispossession and marginalisation that Aboriginal people have experienced

since colonisation. The intergenerational impacts of racist policies, including the forcible removal of Aboriginal children from their families (the Stolen Generations), are still being felt today.<sup>874</sup>

*Wungurilwil Gapgapduir* (Aboriginal Children and Families Agreement) aims to reduce the number of Aboriginal children in out-of-home care by building connection to culture, Country, family and community. The agreement formalises a commitment to transfer the care of Aboriginal children and young people from government and mainstream community service organisations to Aboriginal organisations.<sup>875</sup> It builds on other government policy frameworks, including *Korin Korin Balit-Djak* (Aboriginal health, wellbeing and safety strategic plan 2017–2027), to progress Aboriginal self-determination in child and family services. The Aboriginal Children's Forum – established under the Victorian Aboriginal Affairs Framework – works to implement and monitor the Agreement.

The *Roadmap for reform: strong families, safe children* initiative has also provided strategic direction to transform out-of-home care for children and young people.<sup>876</sup> Efforts to achieve this to date include:

- transferring case management of Aboriginal children in care to ACCOs, supporting the recruitment of Aboriginal foster and kinship carers, and improving cultural support planning
- improving residential care environments
- allocating additional funding to foster carers
- funding additional Child Protection staff
- introducing a new kinship care model with additional supports.<sup>877</sup>

However, there is also a clear need for additional, and more effective, early intervention and prevention

<sup>869</sup> This chapter does not address homelessness issues for Aboriginal children and young people under 16 years of age as there are likely to be unique issues faced by this age group that require consideration beyond this inquiry.

<sup>870</sup> See for example Commission for Children and Young People, *In our own words*; Commission for Children and Young People, *Always was, always will be Koori children*; Hunter et al., *The Family Matters report 2020: measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia*, SNAICC, 2020, accessed 10 December 2020.

<sup>871</sup> On 30 June 2020, there were 14,947 children and young people aged 0–17 years on care and protection orders in Victoria, of whom 3,451 were Aboriginal children and young people: Productivity Commission, *Report on Government Services 2021: 16 Child protection services*, Productivity Commission, Australian Government, 2021, data table 16A.2.

<sup>872</sup> In September 2015, there were 1,374 Aboriginal children and young people in out-of-home care; in September 2020, there were 2,238 Aboriginal children and young people in out-of-home care: DHHS, *Aboriginal Children's Forum: data pack December 2020 Forum*, p 31.

<sup>873</sup> In 2019–20 there were 2,450 Aboriginal children and young people in out-of-home care, of a total of 9,095 children and young people in out-of-home care: Productivity Commission, *Report on Government Services 2021*, data table 16A.2.

<sup>874</sup> Human Rights and Equal Opportunity Commission, *Bringing them home*.

<sup>875</sup> DHHS, *Wungurilwil Gapgapduir*, p 8.

<sup>876</sup> Department of Health and Human Services (DHHS), *Roadmap for reform: strong families, safe children*, DHHS, Victorian Government, 2018.

<sup>877</sup> Commission for Children and Young People, *In our own words*, p 36.

services that support families to keep their children and young people at home.<sup>878</sup>

Victorian legislation, policies and procedures recognise the importance of a safe, caring home for children and young people. The CYFA provides the legislative basis for the provision of services to support children and families in the community, and for government intervention and protection of children who are assessed as being at risk of significant harm.<sup>879</sup> The CYFA states that the ‘best interests of the child must always be paramount’ in decisions or actions taken in accordance with the Act.<sup>880</sup> Considerations for determining whether a decision or action is in the best interests of a child include the need to protect the child from harm, to protect the child’s rights, and to promote the child’s development.<sup>881</sup>

In addition, Commonwealth, state and territory governments and the non-government sector have developed national standards for consistent, best-practice care of children in out-of-home care. The standards recognise the United Nations Convention on the Rights of the Child. They include provision for Aboriginal communities to participate in decisions concerning the care and placement of their children and young people,<sup>882</sup> and for children and young people to be supported to develop their identity through contact with their families, culture and communities.<sup>883</sup>

The Victorian Charter for children in out-of-home care lists the expectations that children and young people can have of the people who care for them, including that careful thought will be given to where a child or

young person lives, so that they ‘have a home that feels like a home’.<sup>884</sup>

This chapter also considers the housing needs of Aboriginal children and young people who are not receiving Child Protection services. The right to housing for all people is promoted in international human rights instruments, including the Universal Declaration of Human Rights, which states:

*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including... housing.*<sup>885</sup>

There is no such protection in the Victorian Charter of Human Rights and Responsibilities, although a recent Parliamentary inquiry into homelessness services in Victoria has recommended that the right to housing be added.<sup>886</sup> However, the Charter does require public authorities to act compatibly with human rights and to give proper consideration to relevant rights when making decisions.<sup>887</sup> This includes rights related to the protection of families and children,<sup>888</sup> and the distinct cultural rights of Aboriginal people.<sup>889</sup>

Aboriginal Victorians are the group most likely to be homeless in Victoria,<sup>890</sup> and they are 11 times more

<sup>878</sup> Commission for Children and Young People, *Lost, not forgotten*, p 22.

<sup>879</sup> The Child Protection Manual is the primary source for statutory child protection policy, procedures and supporting advice. It also contains protocols, practice resources and tools, and links to materials external to the manual that are relevant to child protection practice: Department of Health and Human Services (DHHS), *Child Protection Manual*, DHHS website, Victorian Government, accessed 15 December 2020.

<sup>880</sup> CYFA, s 10.

<sup>881</sup> CYFA, s 10(2).

<sup>882</sup> Standard 3: Department of Families, Housing, Community Services, and Indigenous Affairs (FaHCSIA), *An outline of national standards for out-of-home care: a priority project under the National Framework for Protecting Australia’s Children 2009–2020*, FaHCSIA, Commonwealth of Australia, Canberra, 2011, p 6.

<sup>883</sup> Standard 10: FaHCSIA, *An outline of national standards for out-of-home care*, p 6.

<sup>884</sup> Department of Human Services (DHS) *Charter for children in out-of-home care*, DHS, Victorian Government, Melbourne, 2007, accessed 15 December 2020. Other relevant legislation, policy and frameworks include the *Child Safe Standards*, *Human Services Standards*, *Looking after children outcomes framework*, *Child Protection Manual*, program requirements for home-based care, residential care and lead tenant services in Victoria, the *Out-of-home care education commitment*, and the *Early childhood agreement for children and young people in out-of-home care*. See Commission for Children and Young People, *In our own words*, p 63.

<sup>885</sup> UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III), 1948, article 25. See also article 11 of the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and, in the context of non-discrimination, the Convention on the Elimination of All Forms of Racial Discrimination (UN General Assembly, *International Convention on the Elimination of All Forms of Racial Discrimination*, A/RES/65/200, 2011) and the Convention on the Elimination of All Forms of Discrimination against Women (UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, United Nations, Treaty Series, vol 1249, 1979, p 13).

<sup>886</sup> See recommendation 34: Parliament of Victoria, *Inquiry into homelessness in Victoria: final report*, Legislative Council Legal And Social Issues Committee, Parliament of Victoria, Melbourne, 2021, p 200.

<sup>887</sup> Charter of Human Rights and Responsibilities, s 38(1).

<sup>888</sup> Charter of Human Rights and Responsibilities, s 17.

<sup>889</sup> Charter of Human Rights and Responsibilities, s 19(2).

<sup>890</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort: every Aboriginal person has a home. The Victorian*

likely to use homeless support services than other Victorians.<sup>891</sup> More than 4,000 of Victoria's Aboriginal households live in public and Aboriginal Housing Victoria housing, and a similar number are waiting for social housing through the Victorian Housing Register.<sup>892</sup> Of these, one-third are categorised as 'homeless with support'.<sup>893</sup>

In the context of housing insecurity and other aspects of socio-economic disadvantage, including family breakdown, children and young people can become homeless or spend long periods of time living in fragmented, temporary housing accommodation, such as refuges. Young people (aged under 25) make up more than half of the Aboriginal people using homeless support services.<sup>894</sup> However, Aboriginal Housing Victoria told this inquiry that most young people who seek specialist housing support will not be assisted into long-term housing. From July 2015 to February 2020:

- fewer than 7% of Aboriginal people assessed by specialist homeless services in Victoria as needing long-term housing received it
- transitional housing was only available to 31% of Aboriginal people in Victoria requiring it
- emergency housing was not accessible to 30% of those with an urgent need.<sup>895</sup>

These figures are indicative of the legacy of dispossession and policies that intentionally excluded Aboriginal people from the economy, and home or land ownership:

*Removal of children from their families, and institutionalisation have set in train intergenerational trauma which continues to play out in the experience of homelessness and fracturing transitions. Late entry into free participation in the economy has left a wealth deficit that continues to be implicated in social and civic marginalisation of vast numbers of Aboriginal people. While its legacy is historical, this is*

*Aboriginal Housing and Homelessness Framework*, Aboriginal Housing Victoria, Melbourne, 2020, p 21.

<sup>891</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 73.

<sup>892</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 8.

<sup>893</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 8.

<sup>894</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 76.

<sup>895</sup> AIHW Specialist Homeless Services 2018–2019 data quoted in Aboriginal Housing Victoria, Submission to *Our youth, our way* inquiry, 2020.

*a contemporary and intensifying (not a transitory) crisis. Without a major shift in policy there is no prospect of it dissipating.*<sup>896</sup>

In February 2020, Aboriginal Housing Victoria launched *Mana-na woorn-tyeen maar-takoort: every Aboriginal person has a home* (Victorian Aboriginal Housing and Homelessness Framework). This framework recognises the unique needs of Aboriginal young people transitioning from kinship care and out-of-home care into adult independence.<sup>897</sup> The framework supports interventions to reduce the housing crisis and address the unique needs of Aboriginal young people leaving care.<sup>898</sup>

In November 2020, the Victorian Government announced significant funding relevant to the housing needs of Aboriginal children and young people.<sup>899</sup> This includes additional funding for *Better Futures*, which supports young people transitioning from out-of-home care to independence.<sup>900</sup> A further \$68.7 million over 4 years and ongoing funding is committed to make *Home Stretch* universal, meaning that young people can be supported to stay with their kinship or foster carer until their 21st birthday, and young people moving from care to independent living can access an allowance to assist with housing costs.<sup>901</sup> The Victorian Government has also committed \$5.3 billion to construct more than 12,000 new houses throughout metropolitan and regional Victoria, which will include 9,300 new social housing homes and increase Victoria's social housing supply by 10% over 4 years.<sup>902</sup> These are all very welcome developments.

<sup>896</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 9.

<sup>897</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 76.

<sup>898</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, pp 76–77.

<sup>899</sup> Minister for Child Protection, *Supporting young Victorians – and their future*.

<sup>900</sup> Minister for Child Protection, *Supporting young Victorians – and their future*.

<sup>901</sup> Department of Health and Human Services (DHHS), *Leaving care*, DHHS website, 2020, accessed 15 December 2020.

<sup>902</sup> Premier of Victoria, *Victoria's big housing build* [media release], Victorian Government, 15 November 2020, accessed 15 December 2020.

This chapter is divided into 3 parts:

- 8.1 'Child Protection involvement' examines the 'crossover' between the child protection and youth justice systems and the criminalisation of Aboriginal children and young people in out-of-home care.
- 8.2 'The responsibilities of Child Protection' considers how the child protection system cares for Aboriginal children and young people involved in the youth justice system.
- 8.3 'Housing and homelessness' addresses the housing needs of youth justice system-involved Aboriginal children and young people.

# 8.1 Child Protection involvement

## Finding 17

Most Aboriginal children and young people under Youth Justice supervision have also experienced Child Protection involvement. Many of these ‘crossover children’ have also experienced out-of-home care. In some cases, the experience of out-of-home care and, in particular, residential care, contributes to offending behaviour, police contact and involvement in the youth justice system for Aboriginal children and young people.

Children involved in both the youth justice and child protection systems are often referred to as ‘crossover children’. At least 49 of the children and young people we spoke to as part of this inquiry were crossover children. Many of them spoke to us about the trauma, abuse and neglect that had led to Child Protection intervention.

*Living with mum and her partner, and it was family violence crazy. Watching mum get bashed and having to stand up to grown men. – Jack, 19*

*I was beaten and attacked every day of my life for 15 years, and when I was 15 I saw my step-dad beating my mum in the face, and I... beat him... and then knocked him out and waited for the cops to come. – Cameron, 17*

*That’s probably why I grew up violent, because I was around so much violence – violent cousins, violent uncles, violent parents. DHHS got involved, but that was a bad thing. – Karrwin, 20*

Some also spoke of the trauma of their removal from the family home.

*When I was younger – 5 – I was living with my mum and dad, but they couldn’t take care of me. They used to pull knives on each other. It used to scare me. I remember everything like it was yesterday. I was 5. I remember someone knocked on the door and said, ‘I need to take your kid.’ I looked back and my mum was on the floor crying. – Reggie, 11*

The legacy of the racist policies and practices that forcibly removed Aboriginal children and young people from their families, causing intergenerational trauma, disconnection from culture and impairing parental capacity and wellbeing, cannot be separated from these recent experiences.

## Overlap between Youth Justice and Child Protection

Australian and international research shows that significant numbers of children and young people experience involvement in both child protection and youth justice systems.<sup>903</sup> In the Victorian context, the Youth Justice survey shows that most Aboriginal children and young people under Youth Justice

<sup>903</sup> A McGrath, A Gerard and E Colvin, ‘Care-experienced children and the criminal justice system’, *Australian Institute of Criminology trends & issues in crime and criminal justice*, number 600, 2020, p 2. Victorian data and research has also shown that a large proportion of children and young people involved in the youth justice system have also experienced the child protection system. See for example Baidawi and Sheehan, *Cross-over kids*.



supervision had a previous or current child protection order. On 31 December 2019, 64% of Aboriginal children and young people subject to Youth Justice supervision had a previous or current child protection order, compared with 37% of non-Aboriginal children and young people involved in Youth Justice.<sup>904</sup>

Recent reports from the Sentencing Advisory Council are particularly informative about crossover children in Victoria. These reports detail the analysis of all 5,063 children and young people who were sentenced or diverted for at least one charge in the Victorian Children's Court in 2016 or 2017. Of the Sentencing Advisory Council group, 38% (n = 1,938) were defined as crossover children as they were the subject of at least one child protection report.<sup>905</sup> Thirteen per cent (n = 253) of the crossover children were Aboriginal children and young people, a significant over-representation.<sup>906</sup>

The Sentencing Advisory Council study shows that the younger a child was at their first involvement with the criminal courts, the more likely it was that they were also known to Child Protection.<sup>907</sup> These children and young people had also lived with more carers than those who had their first contact later in life, with 38% having experienced 15 to 19 carers, and 52% having experienced 20 or more carers.<sup>908</sup> This is a significant amount of instability and upheaval for a child or young person to experience.

In addition, a large proportion of the crossover group (40%, n = 767) had experienced out-of-home care.<sup>909</sup> Almost one in 5 of the out-of-home care group were Aboriginal children and young people,<sup>910</sup> which is 11.5

times the rate of the general population.<sup>911</sup> Aboriginal children and young people aged 10 to 13 years at the time of first being sentenced or diverted experienced the highest proportion of out-of-home care for the whole cohort (94% for girls and 73% for boys). Aboriginal crossover children were also younger at their first contact with Child Protection.<sup>912</sup>

Most of the crossover children who had experienced out-of-home care had been placed in residential care at least once (68%, n = 525).<sup>913</sup> This compares with a very small percentage (4.3%) of the total Child Protection population who experience residential care.<sup>914</sup> Of the group that had experienced residential care, 17% (n = 87) were Aboriginal children and young people. This means that the majority of Aboriginal children and young people who had both Youth Justice and Child Protection involvement and had been in an out-of-home care placement had at least one residential care placement (61%, n = 87).<sup>915</sup>

The Taskforce case file review showed that:

- 51% of the cohort had been subject to a child protection order in the past. Of these, 43% (n = 64) had most recently been subject to a care by Secretary order.
- 30% (n = 87) were subject to a current child protection order at the time that the case file review was completed. Of these, 51% (n = 44) were subject to a care by Secretary order.
- 34% (n = 84) had been placed in a residential unit at least once, and 12% (n = 30) were in residential or therapeutic residential care at the time that the case file review was completed.
- 66% (n = 190) been a victim of or witness to family violence.
- 79% (n = 224) had a history of trauma or abuse, either within their family or otherwise.<sup>916</sup>

It is important to note that while a high proportion of children and young people involved in the youth justice system are also, or have been, involved in the child

<sup>904</sup> This survey was undertaken by DJCS of all children and young people in custody (remand and sentenced), and in community (bail supervision, deferral of sentence, community-based sentences, parole and interstate orders) on 31 December 2019: DJCS, *Young people involved with Youth Justice in 2019*, p 6.

<sup>905</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 47.

<sup>906</sup> While the Sentencing Advisory Council was able to use Child Protection data to report on the proportion of Aboriginal children and young people *within* the crossover cohort, due to unreliable court recording of Aboriginality it was unable to report on the proportion of Aboriginal children and young people within the whole study cohort: Advice provided by the Sentencing Advisory Council to the Commission by email, 16 June 2020.

<sup>907</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xvii.

<sup>908</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xvii.

<sup>909</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 47.

<sup>910</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 47.

<sup>911</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxii.

<sup>912</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xvii.

<sup>913</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 72.

<sup>914</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 14.

<sup>915</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 47.

<sup>916</sup> Youth Justice workers responded 'unknown' for a further 8% (n = 22) of children and young people, so the number may be higher.

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protection system, this does not mean that all those involved with Child Protection will become involved with Youth Justice. This is clearly demonstrated by AIHW data, which shows that 63% of children and young people involved in the Victorian youth justice system also received Child Protection services,<sup>917</sup> but that less than 5% of those involved with Child Protection had also been under Youth Justice supervision.<sup>918</sup>

Clearly there is a significant overlap between children and young people in the child protection and youth justice systems; however, the causes of this overlap are less clear. This is discussed in the following section.

### Criminalisation of children and young people in out-of-home care

The significant overlap between Youth Justice and Child Protection cohorts has traditionally been attributed to the impact that trauma has on children and young people. Research has shown that experiences of abuse and neglect can harm healthy brain development and have consequences for a child or young person's psychology.<sup>919</sup> This includes changes to the way that some children and young people assess and engage with risk, are able to regulate their emotions, abuse substances, engage in thrill-seeking, and exhibit anger and aggression<sup>920</sup> (see also Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people'). It is also known that young people who use family violence have commonly witnessed or experienced family violence themselves.<sup>921</sup> Many early police charges are the result of adolescent family violence or other behaviours stemming from emotional and behavioural regulation challenges.<sup>922</sup> As discussed below, the current child protection system does not provide the stability, safety and access to therapeutic

supports to assist children and young people to recover from the effects of early trauma.

However, it is also clear that out-of-home care, particularly residential care, can contribute to a child or young person's involvement in the youth justice system. The Sentencing Advisory Council found that 94% of the crossover children in its study group had at least one child protection report before their involvement in the youth justice system.<sup>923</sup> Over half of the crossover children who experienced out-of-home care were found guilty of committing an offence during or after being placed in care. Of those who had been in a residential care placement, 61% were living in residential care when they were charged with or proceeded against for an offence, though the offence did not necessarily occur in the residential care home.<sup>924</sup> These findings led the Sentencing Advisory Council to suggest that:

*while the experience of trauma and maltreatment is likely to be a causal factor in children's offending behaviour, the experience of care itself may be a contributing factor for many children.*<sup>925</sup>

Several children and young people told us that their first contact with police and subsequent involvement with the youth justice system occurred only after being placed in out-of-home care.

*Problems started happening when I went to resi. In grade 6 I stole my first car. – Aaron, 16*

*Property damage when I was 9, on the first day I came into residential care. Fifteen coppers and 2 DHHS workers came to the house and barged through the door and arrested Dad for outstanding warrants. They told us kids to pack our bags. – Vincent, 17*

<sup>917</sup> Australian Institute of Health and Welfare (AIHW), *Young people in child protection and under youth justice supervision 1 July 2014 to 30 June 2018*, catalogue number CSI 27, AIHW, Australian Government, 2019, data table 4a.

<sup>918</sup> AIHW, *Young people in child protection and under youth justice supervision 1 July 2014 to 30 June 2018*, data table 3a.

<sup>919</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, pp 12–13.

<sup>920</sup> N Papalia et al., 'Patterns of maltreatment co-occurrence in incarcerated youth in Australia', *Journal of Interpersonal Violence* [published online ahead of print, 18 September 2020], pp 5–6.

<sup>921</sup> Baidawi and Sheehan, *Cross-over kids*, p 139.

<sup>922</sup> Baidawi and Sheehan, *Cross-over kids*, p 225.

<sup>923</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xvi.

<sup>924</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xvi.

<sup>925</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xvi.

*When you're living at home with mum and dad, I'd put a hole in the wall. Put a hole in the wall in resi and you get in trouble. Punch your dad, he's gonna punch you back, but if you punch a staff member... Small charges – someone's punched a hole in the wall and got remanded for 3 weeks... First time I could get charged, I was 11 years old. Punched a hole in the wall in resi. I was first in resi from age 8 or 9. They would call the police when I was younger but they were building it up. They 'back-charged' me when I turned 11 – 44 charges at least. That's the first time I ever went to court. They couldn't send me to custody cos I was too young. They just put me on good behaviour bonds. Once I got to like 12, they put me on probations and stuff like that. I been in and out of the system for ages. I'd be good for a year, 2 years. I didn't start to do crimes till I was 16. Driving cars. Sometimes my friend would drive a stolen car and I'd drive that. [At 16] I got 2 and a half weeks for cracking a fucking window. – Frazer, 17*

There are several reasons that the experience of out-of-home care may lead a child or young person to become involved in the youth justice system.<sup>926</sup>

One factor is that the experience of out-of-home care can exacerbate or compound existing behavioural difficulties.<sup>927</sup> This may be particularly likely when a child or young person is traumatised by multiple placements, which also disrupt or impair school attendance and engagement, social connections and health.<sup>928</sup> In Victoria, 68% of children and young people in residential care have experienced between 5 and 28 placement moves while in care,<sup>929</sup> which is significantly destabilising and contributes to a child's internal experiences of abandonment and alienation and very real disconnection from the broader community. Behavioural difficulties can also be exacerbated and

compounded through a failure to provide appropriate therapeutic interventions or to support a child's disability, mental health, and trauma and attachment-related needs.

Another factor is that children and young people in out-of-home care are exposed to higher surveillance and potential 'welfare'-related interventions from other statutory authorities and systems, such as courts and police, due to their protection status. Even if this engagement is designed to protect children and young people, it can result in interactions and experiences that can be potentially criminogenic and normalise contact with the youth justice system in a negative way. For example, in Victoria, safe custody warrants are issued when a child or young person goes missing from placements, often because the placements are unstable or unsuitable.<sup>930</sup> Safe custody warrants require police to apprehend a child or young person and keep them in their care until they can be returned to the care of Child Protection. This means that, each year, children and young people involved with Child Protection spend significant periods of time in police stations for reasons unrelated to any offending behaviour.<sup>931</sup>

*The first time I got in trouble, I got released because I was very young. The second time was worse. I kept absconding from resi to go to mum's, but they couldn't find me so they had to put me in the cells. – Aaron, 16*

The Commission is currently conducting an inquiry relating to the high numbers of children and young people who are absent or go missing from residential care each year.<sup>932</sup>

There is also significant evidence to show that out-of-home care providers are more likely to involve police in response to a child or young person's difficult

<sup>926</sup> McGrath et al., 'Care-experienced children and the criminal justice system', p 10.

<sup>927</sup> CG Malvaso, PH Delfabbro and A Day, 'The child protection and juvenile justice nexus in Australia: a longitudinal examination of the relationship between maltreatment and offending', *Child Abuse & Neglect*, 2017, 64:32–46, p 33.

<sup>928</sup> A Gerard, A McGrath, E Colvin and K McFarlane, "'I'm not getting out of bed!' The criminalisation of young people in residential care', *Australian & New Zealand Journal of Criminology*, 2019, 52(1):76–93, p 79.

<sup>929</sup> Commission for Children and Young People, *In our own words*, p 141.

<sup>930</sup> Other reasons children may be absent from their placement include seeking contact with family and friends.

<sup>931</sup> In April 2021, DFFH advised the Commission that the department has commenced a project to develop a practice resource to provide information for Child Protection workers and contracted care providers to prevent children and young people from going missing and to detail the required actions when a child or young person is missing from care.

<sup>932</sup> For more information see Commission for Children and Young People, *Inquiry concerning young people who are absent or missing from residential care*, Commission for Children and Young People website, 2020, accessed 2 February 2021.

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behaviour, compared with families.<sup>933</sup> According to the Sentencing Advisory Council, such behaviour included:

*children running away from care and being charged with resist, hinder or assault police when police tried to return them to care. It also included less serious criminal damage offences, such as breaking a cup when upset, and drug offences arising from 'self-medication'. One participant commented that sometimes carers involved police not because a child's behaviour was severe but because of its frequency, which could lead carers to eventually call police because they were 'fed up'.*<sup>934</sup>

In its 2016 *Care not custody* report, Victoria Legal Aid provided many examples of out-of-home care providers involving the police for quite minor incidents that occurred within their home, such as breaking a cordless phone, throwing crockery at the wall and a young person breaking their own possessions.<sup>935</sup> While these behaviours may have caused distress to staff or other residents, they are not behaviours that would ordinarily result in a parent or member of a family calling police in response to their own child. Overall, Victoria Legal Aid found that children and young people who lived in care were almost twice as likely to face criminal charges as those who remained with their families,<sup>936</sup> and that most of these charges related to property damage.<sup>937</sup> Victoria Legal Aid concluded that:

*This is due at least in part to the continued practice in many residential facilities of relying on police to manage incidents of challenging behaviour by young people.*<sup>938</sup>

The Commission's observations during the Taskforce, and also through our other inquiries and monitoring work, support these findings. Participants at the Ballarat regional forum raised the issue of criminalisation in care, suggesting that minor incidents were reported to police. Taskforce case planning was undertaken for 2 children and young people whose

involvement with the youth justice system was linked to their placement in residential care.

The Commission found in an earlier inquiry that:

*In some situations, there is an over-reliance on police being called to attend residential care units to respond to children's behaviours that are not of a criminal nature. Such reliance on police may indicate that some staff are not adequately equipped or supported to respond to trauma related behaviours of vulnerable children.*<sup>939</sup>

In addition to inadequate supports and training for staff, there is also evidence to suggest that some providers' policies direct staff to call police, or that calling police is required to fulfil insurance or Workcover claims.<sup>940</sup>

Trevor's story (also described in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people') illustrates the reliance of residential service staff on police, and the willingness of police to charge a child for behaviour in a residential unit, leading to the entrenchment of a child or young person in the youth justice system.

<sup>933</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p xxv; Baidawi and Sheehan, *Cross-over kids*, p 3; Malvaso et al., 'The child protection and juvenile justice nexus in Australia', p 41; McGrath et al., 'Care-experienced children and the criminal justice system', p 3.

<sup>934</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 25.

<sup>935</sup> Victoria Legal Aid (VLA), *Care not custody: a new approach to keep kids in residential care out of the criminal justice system*, VLA, Victoria, 2016, pp 34-35.

<sup>936</sup> VLA, *Care not custody*, p 9.

<sup>937</sup> VLA, *Care not custody*, p 10.

<sup>938</sup> VLA, *Care not custody*, p 1.

<sup>939</sup> Commission for Children and Young People, *"...as a good parent would..." Inquiry into the adequacy of the provision of residential care services to Victorian children and young people who have been subject to sexual abuse or sexual exploitation whilst residing in residential care*, Commission for Children and Young People, Melbourne, 2015, p 14.

<sup>940</sup> VLA, *Care not custody*, p 14.

## Trevor

Trevor is a young person with complex needs who has experienced significant trauma. Child Protection placed him in a residential unit when he was around 10 years old, which seems to have exacerbated some already difficult behaviours. Staff at the residential service frequently called police in response to Trevor's behaviours, for both minor and more extensive property damage.

When Trevor was 11, he was remanded in Parkville youth justice centre. Around this time, he was assessed by a neuropsychologist as having the functional capacity of a much younger child. Until he was 14, courts had found Trevor to be *doli incapax*,<sup>941</sup> and struck out all charges against him. However, this ended when Trevor turned 14.

During his Taskforce case planning session, the Commission observed that Child Protection had failed to address the underlying causes of Trevor's behaviour, and to find him an appropriate placement. Several months later, he was moved to a different placement and additional supports were established.

Trevor's story also shows how a child's behaviour can be criminalised by a residential service from a very young age by a failure to appropriately identify and respond to health, disability and trauma needs and over-reliance on police to manage challenging behaviours.

The Commission is aware of other young people who are in similar circumstances. For example, one Aboriginal young person, Levi, came to our attention before the Taskforce was established. In 2019, the Commission completed an inquiry into the services and care provided to Levi, who was in a residential care placement, had recently spent time in secure welfare, and had subsequent Youth Justice involvement.

<sup>941</sup> 'Incapable of crime': see Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people' for a discussion of *doli incapax*.

Relevant to our current inquiry, the Commission found that:

- The residential service used police and emergency services as a behaviour management tool to encourage behavioural compliance, as an incentive or threat. For example, on 2 occasions, workers threatened to contact the police if Levi refused to take his medication.
- Child Protection's decision to maintain Levi's placement within a specific residential care setting, despite overwhelming evidence that it was inappropriate, criminalised his behaviour and propelled him unnecessarily into the youth justice system.
- There was some evidence that Child Protection understood the nexus between Levi's 'behaviours' and his history of trauma, disorganised attachment and unhappiness in residential care. However, it appeared that non-mental health services didn't fully understand the extent to which Levi had control over his 'behavioural' issues. Consequently, a number of negative inferences were drawn about Levi's capacity to 'control' his actions.

The Commission's recent systemic inquiry into the lived experience of children and young people in the Victorian out-of-home care system, *In our own words*, also found that there are many nuanced ways in which the experience of out-of-home care, and particularly residential care placements, contribute to a child or young person's contact with the youth justice system. Young people with an experience of residential care told the Commission that it had been a causal factor and influenced their offending behaviour, drug use and violence against others. Many young people also reported that they experienced significant peer pressure and were influenced to engage in offending by other residents with whom they were co-located in residential placements.<sup>942</sup> Others told the *In our own words* inquiry that violent or destructive behaviour, or running away, were the only available tools that they had to influence their placement.<sup>943</sup>

<sup>942</sup> Commission for Children and Young People, *In our own words*, p 151.

<sup>943</sup> Commission for Children and Young People, *In our own words*, p 137.

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*I don't want to live in resi anymore, don't want to live in resi. Told them all. No one is listening. [I] just get put back in there. So I keep running away, rather live on the streets like a homeless person. – Sawyer, residential care, 16<sup>944</sup>*

*I have lived in about 20 different residential care units. I have ran away so many times and have been put on safe custody warrants 10 times. – Jack, residential care, 16<sup>945</sup>*

Another concern was that a significant number of children and young people in residential care are denied access to, or are unable to engage in, sporting, recreational or leisure activities in the community due to resource and staffing constraints. The Commission is concerned that this is a contributing factor to behavioural problems, drug use and criminal conduct among children and young people living in residential care.<sup>946</sup> While children and young people in kinship and foster care are more likely to be engaged in voluntary extracurricular activities and sports, they still face significant barriers to participating.<sup>947</sup>

The evidence is clear that involvement with the out-of-home care system increases the likelihood of a child or young person having contact with the youth justice system and experiencing adverse outcomes, which might have been avoided if they were not in care.

Similarly, the Sentencing Advisory Council also suggests that there is a causal connection between residential care and the increased likelihood of bail-related offences, remand and custody:

*[T]here may be a relationship between the use, and subsequent breach, of bail for trauma-related offences committed by children in residential care, remanding the child, the effect of remand on placement stability, the effect of placement instability on subsequent applications for bail and the eventual progression of the child onto a custodial sentence.<sup>948</sup>*

<sup>944</sup> Commission for Children and Young People, *In our own words*, p 137.

<sup>945</sup> Commission for Children and Young People, *In our own words*, p 137.

<sup>946</sup> Commission for Children and Young People, *In our own words*, p 214.

<sup>947</sup> Commission for Children and Young People, *In our own words*, p 217.

<sup>948</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 3.

Other research has shown that, once charged, children and young people who live in out-of-home care are more likely to be remanded to custody than those who live in their family home.<sup>949</sup> This may be due to a lack of suitable accommodation or placement options, particularly through loss of their original placement following the alleged offending and involvement of police. It may also be due to perceptions by a judicial officer that a child in residential care lacks appropriate supports and supervision to prevent further offending, compared to children and young people who are supported by family in court. This suggests that children and young people in out-of-home care are not only pushed into the youth justice system, but that they are also pushed deeper into the system than children and young people who remain with their families.

The Sentencing Advisory Council suggests that the current separate divisions in the Children's Court for child protection and criminal matters may 'create barriers to holistically addressing the child's "needs" and "deeds"',<sup>950</sup> and that there 'are limited avenues for considering child protection and criminal matters holistically, even if they are directly related'.<sup>951</sup> This is discussed further in the following section.

### Preventing criminalisation of Aboriginal children and young people in care

The significant number of Aboriginal children and young people who are involved in both the child protection and youth justice systems requires urgent dedicated attention. Evidence that their involvement in the child protection system also *contributes to* their involvement in the youth justice system creates a moral imperative for the Victorian Government, and relevant government and non-government agencies, to immediately address the causal factors and close off the pathways to the criminalisation of Aboriginal children and young people in care.

A recent initiative offers potential for change. In early 2020, Victoria Police, DHHS, DJCS, VACCA and the Centre for Excellence in Child and Family Welfare signed the *Framework to reduce criminalisation of young people in residential care*, which formalises a

<sup>949</sup> Sentencing Advisory Council, *Crossover kids*, Report 1, p 22; Malvaso et al., 'The child protection and juvenile justice nexus in Australia', p 41.

<sup>950</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 33.

<sup>951</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 34.

commitment to reduce unnecessary and inappropriate contact of young people in residential care with the youth justice system. This framework provides decision-making guidance for residential care workers and commits police to consider using discretion and alternatives to criminal charges when they respond to incidents in residential care services.

Signatories have committed to review and monitor the implementation of the framework through an 18-month action plan. This monitoring should be public and transparent, so that it is clear how effective the framework has been in bringing about change. Unfortunately, efforts to implement the framework stalled in 2020 as departments and agencies focused on responding to the pandemic. At the time of writing, implementation work had yet to commence.

In any event, the framework alone will not break the complex link between the child protection and youth justice systems. As illustrated and recommended by the *In our own words* inquiry, of most urgency is the transformation of the out-of-home care system. This is discussed in more detail under the next findings.

The Sentencing Advisory Council makes several recommendations to improve responses to children and young people who cross over from the child protection to the youth justice system. One possible mechanism to 'bridge the gap between child protection and youth justice responses'<sup>952</sup> is family group conferencing, which would facilitate 'an early, therapeutic response to children's trauma-related behaviour' without necessarily resorting to a criminal prosecution.<sup>953</sup> Chapter 7.2 'Youth Justice practices and family involvement' examines youth justice family group conferencing in New Zealand, and recommends its adoption in Victoria. The youth justice family group conference would develop a plan to address the underlying causes of a young person's offending behaviour, including any causes arising from the young person's experience of out-of-home care.

The Sentencing Advisory Council's findings also show that changes are needed to enable courts to more holistically meet the needs of crossover children. In particular, courts need to be better informed about a child or young person's personal circumstances, including adverse life experiences and trauma impacts,

<sup>952</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 41.

<sup>953</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 42.

and their involvement with Child Protection when they appear on a criminal matter, in order to determine and structure orders to holistically address their needs. One option for achieving this is to establish a 'crossover list' between the Family Division and the Criminal Division of the Children's Court, modelled on the crossover list in the Youth Court of New Zealand.

Earlier calls for the establishment of a crossover list in Victoria<sup>954</sup> have been supported by the Sentencing Advisory Council.<sup>955</sup>

If the Victorian Government decides to establish a crossover list, it should ensure that:

- the model is culturally appropriate and strengthening for Aboriginal children and young people
- a child or young person can have one specialised legal representative for all their matters and appear before one specialised judicial officer for all their matters, allowing a more complete understanding of the child or young person's behaviour
- Child Protection staff are rostered to the court to ensure that information about children and young people's Child Protection histories and placement options are presented to the court, and to inform the court on appropriate supports for the child or young person, including access to services and programs
- judicial officers and legal professionals working with and representing the child or young person are provided with adequate training and support, as recommended in Chapter 12.3 'Court' and Chapter 12.4 'Legal assistance'.

Expanding the specialised Children's Court (Recommendation 62) would also contribute to judicial officers developing an understanding of the unique circumstances and experiences of Aboriginal children and young people in the child protection and youth justice systems.

While crossover lists would enable courts to more effectively address a child or young person's behaviour and improve collaboration between services, the Sentencing Advisory Council's findings also indicate that sentencing legislation must ensure that judicial officers

<sup>954</sup> J Bowles, *What can be done? Residential therapeutic treatment options for young people suffering substance abuse/mental illness*, The Winston Churchill Memorial Trust of Australia, 2014, pp 58–59; Baidawi and Sheehan, *Crossover kids*, pp 172, 180–182.

<sup>955</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 48.

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consider a child or young person's child protection and trauma history and its impact on their offending.<sup>956</sup>

Relevant sentencing factors should include:

*a child's experience of trauma, including the effect of that trauma on the child's development and capacity to avoid problematic behaviour; the child's removal from family, home, community and school; the child's experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers and the need for the child to have safe, stable and secure living arrangements; and the child's age, including developmental age, when they first offended and at their current offence and sentence.*<sup>957</sup>

Given the concerning over-representation of Aboriginal children and young people in the crossover cohort, the Sentencing Advisory Council also suggested that sentencing should consider the 'unique systemic and background factors' that may compound an Aboriginal child or young person's trauma, including 'increased disadvantage, postcolonial and intergenerational trauma and systemic racism'.<sup>958</sup> This could have a significant impact on the number of Aboriginal children and young people sentenced to an order requiring Youth Justice supervision, and must be a priority for inclusion in the new Youth Justice Act.

### Recommendation 34

That the Victorian Government monitor and publicly report on the implementation of the *Framework to reduce criminalisation of young people in residential care*, including a focus on its effectiveness at reducing the criminalisation of Aboriginal children and young people.

### Recommendation 35

That DJCS support the development, including via adequate resourcing, of a crossover list between the Family Division and the Criminal Division of the Children's Court, beginning with regional headquarter courts, to strengthen the court's ability to identify and meet the needs of Aboriginal children and young people, and holistically address the underlying causes of their offending behaviour.

<sup>956</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xviii.

<sup>957</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xviii.

<sup>958</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p xxii.

## Recommendation 36

That the Victorian Government ensure that sentencing legislation requires judicial officers to consider the impact of various factors on a child or young person's behaviour, including:

- the systemic racism, increased disadvantage and postcolonial and intergenerational trauma experienced by Aboriginal children and young people, including any culturally inappropriate responses that may have worsened the effects of trauma
- any experience of trauma, including the effect of that trauma on the child or young person's development and capacity to avoid problematic behaviour, and the relationship between trauma and any mental illness, neurological difficulties or developmental issues
- removal from family, home, community and school, or other disruption to the child or young person's living situation or education
- any experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers, and the need for the child or young person to have safe, stable and secure living arrangements
- the child or young person's age, including developmental age, when they first offended and at their current offence and sentence.

The reforms discussed here would create significant change; however, in isolation, they would not stem the flow of Aboriginal children and young people from Child Protection to Youth Justice. Significant improvements are also needed to the way that Child Protection assists and supports children and young people before, during and after any contact with the youth justice system.

This is discussed in Chapter 8.2 'The responsibilities of Child Protection'.



## 8.2 The responsibilities of Child Protection

### Finding 18

The child protection system does not provide a stable, caring home for too many children and young people involved with Child Protection and Youth Justice. In particular, the current residential care system often fails to provide a caring home for Aboriginal children and young people, instead placing them at an unacceptable risk of harm.

### Finding 19

The child protection system is failing to act ‘as a good parent would’ for too many Aboriginal children and young people involved with Child Protection and Youth Justice. In particular, the child protection system too often abdicates its responsibilities to children and young people when they come into contact with the youth justice system.

As noted above, at least 49 of the children and young people we spoke to as part of this inquiry were crossover children. We heard of some positive experiences with Child Protection and the broader system; however, Aboriginal children and young people mostly spoke of negative experiences.

### The role of Child Protection and Youth Justice in working with crossover children

When Child Protection and Youth Justice are both involved with a child or young person, each maintains statutory responsibility for supervision of the court order relevant to its program area.<sup>959</sup> Children and young people with orders that are simultaneously under the supervision of Youth Justice and Child Protection are referred to as ‘dual clients’.

Youth Justice is responsible for the supervision of orders made in the Criminal Division of the Children’s Court, regardless of whether that child or young person is also involved in the child protection system.<sup>960</sup> Child Protection is responsible for the supervision of orders made in the Family Division of the Children’s Court, regardless of whether that child or young person is also involved in the youth justice system. Child Protection is also responsible for responding to concerns that a child or young person may be at risk of harm, and for providing a range of services to children and young people where risk or harm has been substantiated. These include:

- investigating matters where it is alleged that a child is at risk of significant harm
- referring children and families to services that assist in providing the ongoing safety and wellbeing of children
- making applications to the Children’s Court if the child’s safety cannot be ensured within the family

<sup>959</sup> Department of Health and Human Services (DHHS), *Dual order clients – advice*, Child Protection Manual, DHHS website, 2018, accessed 3 June 2020.

<sup>960</sup> Victoria’s unique dual track system means that Youth Justice is also responsible for supervising young people who are sentenced to youth justice custody by adult courts under the Sentencing Act (see s 32).

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- administering protection orders granted by the Children’s Court.<sup>961</sup>

Child Protection has additional obligations for children ‘for whom the Secretary has parental responsibility...; of whom the Secretary is the guardian under the *Adoption Act 1984*; or in respect of whom the Secretary has authority under the *Adoption Act 1984* to exercise any rights of custody’.<sup>962</sup> In these circumstances, the Secretary ‘must make provision for the physical, intellectual, emotional and spiritual development of the child in the same way as a good parent would’.<sup>963</sup> These responsibilities do not change if the child or young person becomes involved in the youth justice system, including where they are placed in youth justice custody.

Although their roles and responsibilities are discrete, Child Protection and Youth Justice are expected to work together collaboratively to meet the needs of children and young people. As outlined in Chapter 6.1 ‘Collaboration’, the *Protocol between child protection and youth justice* describes how this collaboration and coordination should occur. The protocol has not been updated since machinery of government changes in 2017 resulted in Youth Justice and Child Protection coming under the responsibility of separate government departments; however, DHHS (now DFFH) has advised that the protocol continues to apply and will be updated soon.

The purpose of the protocol is to:

*affirm the partnership between child protection and youth justice and improve outcomes for young people by enhancing joint work between child protection and youth justice.*<sup>964</sup>

The protocol states that ‘it is vital that child protection and youth justice staff work together to maximise outcomes for these young people and their families’,<sup>965</sup> and clarifies roles and responsibilities for dual clients. It directs Youth Justice and Child Protection to decide who will take the role of primary case manager, who has ‘lead responsibility for oversight and coordination of

service delivery and direct case practice with the young person’.<sup>966</sup> The primary case manager will usually be:

*the practitioner who has the most involvement with the young person, the one with whom they have the most intensive working relationship. Given the primacy of relationship-based work, incorporating the perspective of the young person should also be factored into what arrangements have the best chance of improving outcomes with a particular young person.*<sup>967</sup>

For children and young people subject to child protection orders, Child Protection will usually take the primary case management role, unless this won’t suit the young person’s needs.<sup>968</sup> Regardless of who fulfils the primary case management role, Child Protection continues to be responsible for case planning decisions.<sup>969</sup>

The importance of collaboration between services, including Child Protection and Youth Justice, is discussed in more detail in Chapter 6.1 ‘Collaboration’. The following discussion focuses instead on how well Child Protection meets its obligations to Aboriginal children and young people and the implications for those who are involved with both systems.

### The Commission’s previous inquiries

Earlier work by the Commission has demonstrated that Child Protection has frequently failed to meet its obligations to Aboriginal children and young people.

In 2016, the Commission published *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*. This report incorporated findings from Taskforce 1000, an 18-month project which critically reviewed the case plans and circumstances of 980 Aboriginal children in out-of-home care.<sup>970</sup> The *Always was, always will be Koori children* inquiry found that systemic failures and inadequacies had contributed to an over-representation of Aboriginal children in the child protection and

<sup>961</sup> Department of Health and Human Services (DHHS), *Child protection*, DHHS website, 2020, accessed 18 December 2020.

<sup>962</sup> CYFA, s 173(1).

<sup>963</sup> CYFA, s 174(1)(b).

<sup>964</sup> DHHS, *Protocol between child protection and youth justice*, p 2.

<sup>965</sup> DHHS, *Protocol between child protection and youth justice*, p 2.

<sup>966</sup> DHHS, *Protocol between child protection and youth justice*, p 3.

<sup>967</sup> DHHS, *Protocol between child protection and youth justice*, p 3.

<sup>968</sup> DHHS, *Protocol between child protection and youth justice*, p 3.

<sup>969</sup> DHHS, *Protocol between child protection and youth justice*, p 11.

<sup>970</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 12.

out-of-home care systems,<sup>971</sup> and that many children in out-of-home care had experienced, or were exposed to, continuing harm while in care.<sup>972</sup>

In particular, the *Always was, always will be Koori children* inquiry found that:

- the child protection system had insufficient regard to Aboriginal culture and values in service delivery<sup>973</sup> and was failing to preserve, promote and develop cultural safety and connection for Aboriginal children in out-of-home care<sup>974</sup>
- significant practice deficits, including non-compliance with legislative and practice requirements for cultural planning, and inadequate inclusion and engagement with Aboriginal family, programs and community in decision-making, had resulted in the dislocation from culture and family for many Aboriginal children in out-of-home care<sup>975</sup>
- kinship carers required increased advocacy, support, assistance, training and education to provide culturally safe and trauma-informed care to Aboriginal children requiring out-of-home care.<sup>976</sup>

The *Always was, always will be Koori children* inquiry influenced significant change, including the implementation of section 18 of the CYFA, enabling the Secretary of DHHS to authorise an appropriately resourced ACCO to take on prescribed guardianship responsibilities for Aboriginal children and young people, subject to set child protection orders, and a commitment to transfer the case management of all Aboriginal children and young people to ACCOs.<sup>977</sup>

Despite progress made since the *Always was, always will be Koori children* inquiry, 3 recent Commission inquiries have found that Child Protection still often fails to meet its obligations to Aboriginal children and young people:

<sup>971</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 11.

<sup>972</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 82.

<sup>973</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 99.

<sup>974</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 11.

<sup>975</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 82.

<sup>976</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 11.

<sup>977</sup> Commission for Children and Young People, *Commission for Children and Young People annual report 2017–18*, Commission for Children and Young People, Melbourne, 2018, p 17.

- The *In our own words* inquiry made significant findings relating to the general experiences of children and young people in care that show how severely the child protection system is failing these children. This inquiry found that the child protection and out-of-home care systems are under significant stress, with a disproportionately high and growing number of Aboriginal children and young people entering out-of-home care, and resourcing that has not kept pace with demand, despite significant recent investment by the Victorian Government.<sup>978</sup>
- *Lost, not forgotten: inquiry into children who died by suicide and were known to Child Protection* found that connections to culture were inadequately prioritised by both the child and family system and the mental health system.<sup>979</sup>
- *Keep caring: systemic inquiry into services for young people transitioning from out-of-home care* found that the out-of-home care system is not adequately helping young people plan and prepare for their transition to independence.<sup>980</sup>

While not specifically focused on crossover children, the findings of these inquiries are clearly relevant for the significant number of Aboriginal children who find themselves in both the child protection and youth justice systems. Many of these findings are supported by the Commission's observations during the Koori Youth Justice Taskforce. The most relevant findings from these inquiries and the Taskforce are summarised below; however, the *In our own words* inquiry also made significant findings about family reunification, separation from siblings, maintaining connections with family, and participation and engagement.

## Early intervention by the child and family system

The issues described in the following section relate to the services provided by Child Protection once Aboriginal children and young people are already involved in the system. However, if child and family services provide critical, timely and responsive early intervention before risks and concerns escalate, the

<sup>978</sup> Commission for Children and Young People, *In our own words*, p 39.

<sup>979</sup> Commission for Children and Young People, *Lost, not forgotten*, p 19.

<sup>980</sup> Commission for Children and Young People, *Keep caring: systemic inquiry into services for young people transitioning from out-of-home care*, Commission for Children and Young People, Melbourne, 2020.

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need for Child Protection intervention can be minimised. Through its review of the services provided to 35 children and young people who had been known to Child Protection and later died by suicide, the *Lost, not forgotten* inquiry found that there had been ineffective early intervention for these children and their families.<sup>981</sup> The *Lost, not forgotten* inquiry recommended that the Victorian Government develop, resource and implement an integrated and whole-of-system investment model and strategy for the child and family system, including a focus on earlier intervention and prevention services to reduce risks to children and build child and family wellbeing, and reducing the rate of entry to care.<sup>982</sup> Fulfilling this recommendation will be critical in attempts to reduce the over-representation of Aboriginal children and young people involved in the child protection system and keep more Aboriginal children and young people at home with their families.

### Current Child Protection practice

#### Right to culture

The CYFA provides decision-making principles for Aboriginal children and young people, including protecting and promoting an Aboriginal child's cultural and spiritual development by, wherever possible, maintaining and building their connections to their Aboriginal family and community,<sup>983</sup> and recognising Aboriginal self-management and self-determination in seeking the views of Aboriginal family, community and organisations to inform decision-making.<sup>984</sup> The Aboriginal Child Placement Principle also stipulates that, wherever possible, Aboriginal children requiring out-of-home care must be placed with Aboriginal extended family or relatives.<sup>985</sup>

A cultural support plan must also be developed and reviewed for all Aboriginal children placed in out-of-home care, whether with Aboriginal carers or non-Aboriginal carers, to ensure the maintenance of the child's connection to their identity, community and culture.<sup>986</sup> The Victorian Charter of Human Rights and Responsibilities also provides protections for Aboriginal

children living in out-of-home care to maintain their identity and culture, and their connection to family and community.<sup>987</sup>

The *In our own words* inquiry found that poor compliance with requirements, including the legislated processes and principles of cultural support planning, Aboriginal family-led decision-making and other aspects of the Aboriginal Child Placement Principle, continues to undermine Aboriginal children and young people's right to culture.<sup>988</sup>

- The department is complying with the Aboriginal Child Placement Principle in about two-thirds (66%) of all placements.<sup>989</sup>
- Forty-seven per cent of Aboriginal children and young people who had been in care for over 12 months had not had an Aboriginal family-led decision-making conference.<sup>990</sup>
- Over half of Aboriginal children and young people who should have had a cultural support plan did not.<sup>991</sup>

A significant number of Aboriginal children and young people told the *In our own words* inquiry that they felt disconnected from their culture and needed more support to build this connection.<sup>992</sup>

The Taskforce also demonstrated that too many Aboriginal children and young people in the youth justice system experience gaps in cultural support from Child Protection. There were 128 actions relating to culture resulting from the case planning sessions, of which 40 were assigned to DHHS either individually or in conjunction with another agency. Of these, 73%

<sup>981</sup> Commission for Children and Young People, *Lost, not forgotten*, p 75.

<sup>982</sup> Commission for Children and Young People, *Lost, not forgotten*, p 22.

<sup>983</sup> CYFA, s 10(3)(c).

<sup>984</sup> CYFA, s 12(1).

<sup>985</sup> CYFA, s 13.

<sup>986</sup> CYFA, s 176.

<sup>987</sup> Charter of Human Rights and Responsibilities, ss 17, 19(2), 38(1).

<sup>988</sup> Commission for Children and Young People, *Keep caring*, p 99.

<sup>989</sup> Commission for Children and Young People, *In our own words*, p 97.

<sup>990</sup> Commission for Children and Young People, *In our own words*, p 96.

<sup>991</sup> The *In our own words* inquiry reported that, on 31 December 2018, 61% of Aboriginal children and young people who should have had a cultural support plan did not: Commission for Children and Young People, *In our own words*, p 94. As noted in Chapter 7.4 'Connection with culture', data presented to the Aboriginal Children's Forum shows that, on 30 September 2020, 47% of Aboriginal children in care did not have a cultural support plan.

<sup>992</sup> Commission for Children and Young People, *In our own words*, p 86.

(n = 29) were still incomplete when an audit of actions was completed in June 2020.<sup>993</sup>

Some children and young people told us about being separated from family and culture, describing how being in out-of-home care led to losing contact with family and community members with whom they had a deep spiritual, emotional and personal attachment.

*Between 5 to 13, I was with white people, and when I was 13 I think I very first got to go with my Nan, and then they came back again and took us, and that's what made me fuck up. The people that I was with, it's not the same connection as your real family. Yeah, it's just bad vibes and I just hated it, so I just turned.*  
– Peyton, 16

One parent told us:

*DHHS said [Koori Youth Justice worker] was involved too much and that she couldn't be our kinship worker. They cut all ties with cultural support. They want us to fail as a family unit.*  
– Mum

At the Northern Metropolitan Taskforce regional forum, participants said that being placed in out-of-home care detaches Aboriginal children and young people from their family and community, creating a gap in connection with their community and loss of cultural safety. Participants at the Bairnsdale forum also said that Child Protection dislocates and places Aboriginal children and young people far from their families, making it difficult for them to visit. One stakeholder told us that Child Protection in their region is not culturally safe, and that Aboriginal children and young people wait 2 years for Child Protection to develop their cultural support plan. Cultural support planning is also discussed in Chapter 7.4 'Connection with culture'.

## Therapeutic support

Children and young people in out-of-home care are typically survivors of significant trauma and abuse, including family violence, parental drug use or mental ill-health, and significant neglect of their basic needs.

<sup>993</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

Children and young people recovering from trauma experienced before or during their time in care need ongoing access to therapeutic or other mental health supports so they can seek help when they need it. The *In our own words* inquiry heard that although children and young people who have experienced trauma through abuse and neglect want help to heal and recover, for too many this is not happening.<sup>994</sup> The current system lacks therapeutic placements for children and young people in care who have significant trauma and associated behavioural issues,<sup>995</sup> including an insufficient number of therapeutic foster care placements to respond to the increasing number of children and young people who are entering care with complex needs.<sup>996</sup> A failure to provide therapeutic supports to children and young people in care can also contribute to placement instability.<sup>997</sup>

The Taskforce and this inquiry witnessed the effects of unresolved trauma on almost every child or young person that we spoke to, or who was the subject of a case planning session.

*I can't sleep because of my trauma and shit... I don't get support when I ask for it.* – Djiran, 19

Many of these children and young people had long histories of significant child protection involvement. In several regions, participants at the Taskforce case planning sessions identified the lack of interventions available to properly support these children to recover from their traumatic experiences, and highlighted the need for more supportive, therapeutic and structured supports.

## Placement stability

DHHS has 10 'placement planning principles' to guide the placement of children and young people in out-of-home care, and states that '[w]hen making a placement for a child, their best interest should be the first and paramount consideration, with primary focus on their

<sup>994</sup> Commission for Children and Young People, *In our own words*, p 36.

<sup>995</sup> Commission for Children and Young People, *In our own words*, p 274.

<sup>996</sup> Commission for Children and Young People, *In our own words*, p 33.

<sup>997</sup> Commission for Children and Young People, *In our own words*, p 25.

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safety, stability and development'.<sup>998</sup> The principles also recognise that:

*Placement stability is crucial to minimising the damage which disrupted and multiple placements can have on the healthy development of the child. Every effort should be made to maintain stability by minimising the number of staff and carers [sic] involved in the child's life; promoting positive, caring and consistent relationships for a child with their family, peers, significant others, caregivers, schools.*<sup>999</sup>

International research has consistently established that children and young people who have experienced placement instability tend to also experience worse life outcomes, including:

- 'increased anxiety and depression and difficulties trusting and forming new relationships'<sup>1000</sup>
- 'emotional and behavioural problems'<sup>1001</sup>
- 'poor adult outcomes' related to physical and mental health and education<sup>1002</sup>
- heightened risk of criminal offending<sup>1003</sup> and sexual behaviour problems.<sup>1004</sup>

The *In our own words* inquiry found that children and young people in care in Victoria experience an unacceptably high level of placement instability. The Commission found that placement instability is driven

<sup>998</sup> Department of Health and Human Services (DHHS), [Placement coordination and placement planning framework](#), Child Protection Manual, DHHS website, 2012, accessed 3 June 2020.

<sup>999</sup> DHHS, *Placement coordination and placement planning framework*, p 15.

<sup>1000</sup> J Bollinger, 'Examining the complexity of placement stability in residential out of home care in Australia: how important is it for facilitating good outcomes for young people?' *Scottish Journal of Residential Child Care*, 2017, 16(2):1–15, p 8 citing M O'Neill, C Risley-Curtiss, C Ayón and LR Williams, 'Placement stability in the context of child development', *Children and Youth Services Review*, 2012, 34(7):1251–1258.

<sup>1001</sup> Bollinger, 'Examining the complexity of placement stability in residential out of home care in Australia', p 8 citing E Koh, N Rolock, T Cross and J Eblen-Manning, 'What explains instability in foster care? Comparison of a matched sample of children with stable and unstable placements', *Children and Youth Services Review*, 2014, 37:36–45.

<sup>1002</sup> Bollinger, 'Examining the complexity of placement stability in residential out of home care in Australia', p 8 citing Koh et al., 'What explains instability in foster care?'

<sup>1003</sup> JP Ryan and M Testa, 'Child maltreatment and juvenile delinquency: investigating the role of placement and placement instability', *Children and Youth Services Review*, 2005, 27(3):227–249, p 227.

<sup>1004</sup> Bollinger, 'Examining the complexity of placement stability in residential out of home care in Australia', p 8.

by rising numbers of children and young people in care, a lack of suitable carers and placements, and a lack of tailored supports for both carers and children and young people.<sup>1005</sup> Placement instability impairs the safety, wellbeing and life outcomes of these children and young people. Children and young people often described constant moving as degrading, dislocating and upsetting. Some children and young people blamed themselves and appeared to internalise guilt about repeated placement changes.<sup>1006</sup> Many told the Commission that the instability they experienced made being in care not feel like home.<sup>1007</sup>

On 31 December 2018:

- 40% of all children and young people in care had experienced between one and 28 placement moves during their first 6 months in care<sup>1008</sup>
- there were 403 children and young people in care who had experienced 10 or more placements over the duration of their time in care – of these, a disproportionate number were Aboriginal (33%)<sup>1009</sup>
- children and young people in residential care experienced more placement instability, with 68% of children and young people in residential care having experienced between 5 and 28 placement moves while in care.<sup>1010</sup>

The *In our own words* inquiry's analysis also suggested that children and young people with complex trauma, challenging behaviours and/or intellectual disabilities are at higher risk of placement instability in the out-of-home care system.<sup>1011</sup>

The Taskforce and this inquiry also found that too many Aboriginal children and young people experience significant instability in the child protection system. Several Aboriginal children and young people told us about the upheaval caused by being in multiple

<sup>1005</sup> Commission for Children and Young People, *In our own words*, p 25.

<sup>1006</sup> Commission for Children and Young People, *In our own words*, p 136.

<sup>1007</sup> Commission for Children and Young People, *In our own words*, p 135.

<sup>1008</sup> Commission for Children and Young People, *In our own words*, p 130.

<sup>1009</sup> Commission for Children and Young People, *In our own words*, p 144.

<sup>1010</sup> Commission for Children and Young People, *In our own words*, p 141.

<sup>1011</sup> Commission for Children and Young People, *In our own words*, p 150.

placements, and the feeling of isolation, abandonment and disconnection this creates.

*When I got to court, there's this one judge that just looks at me and goes, 'Why have you guys not found a place for this kid? He still doesn't have a placement. You're adding 10 placements. And you wonder why he's not doing the right thing.'* – Frazer, 17

*A couple of months ago they asked me what I wanted. I said I wanted a reunification order with mum. Stuffing around with child protection placements for ages. They kicked me out of resi. No placement. Before, they had me in a placement with a 20 year old and a 2 year old kid.* – Logan, 16

*I was in DHHS care. I couldn't stand it. Bashed around by my Auntie and that [foster carer] when they are drunk... [The foster carer] would throw buckets of water on me and then I'd flog him back and then he started charging me... Getting into more trouble after that, still in DHHS 'care'. Not care. Doing more burgs, stealing cars and stealing out of cars to make money and using it for drugs and bashing fellas around because I could. No one cared about me. I don't care about them. I didn't know who my real parents were.* – Jamil, 16

*I left my cousin's care. After I left her care everyone else was rude and I felt unwanted. So I did whatever I felt like doing. I just left and went my own way because she had another 3 kids to look after.* – Zaine, 19

*I was taken off my mum when I was 8, but I am so lucky because I got to go home, so I'm just so grateful for that.* – Tiana, 25

Participants at 17 Taskforce case planning sessions discussed children and young people who had experienced instability in their out-of-home care placements, including 6 young people who had

experienced 25 or more placements. In Mildura, a theme emerged across the case planning sessions of multiple residential placement changes, including transferring young people off Country to manage resource pressures. In Ballarat, participants noted that there were limited local out-of-home care placement options, including insufficient numbers of foster carers and no Aboriginal community-controlled residential unit.

Participants at the Northern Metropolitan regional forum indicated that experiences of out-of-home care often led to young people feeling institutionalised from an early age, particularly for some young people who had been in care all their lives. A sense of safety and security was undermined by multiple placement changes while in care. One stakeholder told the inquiry of their concern that Child Protection placed children and young people in unsafe and inappropriate accommodation, such as a caravan park.

## Residential care

On 30 June 2020, there were 429 children and young people living in residential care, of whom over one-fifth were Aboriginal (21%, n = 90).<sup>1012</sup>

The program requirements for residential care in Victoria specify that providers of residential care must ensure wherever possible that 'a home-like environment is created to ensure children receive nurturing and a positive care experience'.<sup>1013</sup> In particular:

*The physical living environment will reflect community expectations of a 'home'. It will be a place where children feel safe and supported. Children should not be placed at risk of harm due to the physical environment in which they reside.*<sup>1014</sup>

However, the *In our own words* inquiry found that residential care is not therapeutic and that, almost universally, young people's experiences of living in residential care were negative. This was mainly due to:

- unsuitable placement mix and young people's experiences of managing other young people's trauma

<sup>1012</sup> Productivity Commission, *Report on Government Services 2021*, data table 16A.20.

<sup>1013</sup> Department of Health and Human Services (DHHS), *Program requirements for residential care in Victoria*, DHHS, Victorian Government, 2016, p 32.

<sup>1014</sup> DHHS, *Program requirements for residential care in Victoria*, p 31.

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- sterile physical environments that are not home-like
- the complex needs of the children and young people entering residential care.<sup>1015</sup>

The *In our own words* inquiry provides evidence of many failings relating to residential care, including the lack of consideration of placement mix, over-reliance on police, poor physical environments of residential units, lack of safety, lack of trusted relationships between children and young people and workers, and the heightened risk of serious incidents related to their immediate safety and wellbeing faced by children and young people in care.<sup>1016</sup> That inquiry concluded that residential care in its current form is unsafe for children and young people and places them at an unacceptable risk of harm.<sup>1017</sup>

Throughout the Taskforce and this inquiry, the Commission further observed that residential care was failing to provide a safe, stable or caring home for Aboriginal children and young people involved in the youth justice system.

*I went into care at 14. Going into care is one day I want to forget. Care depends on which units... The first time I moved into a resi unit I was bullied there. They'd try to stab me and put my head through walls. The police were called out because of the bullying. – Callum, 17*

*The resi unit sucks. The other kids, I don't get along with. The workers are nice, but the other kid is a dick – I nearly got in a punch up with him today. – Ruan, 14*

Participants at several regional forums indicated that current residential care options were failing, and identified the absence of an Aboriginal community-controlled residential care option as a significant gap in their region. At the Shepparton forum, DHHS and Rumbalara Aboriginal Co-operative committed to develop a business case for an Aboriginal-run residential care facility in Shepparton.

<sup>1015</sup> Commission for Children and Young People, *In our own words*, p 241.

<sup>1016</sup> Commission for Children and Young People, *In our own words*.

<sup>1017</sup> Commission for Children and Young People, *In our own words*, p 181.

Stakeholders and children and young people told us that the lack of stability in residential care, and a longing to return to family and friends, often meant that children and young people left their residential units. In some cases, this meant that a child or young person breached bail.

*The first time I was on bail, I was always close to breaching my bail. A lot of the times my mum would kick me out and she would ring the police on me, and I think DHHS was sick of it, so they put me in resi. Then I was running away from resi to be at my mum's. – Summer, 18*

Some Aboriginal children and young people also appeared to view residential care and secure welfare as steps on a pathway to youth justice custody.

*Had to come back down here from DHHS, then fucked up down here. Kept moving different resis... Foster parents, resi, now juvie. – Aaron, 16*

*Went to secure a few times. If I had gone to Parkville I probably would've been stuck in that cycle. I've seen it with my mates and there's nothing you can do to help them. – Summer, 18*

### Leaving care

In Victoria, a young person leaves out-of-home care between the age of 16 and their 18th birthday. When a young person leaves care, the Victorian Government no longer has a statutory responsibility to provide them with somewhere to live, case management or other specialised services.

Leaving care is a crucial time in a young person's life, as they transition to independent living. Offending behaviour may increase during this period.<sup>1018</sup> Victorian data linkage suggests a strong link between care leavers' placement instability and contact with the youth justice system. One comprehensive study found that 24% of children and young people who had been

<sup>1018</sup> P Mendes, P Snow and S Baidawi, *Young people transitioning from out-of-home care in Victoria: strengthening support services for dual clients of Child Protection and Youth Justice* [PDF], Monash University, Melbourne, 2012, accessed 4 November 2020, p 7.



in out-of-home care, and 50% of those with a final placement type of residential care, appeared in youth justice data within 2 years of leaving care.<sup>1019</sup> Another Victorian study found that:

*A lack of post-care supports, including insufficient finances and inappropriate accommodation were also seen as contributors to offending post-care. One leaving care worker commented that, ‘...the exit is temporary or to homelessness and so they’re doing what they can to survive.’<sup>1020</sup>*

The *Keep caring* inquiry found that some groups of care leavers, including Aboriginal young people, are more likely to experience disadvantage and are at greater risk of poor life outcomes after they leave care. File reviews for the *Keep caring* inquiry found that almost half of Aboriginal care leavers were involved with Youth Justice.<sup>1021</sup> Aboriginal care leavers also need extra support to build or maintain an enduring connection to culture and culturally safe services,<sup>1022</sup> but ACCOs are not being resourced to meet this demand.<sup>1023</sup>

Throughout the Taskforce, several stakeholders raised concerns about inadequate leaving care support for youth justice system-involved Aboriginal children and young people. Participants in almost every region raised concerns relating to a lack of housing options when a young person leaves care, which is discussed in more detail below. One private session for a 17-year-old young person noted that there was no leaving care plan in place. Another young person told us about their difficulties accessing support when they left care:

*I got a lot of help while I was in care but now I get nothing. – Djiran, 19*

As mentioned above, the Victorian Government has recently announced funding to support children and young people leaving care until their 21st birthday, which promises to improve the leaving care experience for many children and young people.

### Support from workers

A positive relationship with a worker is hugely important for children and young people in the child protection system. It can provide a sense of safety and stability, mentorship and emotional and practical support.<sup>1024</sup> The importance of trusting relationships with workers for Aboriginal children and young people in the youth justice system is discussed in Chapter 6.2 ‘Relationships with workers’.

Children and young people on protective orders are allocated a case manager from DFFH or a contracted community service organisation.<sup>1025</sup> Child Protection advises that ‘a fortnightly client visit is a reasonable minimum’.<sup>1026</sup>

Most of the 204 children and young people who spoke to the *In our own words* inquiry reported that their experiences with workers were limited because:

- their worker was not available to provide support
- they did not know who their worker was
- their worker was too impersonal or busy to get to know them.<sup>1027</sup>

The *In our own words* inquiry also reported that children and young people case managed by Child Protection experienced a significant number of allocated Child Protection workers. The average number of workers for children in care for less than 12 months was 7.9. The highest number of workers allocated to work with a child or young person in a

**1019** Data from the second Social Impact Bonds (SIBS) study. The first SIBS study began in 2017, when DHHS collected, linked and analysed administrative datasets relating to care leavers to support the design of the COMPASS program. The department initially considered a cohort of 4,942 children who exited out-of-home care during the years 2006–14. The department examined the extent to which these young people appeared in other departmental datasets (including those related to health, housing and justice). The department then conducted further analysis of a larger cohort of young people (the second SIBS study): Commission for Children and Young People, *Keep caring*, pp 59, 61.

**1020** Mendes et al., *Young people transitioning from out-of-home care in Victoria*, p 12.

**1021** Commission for Children and Young People, *Keep caring*, pp 79, 117.

**1022** Commission for Children and Young People, *Keep caring*, p 12.

**1023** Commission for Children and Young People, *Keep caring*, p 20.

**1024** Commission for Children and Young People, *In our own words*, p 251.

**1025** Department of Health and Human Services (DHHS), *Case contracting – advice*, Child Protection Manual, DHHS website, 2015, accessed 4 November 2020.

**1026** Department of Health and Human Services (DHHS), *Case planning – advice*, Child Protection Manual, DHHS website, 27 June 2020, accessed 4 November 2020.

**1027** Commission for Children and Young People, *In our own words*, p 252.

## 8.2 The responsibilities of Child Protection

12-month period was 44.<sup>1028</sup> Barriers preventing workers from providing adequate support to children and young people included competing priorities, distance, high worker turnover and attrition, and lack of staff training and development.<sup>1029</sup>

Several Aboriginal children and young people told this inquiry that they had too many case managers to feel they could connect with or trust them.

*I have had 12 different Child Protection workers in 8 months. – Cameron, 17*

*My CP worker changes every freakin' week. They think they know me and they don't even know me. Never met my CP worker in my whole life and she's trying to say that I'm a risk. Never met me in my whole life. – Logan, 16*

*Seen that many workers in my life. Some are alright, some are bad. – Aaron, 16*

Some Aboriginal children and young people told our inquiry that they felt supported by their Child Protection case manager, while others felt let down or failed by their workers.

*My [community service organisation] case worker is good. She actually does stuff for me – she goes and gets stuff and comes to me instead of me having to go out into town. – Vincent, 17*

*Case managers have been shit. They didn't know what they were doing. I've had really good programs and bad case workers. It's a common thing. They're hit or miss. – Bailey, 18*

*[Community service organisation] have case managed me. They've helped me out a lot. [Community service organisation], some of their workers abuse the power of working with kids. I'm not just gonna put it on one company, it's all of them. – Frazer, 17*

### Responsibilities for crossover children

During the Taskforce, the Commission observed that Child Protection frequently appeared to have 'stepped back' when the child or young person in their care became involved in the youth justice system. This included Child Protection case managers not attending court when their client had a criminal matter. This can significantly impair the ability of the legal representative and the court to be informed of the circumstances of the young person, to understand the services and supports available to the child or young person, and to identify and address the causal factors that have contributed to the alleged offending.

A number of Child Protection workers attending the Taskforce case planning sessions clearly did not know the child or young person being discussed, or only had knowledge of what was written in the file. In addition, several case planning sessions also revealed that Child Protection workers had not proactively planned for a child or young person's release from youth justice custody (see also Chapter 6.1 'Collaboration'). For some children and young people, this meant they spent more time in custody. The cases of Trevor, Percy and Elliott below provide more detailed examples of Child Protection stepping back and not behaving as a good parent would for the children and young people in their care.

*They've seen me like twice. I've been in [custody] a month. My worker never answers the phone. I hate Child Protection. – Frazer, 17*

*Sometimes I went for bail and DHHS and my worker were not there. – Aiden, 17*

<sup>1028</sup> Commission for Children and Young People, *In our own words*, p 113.

<sup>1029</sup> Commission for Children and Young People, *In our own words*, p 244.

*When a young person doesn't have a parent or guardian, who plays that role for them? Who is their advocate? – Hume (Wodonga) regional forum*

The then-President of the Children's Court told us that it is rare for Child Protection workers to attend Koori Court with the children and young people in their care, suggesting that they need to be more involved when their clients have criminal matters, and that courts need to 'bring together all of the people who have responsibilities in the young person's life'.<sup>1030</sup> The presence of Child Protection case managers at a client's criminal proceedings is crucial, both to provide a child or young person with support and to ensure that the court has all information needed to make appropriate decisions.

Inadequate guidance is provided to Child Protection workers about when to attend court with the child or young person in their care. The protocol only states that Child Protection 'must consider' attending criminal hearings for children and young people with Child Protection involvement, and that 'where the young person is subject to a family reunification order, care by Secretary order or long-term care order, the young person's case manager (either child protection or case contracted case manager) must attend court hearings for criminal matters, unless there are good reasons not to'.<sup>1031</sup>

Child Protection workers are also directed by the protocol to support Youth Justice staff to undertake bail suitability assessments, provide appropriate bail options, and contribute to minimising periods of detention where suitable alternative options are available.<sup>1032</sup> The protocol also guides both Child Protection and Youth Justice to consult the other before making a recommendation to the court, where it is known that the young person is involved with both systems.<sup>1033</sup> Child Protection advised the Commission that learning and development training for Child Protection workers addresses the role of Child

Protection where a child is subject to both jurisdictions.<sup>1034</sup>

The Child Protection Manual fails to provide specific guidance to Child Protection workers about how to support a child through any contact with the youth justice system. Instead, it appears to encourage case managers to relinquish and abdicate their responsibilities. For example, in relation to supporting a child or young person to access bail, the Child Protection Manual only specifies that a Child Protection case manager should attend a planning meeting for a child or young person on intensive bail 'if invited' by Youth Justice.<sup>1035</sup> The Child Protection Manual also places the onus on the Youth Justice case manager to involve a Child Protection case manager for children and young people on intensive bail:

*If requested, provide the youth justice worker with a copy of the child's endorsed case plan, or most recent case plan and any other plans and closure summary if the case was closed in the past month and any other plans.*<sup>1036</sup>

The Child Protection Manual does not stipulate that a Child Protection worker must have input to suitability assessment or bail planning.<sup>1037</sup>

The following case studies, drawn from Taskforce case planning sessions, are provided to demonstrate how Child Protection 'steps back' when a young person becomes involved in the youth justice system.

<sup>1030</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020.

<sup>1031</sup> DHHS, *Protocol between child protection and youth justice*, p 7.

<sup>1032</sup> DHHS, *Protocol between child protection and youth justice*, p 18.

<sup>1033</sup> DHHS, *Protocol between child protection and youth justice*, p 7.

<sup>1034</sup> Information provided to the Commission by DFFH on 12 April 2021 in response to the draft report.

<sup>1035</sup> Department of Health and Human Services (DHHS), *Intensive bail*, Child Protection Manual, DHHS website, 2018, accessed 3 June 2020.

<sup>1036</sup> DHHS, *Intensive bail*.

<sup>1037</sup> DHHS, *Intensive bail*. In response to the draft report, DFFH advised the Commission that Child Protection policies, together with the protocol, indicate that case management responsibility and the child's best interest remain foremost.

### Trevor

As described in Chapter 8.1, Trevor is a young person with complex needs whose involvement in the youth justice system began due to the over-reliance of residential staff on police for behaviour management.

During Trevor's case planning session, the Commission observed that Child Protection had not supported Trevor when he had been arrested by police after hours. The Commission also noted that when Trevor first began to be remanded, despite being only 11 years old and living in a residential unit on a care by Secretary order, Child Protection did not contribute to a bail plan for Trevor. This indicates a failure by Child Protection to act 'as a good parent would' for Trevor.

### Elliott

Elliott is a young man on a permanent care order whose kinship placement broke down due to his offending behaviour.

Elliott spent several months on remand before he was bailed to a homelessness service. Youth Justice tried 20 different accommodation options for Elliott but none was deemed suitable. Child Protection had closed his case and could not reopen it or support Elliott to access accommodation because he was 17 years old. Child Protection also initially refused to provide Elliott with leaving care support as he had 'aged out' of Child Protection while in custody; however, following extensive advocacy by other agencies, including the Commission, Child Protection agreed to provide leaving care support.

### Percy

Percy is a young man who has spent an extended period living in out-of-home care, including in a residential unit.

At his Taskforce case planning session, the Commission noted that Child Protection was unclear about Percy's placements, with information stating that he was both in residential care and that he had a foster carer. Information from the Taskforce case file review included that Percy had had between 6 and 10 Child Protection workers in the preceding 12 months and that he had not had a case plan for a period on supervised bail.

The Commission was also concerned that Child Protection had not supported Percy while he was in youth justice custody, including that Child Protection had not contributed to an application for bail, was failing to find Percy suitable accommodation and had not provided support to a family member who was willing to care for him.

Some months after the case planning session, Percy was sent to secure welfare on supervised bail. While there, and shortly before a relative's funeral, Percy attempted suicide. After he attended the funeral, Child Protection returned Percy to a residential unit rather than secure welfare. Percy was unsettled and committed several offences at the residential unit that night, before leaving the unit. The following day, a magistrate revoked his bail, noting that, in their opinion, Percy's return to custody was attributable to DHHS failing to support him in the community.

In other cases, Child Protection may work more actively to prevent a child or young person receiving bail. Victoria Legal Aid has told the Commission of a number of bail applications where Child Protection has opposed bail for children and young people with whom it has involvement and requested that they be kept in custody. In some cases, Child Protection has suggested that it needs more time to organise appropriate housing and supports for the child or young person. In other cases, Child Protection has argued that custody is the safest place for the child or young person.<sup>1038</sup>

The President of the Children's Court also told the inquiry that the court is aware that Child Protection has opposed bail or sought to be heard on the question of bail, which is inconsistent with its statutory functions.<sup>1039</sup>

## Improving Child Protection services for Aboriginal children and young people

The evidence presented in this chapter shows that Child Protection is failing to provide a caring home and to act as a good parent would for too many Aboriginal children and young people. In particular, the current residential care model fails to provide a caring home. This has particular ramifications for Aboriginal children and young people who are also involved in the youth justice system.

As stated, the increasing rates of over-representation of Aboriginal children and young people in out-of-home care is of serious concern. Recently, the *Roadmap for reform* initiative has provided strategic direction for out-of-home care, and *Wungurilwil Gaggapduir* indicates the Victorian Government's commitment to reduce the number of Aboriginal children in out-of-home care. The 2020–21 Budget also commits an investment of \$335 million over 4 years to the Family Preservation and Reunification Response, aimed at providing intensive early intervention and prevention services to keep children and young people with their families.<sup>1040</sup> ACCOs have been funded to deliver an

Aboriginal-specific response.<sup>1041</sup> However, the reality is that it will take much more than this recent investment to address the scale of underinvestment in support for families with complex needs. Over time, more investment in early intervention and family preservation services will be needed, informed by monitoring and assessment of the impact of the newly funded programs.

The Victorian Government's commitment to transfer funding and responsibility for Child Protection services to ACCOs may also lead to an improvement in Aboriginal children and young people's experience of care. However, despite significant work to undertake this transfer, to date, less than half of eligible Aboriginal children and young people in care have been transferred or contracted for case management by an ACCO.<sup>1042</sup> It is also too early to know how effective the change has been in improving the situation for Aboriginal children and young people.

The *In our own words* inquiry made 17 recommendations that would greatly improve the experience of out-of-home care for all children and young people. The Commission urges the Victorian Government to develop an implementation plan for these recommendations. Of particular relevance to this inquiry are the recommendations to:

- develop a new investment approach to identify the resourcing levels needed for a safe and quality out-of-home care system (recommendation 1)
- strengthen accountability and governance measures to improve compliance with the legislated processes designed to support connection to culture for Aboriginal children and young people in care (recommendation 2)
- create therapeutic pathways to support children and young people with complex trauma and challenging behaviours to transition to stable homes (recommendation 16).

<sup>1038</sup> Information provided to the Commission by Victoria Legal Aid on 3 March 2021.

<sup>1039</sup> Email from the President of the Children's Court Judge Vandersteen on 5 March 2020. In response to this, DFFH advised the Commission that the revised protocol and practice guidance will address this issue.

<sup>1040</sup> Treasurer of the State of Victoria, *Victorian Budget 2020/21: putting people first. Service delivery budget paper no. 3* [PDF], Victorian Government, 2020, accessed 2 February 2021, pp 63, 68.

<sup>1041</sup> Department of Health and Human Services (DHHS), *Victorian and Aboriginal family preservation and reunification response*, DHHS website, 2020, accessed 2 February 2021.

<sup>1042</sup> Commission for Children and Young People, *In our own words*, p 99. DFFH advised the Commission that the Victorian Government has provided investment to allow up to 70% of Aboriginal children and young people in care to be managed by an ACCO; however, any transfer of Aboriginal children requires joint agreement between DFFH and the ACCO, and an ACCO has the right to refuse the transfer based on their operational situation.

## 8.2 The responsibilities of Child Protection

The emphasis of recommendation 16 is on the creation of family-like care environments, including tailoring models of care and accommodation to a child or young person's needs and creating more flexible placement options such as appropriately staffed one or 2-bed placements. In April 2021, DFFH advised the Commission that more 2-bed residential care homes will be created under the *Action Plan 2020 Residential Care*. DFFH will also design and test more evidence-informed models of care, including intensive models, such as the Keep Embracing Your Success (KEYS) model.<sup>1043</sup>

Aboriginal people and organisations should be supported to provide these flexible, family-like care environments for Aboriginal children and young people. MDAS and VACCA are developing a cultural care model, which may be a positive way of providing this care and support while focusing on family reunification.

This chapter has also raised concerns that Child Protection abdicates its responsibilities when children and young people begin to have contact with the youth justice system, potentially breaching its statutory duty, and failing to use its knowledge to inform sentencing or support youth justice system responses to its clients. It is critical that the Child Protection Manual and the protocol be updated immediately to instruct Child Protection workers to support the children they work with throughout any contact with the youth justice system, including through active involvement with access to legal advice, bail planning and suitability assessment, and by attending any criminal proceedings. This proactive approach is appropriate for any cases open with Child Protection.

In April 2021, in response to the draft of this report, DFFH advised the Commission that Child Protection policies, together with the protocol and training, state that case management responsibility and the child's best interests remain foremost. DFFH also advised the Commission that the revised protocol will strengthen this advice, and will have practice guidance that sets out roles and responsibilities for each workforce, including guidance for court attendance.

<sup>1043</sup> KEYS is run in partnership with Anglicare Victoria, Mind Australia and Monash Health for young people with multiple and complex needs, and includes 2 residential care homes, outreach support for children and young people who exit the residential care home to live in home-based care and therapeutic programs: Anglicare Victoria, *A defining moment in residential care*, Anglicare Victoria website, 2017, accessed 19 April 2021.

The Sentencing Advisory Council has suggested a range of other ways that Child Protection could be required to better support crossover children throughout the youth justice system, including:

- locating Child Protection workers at court to enable access to Child Protection reports<sup>1044</sup>
- empowering the Children's Court's Criminal Division to compel Child Protection case workers to 'support the child, act as a parent advocate and engage in the sentencing conversation', where DHHS (now DFFH) has parental responsibility for a child<sup>1045</sup>
- resourcing Child Protection case workers to support children and young people throughout the youth justice system, where DHHS (now DFFH) has parental responsibility for a child. This would include visiting and supporting children and young people in custody, active engagement and information-sharing with Youth Justice staff on admission and in case planning, and attending hearings, appointments, assessments and meetings, where they would advocate for the child or young person and ensure their understanding of events.<sup>1046</sup>

These suggestions are crucial steps to ensuring the appropriate sharing of information and coordination of services and supports, and reducing the likelihood of crossover children becoming entrenched in the youth justice system.

Ultimately, Child Protection needs to take active steps to prevent children and young people in its care from becoming involved in the youth justice system. *Wungurilwil Gapgapduir* recognises the need to share examples of positive practice leading to improved outcomes for Aboriginal children and families, including programs and services that promote culture, pride and identity for Aboriginal children and young people in out-of-home care and at risk of Youth Justice involvement.<sup>1047</sup> However, this does not go far enough in committing to reducing the number of Aboriginal crossover children.

<sup>1044</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 51.

<sup>1045</sup> The power to compel attendance of a witness is already provided for: CYFA, s 532 (Sentencing Advisory Council, *Crossover kids*, Report 3, p 48).

<sup>1046</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 49.

<sup>1047</sup> DHHS, *Wungurilwil Gapgapduir*, p 41.

The Youth Justice Strategic Plan commits to improving diversion and supporting early intervention and crime prevention for children and young people with a child protection background;<sup>1048</sup> however, without similar commitments from Child Protection these interventions will come too late.

In 2016, the *Always was, always will be Koori children* inquiry recommended that DHHS ‘work in partnership with the Aboriginal Children’s Forum on developing a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system’.<sup>1049</sup> This recommendation has not been implemented. The high numbers of Aboriginal children and young people in out-of-home care who become involved in the youth justice system, and the evidence that Child Protection ‘steps back’ when a child in its care becomes involved in the youth justice system, suggest that the recommended strategy is needed more than ever.

This strategy would take time to develop and implement. Accordingly, immediate change is also needed within DFFH to bring a focus to the care of Aboriginal crossover children, and those Aboriginal children and young people involved with Child Protection who are at risk of becoming involved in the youth justice system. There may be multiple ways this outcome could be achieved. One quick and effective way of doing this would be to create senior ‘crossover’ roles within DFFH. The purpose of these roles would be to inform, guide and drive Child Protection practice with a view to ensuring that Child Protection is properly supporting crossover children and young people. The ‘crossover’ roles could be responsible for ensuring that Child Protection workers are:

- aware of the risk and potential harm of Youth Justice involvement, and of what works to support prevention
- guided and supported to link children and young people to early intervention services and programs
- focused on maintaining care and oversight for those children and young people involved with Child Protection who become involved in the youth justice system.

<sup>1048</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, pp 43–44.

<sup>1049</sup> Recommendation 6.23: Commission for Children and Young People, *Always was, always will be Koori children*, p 18.

Establishing a ‘crossover’ role in each division would allow more in-depth consultation and support than a statewide role could achieve.

## Recommendation 37

That the Victorian Government continue to build on its commitment to improve early intervention and family preservation services, with new investment over time informed by monitoring of recently funded and other existing programs.

## Recommendation 38

That the Victorian Government, in implementing the recommendations from the Commission’s *In our own words* inquiry, particularly recommendation 16, work with Aboriginal organisations to identify and develop alternatives to residential care that meet the needs of Aboriginal children and young people with complex trauma and challenging behaviours.

## Recommendation 39

That DFFH work in partnership with the Aboriginal Children’s Forum, the Aboriginal Justice Forum and relevant departments to develop a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system.

## Recommendation 40

That:

- a) DJCS and DFFH urgently review and update the *Protocol between child protection and youth justice*
- b) DFFH provide clear guidance to Child Protection workers in both the Child Protection Manual and the *Protocol between child protection and youth justice* to clarify their obligations to perform their statutory duty to the children and young people they work with throughout any contact with the youth justice system. Similar guidance should be provided to contracted agencies.

### Recommendation 41

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That DFFH ensure that Child Protection is properly supporting children and young people involved in both the youth justice and child protection systems, preferably by establishing a senior 'crossover' role in each division or by another mechanism that achieves the same outcome.

### Recommendation 42

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That the Victorian Government require and resource Child Protection to provide an appropriate level of support to children and young people throughout their contact with the youth justice system, including by:

- a) rostering Child Protection staff to the Children's Court
- b) empowering the Criminal Division of the Children's Court to compel Child Protection workers and/or contracted agency staff to attend hearings and to provide the court with reports concerning children and young people under Child Protection's care
- c) ensuring that Child Protection workers and/or contracted agency staff visit and support children and young people in custody, actively engage with Youth Justice staff and attend hearings, appointments, assessments and meetings as advocates for children involved with both Youth Justice and Child Protection.



## 8.3 Housing and homelessness

### Finding 20

A significant proportion of Aboriginal children and young people in the youth justice system experience housing insecurity. For some young people, insecure housing and involvement in the youth justice system are directly linked. Supported accommodation can assist these young people to stay out of the youth justice system.

Chapter 8 has so far focused on the needs of Aboriginal children and young people involved with Child Protection to be provided with a caring home. Caring homes are also essential for Aboriginal children and young people who are not receiving Child Protection services. Many Aboriginal children and young people in Victoria experience housing insecurity when they can no longer live at home, are too old to access Child Protection services, or because their families cannot access secure housing.

Sixteen young people talked to us directly about their experiences of homelessness or unstable housing. In interviews with family members, we heard about a further 2 young people with these experiences. Six young people told us that couch surfing was their only housing option.

*I've been homeless for nearly 2 years since I was 16. I just turned 17 and I got kicked out of my mum's house because she just got locked up and I had no contact with Child Protection.*  
– James, 18

*Started living on my own for 2 months. Before that, couch surfing, going to different family members' houses. I didn't have a carer. If I wasn't at family's house, it would be on the street. – Zaine, 19*

This chapter explores the link between housing insecurity and the youth justice system, current housing options available to Aboriginal children and young people involved in the youth justice system, and potential solutions.

### The link between housing insecurity and the youth justice system

Inadequacies in data collection and reporting make it very difficult to know the full extent of housing insecurity for Aboriginal children and young people in the youth justice system. The only recent published data is in the 2016–17 Youth Parole Board Annual Report, where survey results show that 13% of all young people in custody were homeless, with no fixed address or living in insecure housing, immediately before being taken into custody.<sup>1050</sup> However, this is not specific to Aboriginal children and young people, and does not capture those who were on community orders or who experienced housing insecurity at another point in time.

The Victorian Social Investment Integrated Data Resource (VSIIDR) is now able to link homelessness and youth justice data, but neither DFFH nor DJCS systematically captures whether children and young people involved with their systems are experiencing housing insecurity while involved with the youth justice system.<sup>1051</sup> VSIIDR data suggests that homelessness is experienced at a higher rate by Aboriginal children and

<sup>1050</sup> Youth Parole Board, *Annual report 2016–17*, Youth Parole Board, Victorian Government, 2017, p 16.

<sup>1051</sup> See Chapter 4.2 'Data on Aboriginal children and young people in the youth justice system' for a discussion of VSIIDR.

### 8.3 Housing and homelessness

young people involved with Youth Justice than by their non-Aboriginal counterparts. Almost half of all Aboriginal children and young people who were involved in Youth Justice between 2017 and 2018 (45%, n = 207) had contact with homelessness services between 2015 and 2018. In contrast, one-third of non-Aboriginal children and young people recorded contact with homelessness services (33%, n = 870).<sup>1052</sup> However, these numbers are likely to be higher, as VSIIDR does not capture informal homelessness, such as couch surfing.

Given that the *Keep caring* inquiry found that half of Aboriginal care leavers were involved with the youth justice system,<sup>1053</sup> its findings are also relevant here. The *Keep caring* inquiry found that care leavers are more likely than other Victorians to experience homelessness:

- Of the young people who left care in Victoria between 2013 and 2015, nearly one-third (32%) were identified as homeless in 2015–2016 housing data.
- Young people whose final placement was residential care were most likely to experience homelessness.
- Almost one-quarter (24%) of young people who left care between 2006 and 2015 were involved in the youth justice system, with half of the young people whose final placement was residential care appearing in Youth Justice data.<sup>1054</sup>

The Taskforce and this inquiry also show that housing insecurity is a pervasive issue for Aboriginal children and young people in the youth justice system:

- Almost one-fifth (17%, n = 47) of young people in the Taskforce cohort had experienced over 6 changes of address in their lives. Of these, most (70%, n = 33) had more than 10 changes of address in their lives. However, Youth Justice workers completing the case file review did not know how many addresses a child or young person had had for over half of the cohort (53%, n = 146), so this number might be higher.
- At least 21 young people (7%) in the Taskforce cohort had unstable housing at the time the case file review was completed.

<sup>1052</sup> VSIIDR data provided to the Commission on 15 April 2020.

<sup>1053</sup> Commission for Children and Young People, *Keep caring*, pp 79, 117.

<sup>1054</sup> Commission for Children and Young People, *Keep caring*, pp 79, 113.

- 43 children and young people (62%) for whom Taskforce case planning sessions were held were experiencing homelessness or housing instability. Of these, 34 sessions resulted in 46 case plan actions relating to housing.<sup>1055</sup>
- Participants at 7 Taskforce regional forums raised a variety of issues relating to insecure housing for Aboriginal children and young people.

The 2019 Youth Justice survey indicated that, on 31 December 2019, 24% of Aboriginal children and young people under Youth Justice supervision who were not in out-of-home care were residing in accommodation that was either unsafe or unstable.<sup>1056</sup>

Unsafe, unstable and inappropriate housing negatively impacts children and young people's social and physical development, and their capacity to grow and learn in a healthy way, potentially putting them on the path towards anti-social behaviour and, ultimately, offending.<sup>1057</sup> A stable, safe and caring home is a protective factor against children and young people becoming involved in the youth justice system.

Homelessness is also a major risk factor for children becoming involved in the youth justice system. Young people who are unable to support themselves or access Centrelink benefits (due to a lack of systems literacy or support from government agencies) may engage in 'survival behaviours' such as drug dealing or theft, which are not only illegal, but also more visible to police given the lack of privacy experienced by people experiencing homelessness.<sup>1058</sup>

Three young people told us about increased offending and contact with police due to not having a home.

<sup>1055</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>1056</sup> A similar proportion (21%) of non-Aboriginal children and young people who were not in out-of-home care were residing in accommodation that was either unsafe or unstable: Information provided to the Commission by DJCS on 21 April 2021.

<sup>1057</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 65.

<sup>1058</sup> A Stewart and E Hurren, *Child maltreatment, homelessness and youth offending*, Australian Institute of Family Studies website, 2017, accessed 2 February 2021.

*I had nowhere to stay. I had to break into houses to find a place to stay... I couldn't pay rent. I had nowhere to go. I started breaking into drug dealers' houses and taking their safes.*

– James, 18

A lack of housing can also lead to a child or young person spending more time in the youth justice system, because:

*courts consider the availability of suitable and stable housing when considering whether to grant bail; a person without appropriate housing is likely to be remanded. Similarly, the Youth Parole Board considers the availability of stable and suitable housing when considering whether to release a young person from custody. Accommodation also influences outcomes for young people with community-based orders, particularly their capacity to complete their orders successfully.<sup>1059</sup>*

This is despite legislative requirements that bail must not be refused to a child on the sole ground that the child does not have any, or any adequate, accommodation.<sup>1060</sup>

One young person told us:

*Having no fixed address means you'll go straight in. If you're going back to nothing, you'll go straight back inside. They put you in longer if you don't have somewhere stable. – Harley, 19*

Discussions with stakeholders suggest that it is quite common for children and young people to be considered unsuitable for bail or parole because they do not have housing. For example, Percy (referenced above) spent long periods on remand due to a lack of appropriate housing in the community.

Once involved in the youth justice system, it can also be more difficult for children and young people to access safe and secure housing. For example, as described in Elliott's case study above, Youth Justice tried 20 different accommodation options for Elliott but none were deemed suitable because of the nature of his offending behaviour and the perceived risk he posed to other residents. Many Aboriginal children and

young people become trapped in a cycle where insecure housing contributes to involvement in the youth justice system, which in turn contributes to ongoing housing insecurity.

While homelessness and insecure housing affect Aboriginal children and young people of all ages, this chapter focuses on Aboriginal young people aged 16 and over who need the support of the state to move to independence. There are likely to be unique issues faced by Aboriginal children and young people under the age of 16 years, and further consideration may be needed to address their needs and determine whether changes to the service system are required.<sup>1061</sup>

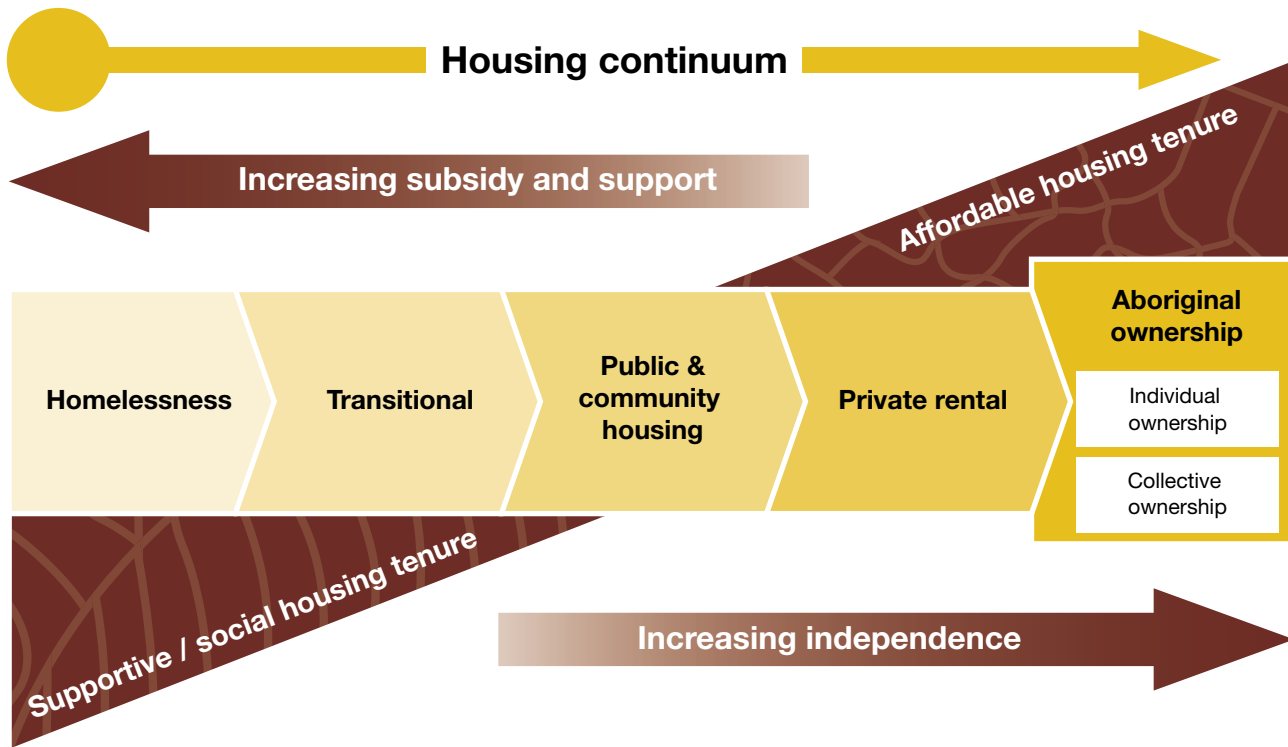
## **Housing options for Aboriginal children and young people involved in the youth justice system**

Aboriginal Housing Victoria describes the housing options available to Aboriginal Victorians across a continuum that includes transitional accommodation, public and community housing, private rental, or ownership (see Figure 8.1). Throughout this chapter, 'transitional accommodation' is used to describe temporary housing, which can vary in duration from crisis or refuge-style accommodation, to longer-term housing provided with the intention that the resident will eventually move on. Some programs also provide support and assistance alongside the transitional accommodation.

<sup>1059</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 163.

<sup>1060</sup> Bail Act, s 3B(3). See also Chapter 12.2 'Bail and remand'.

<sup>1061</sup> For example, the New South Wales Government funds non-government organisations to deliver the Homeless Youth Assistance Program, which provides support and accommodation to children aged 12 to 15 years who are homeless or at risk of homelessness: NSW Department of Communities and Justice, *Our homelessness programs*, NSW Department of Communities and Justice website, 2019, accessed 4 March 2021. See also NSW Ombudsman, 'More than shelter – addressing legal and policy gaps in supporting homeless children': a progress report, NSW Ombudsman, Sydney, 2020; D Taylor et al., *Evaluation of the Homeless Youth Assistance Program: final report*, Centre for Evidence and Implementation, Sydney, 2020.



**Figure 8.1** Housing options available to Aboriginal Victorians

Source: Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 10.

An obvious cause of housing insecurity for young people in Victoria is a lack of affordable housing, including low levels of home ownership, private rentals and public housing. Participants at Taskforce regional forums in Ballarat, Mildura, Northcote and Dandenong identified a lack of affordable housing as a key issue and stressor for their communities. Stakeholders told us that children and young people involved with Youth Justice would rarely be accepted for private rentals. Staff at Bert Williams Aboriginal Youth Services (BWAYS) also noted that young people aged under 18 years are not eligible for private rentals, and that young people without rental history and positive referrals are rarely selected for tenancies.

Public housing is also not easy to come by. Aboriginal Housing Victoria told this inquiry that in Victoria, 69% of Aboriginal people who entered the specialist housing support system in 2017–18 exited homeless. This figure may be even higher for the Youth Justice cohort, considering that the Youth Justice program ‘has had very poor or little engagement with... homelessness/housing programs’<sup>1062</sup> and ‘[t]here is no evidence of

young offenders being prioritised to access stable and affordable housing’.<sup>1063</sup>

It is difficult to determine the full range of supported housing programs and services available to Aboriginal children and young people in Victoria. There are several youth-specific homelessness accommodation programs in Victoria, as shown in Table 8.1. Aside from BWAYS, the Margaret Tucker hostels and Nungurra, none of these services is run by an Aboriginal organisation for Aboriginal young people.

The Commission could only identify 4 housing programs and services specifically catering to young people in the youth justice system (see Table 8.2). None of these is culturally specific, and their capacity is severely limited.

<sup>1062</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 92.

<sup>1063</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 163.

**Table 8.1** Youth-specific homelessness accommodation programs

Name	Program description	Capacity
Youth foyers	Youth foyers provide affordable accommodation for up to 2 years to support young people who are at risk of or experiencing homelessness to achieve sustainable education, employment, housing and community connections.	236 beds across 12 properties
Youth Housing Pathways	Youth Housing Pathways provide semi-independent accommodation as a bridge between intensive support or crisis accommodation and long-term accommodation and independent living.	16 beds across 3 services
Youth refuges	<p>Youth refuges provide a period of stabilisation in crisis accommodation to young people aged 16 to 25 years who are experiencing homelessness. These services include:</p> <ul style="list-style-type: none"> <li>• the Margaret Tucker Hostel, which provides short-term crisis accommodation for Aboriginal girls aged 15 to 18 years (8 beds)</li> <li>• the Bert Williams Aboriginal Youth Services hostel, which provides short-term accommodation for Aboriginal boys and young men aged 16 to 22 years (5 beds)</li> <li>• Nungurra Youth Accommodation Services, which provides crisis accommodation in Bairnsdale for young people aged 16 to 21 years who are homeless (11 beds).</li> </ul>	181 beds across 21 properties
Transitional Housing Program accommodation	<p>A supported short-term accommodation program that acts as a stepping stone to more permanent housing in public housing, community housing or the private rental market.</p> <p>Includes the Youth Justice Housing Pathways Initiative.</p>	213 beds
Leaving Care specific models	Some programs provide housing stock, others purely provide assistance or funding to access private rentals. These programs include Home Stretch and COMPASS.	Not possible to calculate*

\* Figures are provided over varying time periods, making it impossible to calculate the overall capacity. Further, recent budget announcements will dramatically increase the capacity of Home Stretch, meaning that the provided figure of 50 per annum will increase to allow all eligible children and young people to access the program.

Source: Department of Health and Human Services (DHHS), *Leaving care discussion paper: attachment 1*, DHHS, Victorian Government, unpublished, provided to the Commission by DHHS on 5 August 2020.

## 8.3 Housing and homelessness

**Table 8.2** Housing services for children and young people in the youth justice system

Name	Program description	Capacity
Youth Justice Housing Pathways Initiative <sup>a</sup>	This program provides accommodation and intensive support in dedicated transitional housing properties across Victoria. The initiative also includes a protocol between homelessness services entry points and Youth Justice to strengthen housing pathways for young people exiting custody.	53 properties <sup>b</sup>
Youth Justice Homelessness Assistance Service <sup>c</sup>	This program aims to develop housing pathways for young people before their release from youth justice custody. This service does not own any housing stock. It is operated by VincentCare.	80 targets per annum <sup>d</sup>
Dillon House <sup>e</sup>	This is the only specifically funded 24-hour supported accommodation accessible by young people involved in the youth justice system. The program delivers early intervention and family therapy to prevent homelessness among at-risk young people by strengthening family relationships, and provides links to training, educational and employment services.  Dillon House is part of the Next Steps program operated by Jesuit Social Services.	3 beds
Perry House <sup>f</sup>	Perry House is a 12-month living skills residential program for young people with intellectual disabilities who are involved with the adult or youth justice systems. It is operated by Jesuit Social Services.	3–4 young people per year

- a Department of Justice and Community Safety, [Youth Justice Community Support Service](#), Youth Justice website, accessed 18 December 2020.
- b Department of Health and Human Services (DHHS), *Leaving care discussion paper: attachment 1*, DHHS, Victorian Government, unpublished, provided to the Commission by DHHS on 5 August 2020.
- c VincentCare, [Youth Justice Homelessness Assistance Service](#), Services, VincentCare website, 2021, accessed 2 February 2021.
- d Information provided to the Commission by VincentCare on 18 December 2020.
- e Jesuit Social Services (JSS), [Our justice and crime prevention programs](#), Justice and crime prevention, JSS website, accessed 18 December 2020.
- f Jesuit Social Services (JSS), [Perry House makeover](#), JSS website, 2015, accessed 18 December 2020.

### Nungurra Youth Accommodation Services

Nungurra Youth Accommodation Services provides crisis accommodation in Bairnsdale for young people aged 16 to 21 years who are homeless, or at risk of becoming homeless. Although the service is operated by the Gippsland and Gippsland East Aboriginal Co-Operative, both Aboriginal and non-Aboriginal young people can access the service. Nungurra can also work with young people involved in the youth justice system and can house young people bailed on their own undertaking.

Nungurra, which is the Gunaikurnai word for ‘pleasant place’, is built like a home. Commission staff visited Nungurra’s 11-bed facility as part of this inquiry, and were impressed by the caring and supportive atmosphere, which can in part be explained by the service’s approach to working with young people.

*It’s a matter of getting behind young people, finding out what the issues are, and starting from zero. – Manager, Nungurra*

Residents must be willing to commit to the Nungurra Accommodation Agreement that is ‘no different than what the rules would be in the family home’,<sup>1064</sup> including:

- zero tolerance of drugs and alcohol at the service
- school, education or work 3 days a week
- no violence or physical abuse
- chores and cleaning.<sup>1065</sup>

<sup>1064</sup> Interview with Ryan Hedley, Manager, Nungurra Youth Accommodation Services on 19 December 2019.

<sup>1065</sup> Interview with Ryan Hedley, Manager, Nungurra Youth Accommodation Services on 19 December 2019.

However, Nungurra takes a flexible approach and understands that young people may make mistakes and may need multiple opportunities to engage.

*Everything is based on the relationships – it takes good staff and the young person must want to make the difference. You have to meet in the middle. Sometimes it works and maybe it doesn't more than it does. – Manager, Nungurra*

Recognising that many young people who access the service do not have independent living skills, Nungurra teaches practical skills like cooking, cleaning and laundry to prepare residents to live in their own property. Nungurra employs a multi-disciplinary team whose members are selected in part for their ability to pass on these skills.

Other support that Nungurra provides includes:

- links to education, training and employment
- referral to services such as alcohol and other drugs, legal, mental health, general practitioners and psychologists
- help navigating Centrelink
- learner driving practice
- connecting to the community
- assisting with private rental applications.

Nungurra shared a positive example of what its work can achieve, describing the experience of a young Aboriginal woman who moved to Bairnsdale from interstate with nothing to her name. Nungurra provided her with emergency accommodation and helped her to find employment at a large retailer and access a Community Housing Limited property. She now has a job, a private rental and her driver's licence.

## Youth foyers

Youth foyers are accommodation centres that typically provide 2 years of stable housing for young people aged 16 to 24 years who are homeless or at risk of homelessness. Youth foyers usually consist of a block or complex of small studios or units that allow for independent living, with communal areas to enable services to provide in-reach supports, as well as allowing residents to enjoy social contact and learn life skills. Residents are often required and supported to

engage in education, training or employment as a condition of their placement.<sup>1066</sup>

There are currently 15 foyers or foyer-like services across Australia with the capacity to support up to 500 young people.<sup>1067</sup> The Foyer Foundation told the Commission that, in 2019–20, 16.5% of residents were Aboriginal young people, but that Victorian foyers housed a lower proportion of Aboriginal children and young people. None of the current youth foyers is Aboriginal-led or caters specifically to Aboriginal young people. There are also no youth foyers specifically for young people in contact with the youth justice system.

The Education First Youth (EFY) Foyer model prioritises mainstream education and training by requiring residents to agree to participate in education and 5 other services offered by the EFY Foyer.<sup>1068</sup> An economic evaluation of EFY Foyers in Victoria found that:

- '[t]he monetised benefits of the EFY Foyer services significantly outweigh the direct and indirect costs associated with this model'<sup>1069</sup>
- compared with transitional housing models, the EFY Foyer model 'delivers approximately an additional \$10 million in net benefits over a 20 year timeframe'<sup>1070</sup>
- the economic benefits are shared between the young person (improved earning and employment outcomes), the Australian Government (lower spending on unemployment support) and the Victorian Government (lower spending on future housing support, health services and criminal justice system interventions)<sup>1071</sup>
- additional benefits are likely to be associated with the program but these could not all be quantified.<sup>1072</sup>

Another study also found that the EFY Foyers improved housing independence and stability for those exiting the service.<sup>1073</sup>

<sup>1066</sup> Foyer Foundation, *How foyers work*, Foyer Foundation website, 2018, accessed 18 December 2020.

<sup>1067</sup> Foyer Foundation, *How foyers work*.

<sup>1068</sup> KPMG, *Education First Youth Foyers: economic evaluation*, Brotherhood of St Laurence, 2019, p 8.

<sup>1069</sup> KPMG, *Education First Youth Foyers*, p 2.

<sup>1070</sup> KPMG, *Education First Youth Foyers*, p 3.

<sup>1071</sup> KPMG, *Education First Youth Foyers*, p 4.

<sup>1072</sup> KPMG, *Education First Youth Foyers*, p 4.

<sup>1073</sup> M Coddou, J Borlagdan and S Mallett, *Starting a future that means something to you: outcomes from*

### A lack of transitional accommodation for Aboriginal children and young people involved in the youth justice system

Despite the options detailed above, throughout the Taskforce, the Commission observed that there is a shortage of transitional accommodation available to Aboriginal children and young people involved in the youth justice system.<sup>1074</sup> Many workers appeared fatigued by their efforts to find housing for Aboriginal young people in crisis. Nineteen of 46 (41%) Taskforce case planning actions relating to housing were still not complete in June 2020, when an audit of actions was undertaken, suggesting that workers find it challenging to resolve housing issues.<sup>1075</sup> The case planning sessions also demonstrated how challenging it can be for children and young people with complex needs to access housing. Shane's story illustrates how system gaps can leave a young person homeless.

## Shane

Shane is a young person who has remained connected to his mother, siblings and girlfriend throughout his involvement in the youth justice system, but he cannot live with any of them permanently and he has nowhere else to live.

Shane was eligible for a placement at a residential facility for young people with disabilities. However, Shane also has drug misuse issues that made that placement unsuitable. Support workers also took the view that an application to public housing would be unsuccessful, partly because Shane struggled to keep appointments and partly because of his drug use.

A place was available at a residential drug and alcohol treatment program, which would have met both Shane's housing and drug treatment needs. However, Shane was required to detox before he could attend the program, and workers had not been able to find a detox option. This left Shane without housing. He was still couch surfing when the Commission received an update 8 weeks after the initial Taskforce case planning session.

Crisis services aren't the only gap in accommodation for Aboriginal children and young people involved in the youth justice system. Staff at Nungurra, BWAYS and Bunjilwarra (a residential drug and alcohol service discussed in detail in Chapter 9.2 'Substance use') told the Commission that one of the most challenging issues they face is finding suitable housing for young people exiting their services. They suggested that the most significant need is for longer-term supported transitional housing. Bunjilwarra staff said that they hoped to expand their service to fill this gap, and BWAYS staff said that at times they have continued to support young people beyond their exit to try to meet this need.

Despite the great potential of Nungurra's work, the Commission heard that the outcomes it can achieve are limited by the lack of housing options for young people. Nungurra can only provide crisis

*a longitudinal study of Education First Youth Foyers*, Brotherhood of St Laurence & Launch Housing, 2019, Melbourne, p 6.

**1074** The recent Parliamentary inquiry into homelessness also recommended that the Victorian Government provide more transitional housing for people leaving custody. See recommendation 22: Parliament of Victoria, *Inquiry into homelessness in Victoria*, p 180.

**1075** This figure does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.



accommodation for 6 weeks, and then aims to assist the young person to find other stable accommodation.<sup>1076</sup> Nungurra also assists the young person to apply for Community Housing Limited housing in the area. However, there are only 6 2-bedroom Community Housing Limited units. These are accessed by all the homelessness services in the region and are provided on a 2-year tenancy. These 12 beds are inadequate to meet the vast need in the region – Nungurra alone received 129 referrals in 2019.

Compounding the problem is the fact that it is often difficult to create the right mix within a Community Housing Limited unit. As Nungurra’s manager explained to the 2019 Parliamentary inquiry into homelessness in Victoria:

*It is a real shame to see that these two-bedroom units are sitting there, and we are yet to have a success by filling both bedrooms. There is always a conflict. These people have mental health issues or anxiety, and there are a lot of issues to deal with homelessness or with these young people who are experiencing homelessness. There always seems to be a clash, and this ruins it for both. They both seem to exit the property or one will move in and upset the other. The other will move out so they are back into the homeless cycle again, and the person that has moved in will generally not last long as well.*<sup>1077</sup>

This is supported by the Commission’s *Keep caring* inquiry, which found that ‘there is a critical overall lack of suitable housing available to care leavers... driving high levels of homelessness among care leavers in Victoria, especially those with complex support needs’.<sup>1078</sup> Almost all of the workers who spoke to the *Keep caring* inquiry confirmed that a lack of suitable housing options, including a lack of affordable housing, social housing and supported accommodation, was the biggest obstacle preventing them from successfully supporting young people to transition from care.<sup>1079</sup> The *Keep caring* inquiry recommended that the Victorian

Government increase investment in post-care housing options for care leavers to a level sufficient to guarantee a secure, stable and safe home for all young people upon leaving care.<sup>1080</sup>

This inquiry also heard that many Aboriginal children and young people would not be ready to move directly to independent living even if there were affordable options available. These young people need supported transitional accommodation, such as crisis accommodation or longer-term transitional housing services that can provide the support and skills needed by young people to transition to independent living. Participants at 6 Taskforce regional forums discussed the need for more supported transitional accommodation. For some, this was closely linked to the need for supported accommodation for young people ‘aging out’ of the child protection system.

*Suitable accommodation options need to be available to young people, to promote independent living and the development of independent living skills, reduce reliance on residential care, and support effective leaving care planning. – Loddon Mallee (Mildura) regional forum*

*Housing instability is high and there is a lack of appropriate accommodation options for the older cohort – 17 and older – moving into independent living. – Gippsland (Morwell) regional forum*

*Young people need access to safe and affordable housing in community and locally, especially around their 18th birthday and leaving care. – Southern Metropolitan regional forum*

As Nungurra’s manager explained, providing a property without providing support can set young people up to fail. He suggested that accommodation that can provide intensive support for one to 2 years is required to ensure that young people can learn the life skills needed to live completely independently, such as how

<sup>1076</sup> Manager Nungurra Youth Accommodation Services quoted in Parliament of Victoria, [Transcript: Inquiry into homelessness in Victoria, Bairnsdale](#) [PDF], Legislative Council Legal And Social Issues Committee, Parliament of Victoria, 2 December 2019, accessed 2 February 2021, p 2.

<sup>1077</sup> Manager Nungurra Youth Accommodation Services quoted in Parliament of Victoria, *Transcript*, pp 2–3.

<sup>1078</sup> Commission for Children and Young People, *Keep caring*, p 26.

<sup>1079</sup> Commission for Children and Young People, *Keep caring*, p 100.

<sup>1080</sup> Commission for Children and Young People, *Keep caring*, p 31.

### 8.3 Housing and homelessness

to budget, pay bills and manage friendships and relationships. Nungurra's manager said that this is particularly important for young people exiting youth justice centres:

*They need to step right into life skills. Rather than being released into community and finding themselves back in juvie again, let's provide life skills and help them with their journey in a positive way. – Manager, Nungurra*

Any crisis or transitional housing for young people must also provide holistic supports. In its submission to the Parliamentary inquiry into homelessness in Victoria, VACCA also highlighted the importance of providing a variety of accommodation options to Aboriginal children and young people, and recommended the 'provision of a culturally safe drop in service or youth foyer... specific for Aboriginal young people that provides trauma informed, wraparound services'.<sup>1081</sup> VACCA highlighted the risk of only providing accommodation:

*Without wrap-around supports suitable to their individual needs, young people become at risk of losing their housing or placements due to symptoms of these needs that may present as challenging behaviours.*<sup>1082</sup>

BWAYS staff also emphasised the need for a 2-year supported model to provide stability, life skills, education and employment experience to equip young people to live independently.

The *Keep caring* inquiry found that care leavers, particularly those exiting from residential care, had not been provided with opportunities to learn critical living skills.<sup>1083</sup> There is evidently a service gap in programs to assist young people to develop these skills while they are in care.<sup>1084</sup> However, care leavers also 'require supported (including 'step-down') housing options to make a gradual transition to independence', particularly those with complex needs who often leave care with unaddressed mental health, trauma and/or substance

use issues and have often experienced significant placement instability in care.<sup>1085</sup>

The *Keep caring* inquiry recommended that, as part of increasing investment in post-care housing options for care leavers, the Victorian Government should 'develop and implement an integrated and demand-driven suite of housing options – which includes housing stock and support services – tailored to the diverse needs of young people leaving care'.<sup>1086</sup> The suite of options should include:

- social and public housing stock
- a range of supported and step-down accommodation options for young people up to the age of 21 years, who are not yet ready to live independently
- a range of culturally safe housing for Aboriginal young people leaving care, including tailored supports.<sup>1087</sup>

It is clear that the current housing options in Victoria are inadequate to meet the needs of Aboriginal children and young people in the youth justice system. Recommendations for improvements are discussed below.

#### Providing caring homes for Aboriginal children and young people involved in the youth justice system

Despite the importance of stable housing to the Youth Justice cohort, it is clear that there are inadequate options and a severe lack of supports and culturally appropriate accommodation to ensure that all Aboriginal children and young people have housing.<sup>1088</sup>

As noted above, the recent Victorian Government commitment to build 9,300 new social housing homes is positive; however, it is unclear how many of these will be available for youth justice system-involved Aboriginal children and young people.<sup>1089</sup> These homes will also not meet the need for supported accommodation.

<sup>1081</sup> Victorian Aboriginal Child Care Agency (VACCA), *Submission to Legal and Social Issues Committee: Inquiry into homelessness in Victoria*, Parliament of Victoria, 2020, accessed 2 February 2021, p 13.

<sup>1082</sup> VACCA, *Submission to Legal and Social Issues Committee*, p 12.

<sup>1083</sup> Commission for Children and Young People, *Keep caring*, p 26.

<sup>1084</sup> Commission for Children and Young People, *Keep caring*, p 18.

<sup>1085</sup> Commission for Children and Young People, *Keep caring*, p 17.

<sup>1086</sup> Commission for Children and Young People, *Keep caring*, p 31.

<sup>1087</sup> Commission for Children and Young People, *Keep caring*, p 31.

<sup>1088</sup> VACCA, *Submission to Legal and Social Issues Committee*, p 10.

<sup>1089</sup> Premier of Victoria, *Victoria's big housing build*.

The Youth Justice Strategic Plan acknowledges that:

*Children and young people need safe, stable and supported housing if they are to successfully rehabilitate in the community. Housing is a crucial issue, and we are considering ways to address the varied housing and support needs of young people.*<sup>1090</sup>

However, the only new initiative under the plan is to trial the Link Youth Justice Housing Program, a head-lease arrangement with intensive case management support and housing provided by Jesuit Social Services and VincentCare. Youth Justice has also advised that it will fund more than 50 accommodation studios from Kids Under Cover to address housing needs and keep young people connected to the family home.<sup>1091</sup>

While these initiatives are welcome, Aboriginal solutions are needed for Aboriginal children and young people. The 2020 Victorian Aboriginal Housing and Homelessness Framework highlights the need to move Aboriginal people along the housing continuum and create new housing options. It recommends establishing an EFY Foyer, including for children leaving care.<sup>1092</sup>

The Victorian Government and Aboriginal Housing Victoria are working together to develop a workplan for the framework. Given the issues raised throughout the Taskforce and inquiry, the workplan should focus on the actions that will most assist Aboriginal children and young people involved in, or at risk of contact with, the youth justice system, particularly to:

- provide tailored housing, support and pathways for those at high risk, including those leaving out-of-home care or the youth justice system<sup>1093</sup>
- increase the supply of crisis and transitional housing by funding and recommissioning Aboriginal hostels and facilities and establishing new emergency and transitional options to respond to the needs of high

<sup>1090</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 37.

<sup>1091</sup> DJCS advised the Commission that referrals to the Kids Under Cover program commenced in December 2020, and one studio is currently operating and is being used by an Aboriginal young person. There are 6 studios currently in the build stage with an additional 8 referrals underway.

<sup>1092</sup> Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 91.

<sup>1093</sup> Under the banner of 'Provide tailored support for those at high risk', Action 4.2.2 states 'Those at high risk are targeted – provide housing, support and pathways i.e. mental health, drug and alcohol, leaving out of home care, leaving justice system.': Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 18.

need cohorts, people leaving custody and young people leaving care.<sup>1094</sup>

In fulfilling these actions, the Commission recommends looking to the Nungurra service model as an example of good practice in supported crisis accommodation. The Commission also considers that youth foyers for Aboriginal children and young people should be community-led, and that there is a need for multiple foyers.

At a forum coordinated by Aboriginal Housing Victoria, stakeholders told the Commission that Victoria needs Aboriginal community-controlled youth foyers to meet the housing gaps for Aboriginal children and young people at risk of entering or remaining in the youth justice system.

We also heard that, although there are youth foyers in Victoria, there are significant gaps. For example, there is no youth foyer in Geelong. Although there is a youth foyer in Warrnambool, it excludes young people with previous convictions relating to arson, violence, drug trafficking or sexual offending; unmanaged mental health issues or a recent attempt at suicide; unmanaged drug and alcohol issues; or who are facing current charges that are likely to lead to incarceration. This is likely to exclude the majority of Aboriginal children and young people at risk of, or already in, contact with the youth justice system.

Stakeholders suggested that Aboriginal control would provide the flexibility needed to respond to the diverse and complex needs of Aboriginal children and young people and ensure that supported accommodation is culturally safe.<sup>1095</sup> In a submission to this inquiry

<sup>1094</sup> Under the banner of 'Increase supply of crisis and transitional housing', Action 4.3.1 states 'Aboriginal hostels and facilities are funded and recommissioned' and Action 4.3.2 states 'New transitional and emergency housing options are established to respond to the needs of high need cohorts, including people transitioning from institutional settings (former prisoners, young people leaving care, people with mental health issues) and family violence victims and perpetrators.': Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort*, p 18. The Parliamentary inquiry into homelessness in Victoria also recommended that the Victorian Government expand the availability of crisis accommodation and fund both general and specialised forms of crisis accommodation. See recommendations 37 and 39: Parliament of Victoria, *Inquiry into homelessness in Victoria*, pp 221, 229.

<sup>1095</sup> The Parliamentary inquiry into homelessness in Victoria found that the Education First Youth Foyer model may not be suitable for children and young people with complex needs. See finding 22 and recommendation 17: Parliament of Victoria, *Inquiry into homelessness in Victoria*, p 4. This may make them unsuitable for Aboriginal children

### 8.3 Housing and homelessness

informed by the forum, Aboriginal Housing Victoria suggested that:

*There would be real merit in establishing at least one Aboriginal Youth Foyer, preferably more, including one specifically to support young care leavers (of whom there are around 80 each year)... Options also exist to examine less formal models of youth foyers which operate in some other states.<sup>1096</sup>*

Another significant advantage of youth foyers is that their scale helps to reduce the cost of providing one-bedroom apartments, which are otherwise the most expensive property to build.

Given these advantages, Aboriginal community-controlled youth foyers are good accommodation and support options for children and young people involved in the youth justice system, including those serving community orders, on parole or transitioning from custody. Youth foyers could also meet the needs of those at risk of becoming involved in the youth justice system, including those leaving the out-of-home care system who need additional wraparound support and to continue to develop living skills.

#### Recommendation 43

That the Victorian Government establish Aboriginal community-controlled crisis accommodation for Aboriginal children and young people in every region, informed by the model provided by Nungurra Youth Accommodation Services.

#### Recommendation 44

That the Victorian Government establish at least 4 Aboriginal community-controlled youth foyers across the state, with consideration given to 3 regional locations and one metropolitan location.

and young people involved in the youth justice system. However, stakeholders told the Commission that the more generalised youth foyer model could suit the needs of youth justice system-involved Aboriginal children and young people well.

<sup>1096</sup> Aboriginal Housing Victoria, *Housing needs of young people leaving care issues paper*, p 8.

# 9 Wellbeing

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*This is a reminder of the journey – finding a new crowd of people and support to move forward, away from drugs and abuse. The shield in the centre of the meeting place is a reminder of safety and connection in our gathering place, with spears for protection. It is connected by the waterway as a reminder that the cleansing of our troubles is important, with the galaxy a reminder that we don't know what's going to happen in our life. – Young people of Morwell, Gunaikurnai Country*

## Our way

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*When you have young people with a sense of hopelessness, that's where health and wellbeing issues come from. Aboriginal cultures have ways – women's and men's business – that are about establishing your sense of self, fostering respect and accountability, and the obligations to community and kin. As a community, we have a responsibility to cater and care for [our children and young people]. – Director, Korin Gamadji Institute*

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Every Aboriginal child and young person deserves to grow up happy and healthy, with a strong sense of wellbeing. The Aboriginal concept of social and emotional wellbeing is 'a holistic and interconnected Aboriginal view of health which embraces social, emotional, physical, cultural and spiritual dimensions of wellbeing'.<sup>1097</sup> Wellbeing is a protective factor against contact with the youth justice system.

Many Aboriginal children and young people who come into contact with the youth justice system have experienced trauma and suffer from poor social and emotional wellbeing. All of the Aboriginal communities the Commission spoke to through the Taskforce emphasised the centrality of culture and the importance of healing for children and young people. The strengths of Aboriginal methods of healing must be recognised and prioritised to avoid further criminalising children and young people:

*The Indigenous approach to healing is an integral part of Indigenous justice, and lies at the foundation of changing and reforming criminal behaviour among Indigenous people.*<sup>1098</sup>

Health, happiness and resilience are built from connections to family, community, spirituality and ancestors, land and culture, alongside physical and

mental health.<sup>1099</sup> Ensuring that these bonds are preserved and strengthened will protect Aboriginal children and young people from being harmed by experiences of the youth justice system. It will also support them to lead healthy, happy and safe lives outside the system.

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<sup>1097</sup> DHHS, *Balit Murrup*, p 10.

<sup>1098</sup> C Cunneen, 'Sentencing, punishment and Indigenous people in Australia', *Journal of Global Indigeneity*, 2018, 3(1), p 14.

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<sup>1099</sup> Koorie Youth Council, *Ngaga-dji*, p 41.

## Watanom's story

Watanom<sup>1100</sup> grew up fascinated by cars. Learning about cars and working on cars were his favourite ways to pass the time.

*I always wanted to be a mechanic, but I didn't get the chance to do it at school. I've worked on cars – all kinds of cars – but not as a job.*

Around the age of 15, Watanom began to hang out with some older boys who were also interested in cars.

*Older boys showed me around. I became friends with them and started mixing around with them.*

When he was 16, Watanom was arrested for stealing cars with his peers.

*I was asleep and the police came at 3 am. They surrounded the house and knocked really loud. Then they just stormed around the house with their torches and I woke up and I went outside with my mum and they arrested me.*

He was released on bail, but struggled with his bail conditions.

*Non-association with co-offenders affected me majorly because my co-offenders were my only friends I hanged around with. When I got out, I found it hard stuck at home with no one to hang out with, even when we weren't doing the wrong thing.*

*Once I was at nan and pop's house having dinner and I got breached and taken back to custody. They went to mum's house and I wasn't there. They breached me straight away.*

Watanom felt defeated by the court process. He felt like no one took the time to understand his experiences or the challenges and stressors in his life.

*I could see it in the judge's eyes. We are all another number in the system. Repeat offenders. They don't understand our background and what we had to go through and what we experienced.*

*My lawyer saw me as a repeat offender. He didn't explain to the judge what I went through in the community. I felt like he was on the judge's side. I have wanted to change for a long time, but it's always too much of a process because they don't know my background and I have to explain it all again.*

Watanom wanted the court to know that he struggled with mental health issues and began using drugs at around the age of 16. Watanom recognised that his drug use was intrinsically linked with his mental health and offending behaviour.

*Drugs has been an issue – it's the main thing. It's what leads me to offending. Anxiety leads to drugs and drugs leads to offending and offending leads me back here.*

He wants help with his mental health and drug issues.

*I've been trying to help myself for the last year or 2. I'd go to rehab. I've been ready to make change for a while.*

<sup>1100</sup> Watanom is a pseudonym meaning 'returning boomerang' in Kirrae Wurrung.



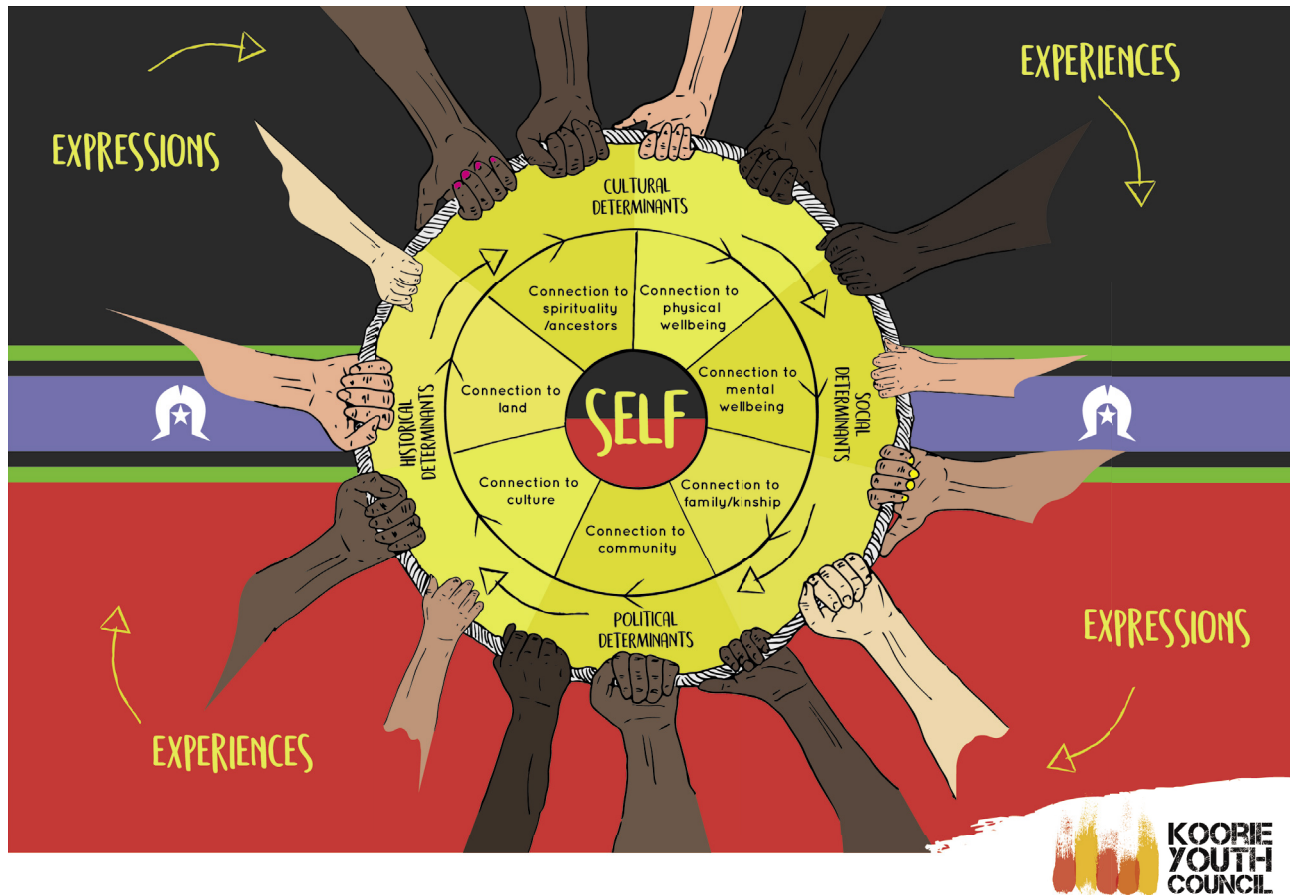
## Chapter at a glance

- The Aboriginal concept of wellbeing encompasses social, emotional, physical, cultural and spiritual dimensions.
- A holistic approach to improving the wellbeing of Aboriginal children and young people in the youth justice system requires recognising and responding to the links between experiences of trauma and grief, mental health conditions, substance misuse and youth justice system involvement.
- Many Aboriginal children and young people in contact with the youth justice system experience poor mental health and low levels of access to mental health services, and most experience substance misuse.
- Children and young people in Victoria have insufficient access to culturally safe mental health and alcohol and other drug support services in their communities.
- Many Aboriginal children and young people and their families and community members believe that Aboriginal cultural mentoring programs improve young people's mental health and wellbeing, make a positive difference in their lives and reduce offending behaviour.

### Key data

- 53% of children and young people in the Taskforce case file review presented with a mental health condition and 32% had self-harmed, engaged in suicidal ideation or attempted suicide.
- 45% of children and young people consulted for the inquiry spoke about their mental health, and 40% of these children and young people discussed counselling services and difficulties with access and support.
- 94% of Aboriginal children and young people under Youth Justice supervision on 31 December 2019 had a history of alcohol and/or drug misuse and 88% had offended while under the influence.
- 33% of children and young people who spoke to the inquiry about substance use said that their drug and alcohol misuse began before they were 16 – the age when many treatment and addiction services for young people begin.

# Current context



**Figure 9.1** Aboriginal social and emotional wellbeing

Source: Gee, Dudgeon, Schultz, Hart and Kelly, 2013 on behalf of the Australian Indigenous Psychologists Association. Adapted by the Koorie Youth Council for the *Ngaga-dji (hear me)* project. Illustration by Jacob Komesaroff from original art by Tristan Schultz, Relative Creative.

As noted above, the Aboriginal concept of wellbeing encompasses social, emotional, physical, cultural and spiritual dimensions (see Figure 9.1).<sup>1101</sup> Healthy connections to community, culture and Country are key to Aboriginal people’s wellbeing, alongside positive relationships with immediate and extended family members and kin.<sup>1102</sup>

From this perspective, the harms experienced by Aboriginal children and young people are not limited to physical or mental illness or injury, but extend to social isolation, cultural disconnection, loss of spirituality and so on. Similarly, physical and mental health are linked with other aspects of wellbeing. Social or cultural isolation, for example, is tied to mental health. Treatment limited to clinically diagnosed mental illnesses may not be effective unless supports are put in place to reconnect young people with their

<sup>1101</sup> DHHS, *Balit Murrup*.

<sup>1102</sup> G Gee et al., ‘Aboriginal and Torres Strait Islander social and emotional wellbeing’ in P Dudgeon, H Milroy and R Walker (eds), *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, Australian Government, 2014; JJ McDowall, ‘Connection to culture by Indigenous children and young people in out-of-home care in Australia’, *Communities, Children and Families Australia*, 2016, 10(1):5–26, pp 6–7. This is reflected in the literature and guidance produced in relation to best practice implementation of the Aboriginal

Child Placement Principle in various jurisdictions’ child protection schemes: see, for example, Secretariat of National Aboriginal and Islander Child Care (SNAICC), *The Aboriginal and Torres Strait Islander Child Placement Principle: a guide to support implementation*, SNAICC, 2019, accessed 22 February 2021.

community and culture.<sup>1103</sup> This has consequences for the youth justice system's ability to respond to young people in a way that will effectively address the causes of their offending.

Aboriginal communities are strong and resilient and know how to care for each other and their young people. Further, Aboriginal health services and culturally competent practitioners can recognise the problems that Aboriginal people might be experiencing and know how to best support them.<sup>1104</sup> Aboriginal community-controlled health organisations (ACCHOs) embed culture within all elements of service delivery, including accessibility, relevance and responsiveness not only to treating illness but also to promoting holistic health and wellbeing.<sup>1105</sup> Despite these strengths, literature shows that the loss of culture and Country stemming from colonisation, the violence done to familial relationships through the Stolen Generations, and ongoing government intervention in Aboriginal families causes intergenerational grief and trauma.<sup>1106</sup> This history creates serious risks for the wellbeing of Aboriginal people today.<sup>1107</sup>

The Royal Commission into Victoria's Mental Health System (RCVMHS) delivered its final report in February

2021.<sup>1108</sup> It detailed the over-representation of Aboriginal people in the mental health system and the poorer mental health outcomes that they experience.<sup>1109</sup> It found that that 31% of Aboriginal people experience high or very high levels of psychological distress – about 2.5 times the rate of non-Aboriginal Australians.<sup>1110</sup> Twice as many Aboriginal people aged 18 to 24 years as non-Aboriginal people experience considerable psychological distress.<sup>1111</sup> In 2018, Victoria (along with Tasmania) had the highest rate of Aboriginal young people aged 15 to 24 years reporting mental health conditions in Australia.<sup>1112</sup> Nationally, higher rates of psychological distress<sup>1113</sup> and substance misuse<sup>1114</sup> for Aboriginal young people are also well known.

Data relating to deaths by suicide of Aboriginal children and young people is especially alarming. This is an issue of major concern for many Aboriginal communities and a public health priority for all Australian governments.<sup>1115</sup> Aboriginal young people are estimated to be over 5 times more likely to die by suicide than their non-Aboriginal peers.<sup>1116</sup> Nationally,

- <sup>1103</sup> DHHS, *Balit Murrup*, pp 10–11; Orygen, [Aboriginal and Torres Strait Islander young people and mental ill-health: youth mental health policy briefing](#) [PDF], Orygen, The National Centre of Excellence in Youth Mental Health, 2018, accessed 22 February 2021; Closing the Gap Clearinghouse, *Strategies and practices for promoting the social and emotional wellbeing of Aboriginal and Torres Strait Islander people*.
- <sup>1104</sup> JS Gomersall et al., 'What Indigenous Australian clients value about primary health care: a systematic review of qualitative evidence', *Australian and New Zealand Journal of Public Health*, 2017, 41(4):417–423. See also IPS Anderson, SC Ewen and DA Knoche, 'Indigenous medical workforce development: current status and future directions', *Medical Journal of Australia*, 2009, 190(10):580–581.
- <sup>1105</sup> The Centre of Research Excellence in Aboriginal Chronic Disease Knowledge Translation and Exchange (CREATE), *Aboriginal Community Controlled Health Organisations in practice: sharing ways of working from the ACCHO sector*, Wardliparingga Aboriginal Health Equity Theme, Adelaide, 2020.
- <sup>1106</sup> State of Victoria, [Royal Commission into Victoria's mental health system: final report](#), 2021, Volume 3, p 149; Healing Foundation, *Our healing our solutions: sharing our evidence*, Healing Foundation, Canberra, 2013, p 13; Australian Human Rights Commission (AHRC), *Social justice report 2011: Aboriginal and Torres Strait Islander Social Justice Commissioner*, AHRC, 2011, p 8.
- <sup>1107</sup> RCVMHS Final Report, Volume 3, p 149; Australian Institute of Health and Welfare (AIHW), [Aboriginal and Torres Strait Islander Stolen Generations and descendants: numbers, demographic characteristics and selected outcomes](#), catalogue number IHW 195, AIHW, Australian Government, 2018, accessed 23 February 2021.

- <sup>1108</sup> The Victorian Government has committed to implementing all recommendations made by the RCVMHS: Premier of Victoria, [Date set for Mental Health Royal Commission final report](#) [media release], Victorian Government, 18 February 2021, accessed 19 April 2021.
- <sup>1109</sup> RCVMHS Final Report, Volume 3, p 145.
- <sup>1110</sup> RCVMHS Final Report, Volume 3, p 144, sourced from Victorian Aboriginal Community Controlled Health Organisation Inc. (VACCHO), *Balit Durrn Durrn: strong brain, mind, intellect and sense of self*, Report to the Royal Commission into Victoria's Mental Health System, VACCHO, 2020, p 19.
- <sup>1111</sup> RCVMHS Final Report, Volume 3, p 144, sourced from VACCHO, *Balit Durrn Durrn*, p 19.
- <sup>1112</sup> Australian Institute of Health and Welfare (AIHW), [Aboriginal and Torres Strait Islander adolescent and youth health and wellbeing 2018](#), catalogue number IHW 202, AIHW, Australian Government, 2018, p 129, accessed 23 February 2021.
- <sup>1113</sup> Victorian Auditor-General's Office, [Child and youth mental health](#), Victorian Auditor-General's Office, Melbourne, 2019, accessed 23 February 2021, pp 8, 82; AIHW, *Aboriginal and Torres Strait Islander adolescent and youth health and wellbeing 2018*.
- <sup>1114</sup> Australian Bureau of Statistics (ABS), [National Aboriginal and Torres Strait Islander Health Survey 2018–19: substance use](#), ABS website, 2019, accessed 20 July 2020.
- <sup>1115</sup> Prime Minister of Australia, [Making suicide prevention a national priority](#) [media release], Commonwealth Government, 8 July 2019, accessed 21 January 2021.
- <sup>1116</sup> Victorian Auditor-General's Office, *Child and youth mental health*, p 82; State of Victoria, [Royal Commission into Victoria's mental health system: interim report](#), 2019; P Dudgeon et al., *Solutions that work: what the evidence and our people tell us*, Aboriginal and Torres Strait Islander Suicide Prevention Evaluation Project Report, School of

suicide was the leading cause of death for Aboriginal children and young people from 2015 to 2019,<sup>1117</sup> accounting for one-third of all deaths of Aboriginal children and young people during this period.<sup>1118</sup> Children aged 15 to 17 years accounted for 80% of these suicides.<sup>1119</sup>

Unrecognised mental ill-health can attract criminalising responses, and psychological illness can compound other risk factors for contact with the criminal justice system, such as becoming homeless or being unemployed.<sup>1120</sup> Mental illness can also predispose a child or young person to risk-taking behaviours and conduct that could lead to contact with the youth justice system.<sup>1121</sup> For example, some forms of mental illness may push young people towards criminalised coping mechanisms, particularly underage abuse of alcohol and the abuse of illicit drugs. Mental illness can also pose barriers to the effectiveness of interventions and/or rehabilitation.<sup>1122</sup>

The RCMHS 'heard significant concerns from Aboriginal organisations and experts about the intersections between the mental health and justice systems for Aboriginal people'.<sup>1123</sup> When mental health issues remain unaddressed, young people are at increased risk of exposure to the youth justice system, and escalation into the adult system.

*Balit Murrup 2017–2027* outlines the Victorian Government's strategic plan to improve social and

emotional wellbeing outcomes for Aboriginal people.<sup>1124</sup> It acknowledges that:

*Overall, the mental health and primary health service systems have been largely ineffective in responding to the high rates of psychological distress experienced within Aboriginal communities. Much of the service system has been unable to embrace Aboriginal concepts of health and wellbeing and has failed to understand the historical context and pervasiveness of racial oppression and social disadvantage.*<sup>1125</sup>

*Balit Murrup* aims to address these barriers with a holistic, culturally responsive approach to 'prevent the escalation of social and emotional wellbeing and mental health issues immediately and in later years'.<sup>1126</sup>

This chapter is divided into 3 parts:

- 9.1 'Mental health' examines mental health support for Aboriginal children and young people in the youth justice system and more broadly.
- 9.2 'Substance use' considers substance misuse and recommends the establishment of healing centres for Aboriginal children and young people.
- 9.3 'Mentoring' discusses the power of mentoring for Aboriginal children and young people and recommends the expansion of culturing mentoring programs in Victoria.

Indigenous Studies, University of Western Australia, 2016, p 7.

1117 Australian Bureau of Statistics (ABS), [\*Causes of death, Australia: statistics on the number of deaths, by sex, selected age groups, and cause of death classified to the International Classification of Diseases \(ICD\)\*](#), ABS website, 2020, accessed 20 September 2020. The ABS does not report separate data on Aboriginal suicide deaths of children aged 5 to 17 years in Victoria because of low numbers.

1118 ABS, *Causes of death, Australia*.

1119 ABS, *Causes of death, Australia*.

1120 N Hughes et al., 'Health determinants of adolescent criminalisation', *The Lancet Child and Adolescent Health*, 2020, 4(2):151–162; Australian Institute of Health and Welfare (AIHW), [\*The health of Australia's prisoners 2018\*](#), catalogue number PHE 246, AIHW, Australian Government, 2019, accessed 23 February 2021.

1121 Australian Institute of Health and Welfare (AIHW), [\*National data on the health of justice-involved young people: a feasibility study 2016–17\*](#), catalogue number JUV 125, AIHW, Australian Government, 2018, accessed 20 September 2020, p 5.

1122 Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, pp 94–95.

1123 RCMHS Interim Report, p 405.

1124 This framework is one of a number of key strategies, all of which are inter-related in seeking to support improved outcomes for the social and emotional wellbeing of Aboriginal children and young people. See, for example, *Korin Korin Balit-Djak*, which serves as a 10-year plan to work alongside Aboriginal communities towards a better and fairer future for Aboriginal people; the *Victorian Aboriginal Affairs Framework 2018–2023*; the *National strategic framework for Aboriginal and Torres Strait Islander people's mental health and social and emotional wellbeing 2017–2023*; the *Aboriginal Justice Agreements* which include an *Aboriginal Social and Emotional Wellbeing Plan*; and *Wungurilwil Gapgapduir*, which is a shared commitment between the Victorian Government, the Aboriginal community and the child and family service sector to work towards a future where all Aboriginal children and young people are safe and living in culturally rich Aboriginal families and communities.

1125 DHHS, *Balit Murrup*, p 18.

1126 DHHS, *Balit Murrup*, p 19.

# 9.1 Mental health

## Finding 21

**Many Aboriginal children and young people in contact with the youth justice system experience poor mental health and low levels of access to mental health services.**

In a 2018 survey, for the first time in 17 years, young people in Victoria categorised mental health<sup>1127</sup> as their most pressing concern (above such issues as alcohol, drugs, the environment and discrimination).<sup>1128</sup> As noted above, the RCVMHS found that twice as many Aboriginal people aged 18 to 24 years as non-Aboriginal people experience considerable psychological distress.<sup>1129</sup> Suicide and self-inflicted injuries are the highest contributor to ill-health for Aboriginal people aged 10 to 24 years (13%), followed by anxiety disorders (8%), alcohol use issues (7%) and depression (7%).<sup>1130</sup>

Racism contributes to the higher levels of mental illness experienced by Aboriginal people, particularly anxiety

and depression.<sup>1131</sup> The RCVMHS undertook research that suggests that ‘almost all Aboriginal people in Victoria have experienced racism’.<sup>1132</sup> This includes experiences of racism in health service settings, which can compound the higher levels of psychological distress experienced by Aboriginal people.<sup>1133</sup> It can also affect their decisions about seeking help from health services and undergoing treatment.<sup>1134</sup>

The RCVMHS highlighted that, despite these higher rates of mental ill-health for Aboriginal people, Victoria lacks both culturally safe mainstream services<sup>1135</sup> and well-resourced Aboriginal community-controlled health services.<sup>1136</sup> Approximately half of Aboriginal people in Australia use mainstream health services; however, many would prefer to use Aboriginal services if they were accessible and better resourced.<sup>1137</sup>

Research indicates that Aboriginal children and young people are not accessing mental health services at a rate consistent with their need.<sup>1138</sup> The RCVMHS also found that of Aboriginal people aged 18 to 24 years who had experienced very high or high psychological distress, 77% had not seen a health professional.<sup>1139</sup> A lack of cultural safety can deter access to health

**1127** The RCVMHS defines ‘good mental health’ as ‘a state of wellbeing in which a person realises their own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to their community’, and ‘mental illness’ as ‘a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory’: RCVMHS Final Report, Volume 1, pp xiv–xv. However, the Lowitja Institute has identified the absence of an all-encompassing definition of mental health for Aboriginal people, and recommended further work to determine whether a specific definition is required: The Lowitja Institute, *Journeys to healing and strong wellbeing: final report*, The Lowitja Institute, Melbourne, 2018, pp 11–12.

**1128** E Carlisle et al., *Youth survey report 2018*, Mission Australia, 2018, pp 29–30, cited in RCVMHS Interim Report, p 44.

**1129** RCVMHS Final Report, Volume 3, p 144, sourced from VACCHO, *Balit Durn Durn*, p 19.

**1130** AIHW, *Aboriginal and Torres Strait Islander adolescent and youth health and wellbeing*, p 100.

**1131** RCVMHS Final Report, Volume 3, p 154.

**1132** RCVMHS Interim Report, p 466; VicHealth, *Mental health impacts of racial discrimination in Victorian Aboriginal communities. Experiences of Racism Survey: a summary*, VicHealth, 2012, p 2.

**1133** DHHS, *Balit Murrup*, p 19. See also MA Kelaher, AS Ferdinand and Y Paradies, ‘Experiencing racism in health care: the mental health impacts for Victorian Aboriginal communities’, *Medical Journal of Australia*, 2014, 201(1):44–47.

**1134** DHHS, *Balit Murrup*, p 19; Kelaher et al., ‘Experiencing racism in health care’.

**1135** RCVMHS Final Report, Volume 3, p 154.

**1136** RCVMHS Final Report, Volume 3, p 153.

**1137** DHHS, *Balit Murrup*, p 18.

**1138** Orygen and Headspace, *Submission to the Productivity Commission’s inquiry into mental health* [PDF], Orygen and Headspace, 2019, accessed 24 February 2021, p 31.

**1139** RCVMHS Final Report, Volume 3, p 144, sourced from VACCHO, *Balit Durn Durn*, p 19.

## 9.1 Mental health

services and 'reduce treatment adherence or result in complete disengagement'.<sup>1140</sup> This can prevent early intervention for Aboriginal children and young people with emerging mental health issues, leading to increased engagement with more complex tertiary services<sup>1141</sup> and possible involvement with the youth justice system.<sup>1142</sup>

Research also shows that youth justice system involvement has a negative impact on the mental health of Aboriginal children and young people, exacerbating existing issues and creating new ones.<sup>1143</sup> The RCMHS observed that 'when Aboriginal people enter the justice system, mental health supports are often inaccessible or inappropriate'.<sup>1144</sup>

Young women in contact with the justice system appear more likely to experience adverse mental health conditions. A recent review of surveys of justice-involved young people found that over half of young women reported high or very high levels of psychological distress, 23% had attempted suicide and approximately two-thirds of respondents had been diagnosed with at least one mental health disorder.<sup>1145</sup>

Evidence from the Taskforce and the inquiry supports this body of research. Participants at every Taskforce regional forum raised mental health as an area requiring attention in their region. The Taskforce case file review showed that 53% of the cohort presented with a mental health condition, and 32% had self-harmed, engaged in suicidal ideation or attempted suicide.

Mental health issues were also a key theme of the Taskforce case planning sessions. Some level of concern about mental health was evident in every session, as well as concerns about the lack of early intervention and support. Actions surrounding mental health were developed for 75% of children and young people in these sessions.<sup>1146</sup>

<sup>1140</sup> RCMHS Interim Report, p 399.

<sup>1141</sup> DHHS, *Balit Murrup*, p 18.

<sup>1142</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 157.

<sup>1143</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 181.

<sup>1144</sup> RCMHS Interim Report, p 398.

<sup>1145</sup> C Meurk et al., *Changing direction: mental health needs of justice-involved young people in Australia*, Kirby Institute, University of New South Wales, Sydney, 2019.

<sup>1146</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

Of the 93 children and young people consulted for the inquiry, 45% (n = 42) discussed their mental health. Among these children and young people, 40% (n = 17) referred to counselling services and difficulties with access and support. The experiences of children and young people and their families are described in more detail below.

### Mental health in the community

Young people in Victoria currently do not have sufficient access to mental health support services in the community.<sup>1147</sup> This is especially true for Aboriginal children and young people,<sup>1148</sup> and for those in contact with the youth justice system.<sup>1149</sup> Even when age-appropriate services are available, Aboriginal children and young people and those in contact with the youth justice system have additional unique and complex needs that public mental health services are failing to meet.<sup>1150</sup>

### Experiences of Aboriginal children and young people

Many Aboriginal children and young people told the Commission about their struggles with mental health.

*I've been real bad lately with depressions and anger, and I have been off my meds for about 6 or 7 months. It's like there's a big black hole in my chest or a voice in my head telling me that I'm not good enough. My moods change all the time, like one minute I'll be happy and then I'll be sad and then I'll be angry. Sometimes I yell or sometimes I cry with anger. I find it hard to talk about my feelings and that's something that I really, really want to get better at. – Gabrielle, 17*

*I've got mental health problems. When I get angry, I start hearing voices, then I black out and have seizures... When I get angry my body gets warmed up and I want to hurt everyone, then I want to hurt myself, all suicidal and stuff. – Toby, 15*

<sup>1147</sup> RCMHS Final Report, Volume 1, p 199.

<sup>1148</sup> RCMHS Final Report, Volume 3, p 176.

<sup>1149</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 45.

<sup>1150</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 45.

*When I'm at home I overthink shit. My depression has gone downhill since the start of the year, and my anxiety. – Keegan, 15*

*Sitting at home. Don't get out much anymore. In the whole community, there is nothing to do. What's fun? I don't know what's fun anymore. – Paul, 15*

*I was kind of depressed [at the time of offending behaviour]. I didn't care what happened. – Darcy, 17*

*I get real bad anxiety and paranoia because of my childhood. I'd get sweaty and shaky. – Pakap, 16*

Children and young people told us that untreated or unresolved mental health issues can make compliance with the conditions of bail or supervised community sentences difficult (see also Chapter 12.2 'Bail and remand' and Chapter 12.5 'Community orders supervised by Youth Justice'). One young person said that requiring attendance at appointments as a condition of bail 'would be setting me up to fail, because with my mental health, if I have a couple of hard days, I just give up'.

Children and young people also shared their thoughts with us on counselling. Some had positive experiences or recognised the benefits.

*Counsellors and that have been the people I can trust the most. – Djiran, 19*

*I want to talk to people who have been through it and that can actually help you. I want to do it in a one-on-one. – Rory, 20*

*Psychology can help – inner workings of the mind and the heart and how they go together. – Jack, 19*

However, some young people said that they did not want to access counselling and support services or that they didn't believe that such services could help them. These views could be related to stigma associated with accessing mental health services. Some young people's comments also indicate possible distrust in services and/or a lack of cultural safety.

*For my mental health, people want me to see a GP and a counsellor. I'm not ready for that. – Keegan, 15*

*Counsellors who have not been through it themselves do not understand what it is like to go through what I go through. – Brooke, 15*

*I've spoken to Headspace and I used to go to the [mental health service], but I realised that it's just never going to change. – Toby, 15*

*Counsellors and shit like that, they don't work. – Leroy, 14*

## **Barriers to accessing mental health support services in the community**

*Balit Murrup* notes that 'only one in four Aboriginal children experiencing traumatic life events are accessing appropriate services'.<sup>1151</sup> Many barriers to accessing mental health services in the community exist for Aboriginal children and young people, including:

- a lack of culturally safe care and facilities
- a lack of local Aboriginal services, particularly in regional areas
- distrust of mainstream healthcare providers based in historical and ongoing racism
- shame and stigma surrounding mental ill-health
- economic disadvantage and financial difficulties
- inflexible mainstream service delivery

<sup>1151</sup> DHHS, *Balit Murrup*, p 19.

## 9.1 Mental health

- a lack of Aboriginal mental health counsellors and clinicians.<sup>1152</sup>

The Commission repeatedly heard about 2 key barriers to Aboriginal children and young people accessing support services:

- limited rural and regional services
- limited culturally specific services.

Regional disadvantage experienced by Aboriginal children and young people and their families is discussed more broadly in Chapter 7.3 'Challenges experienced by Aboriginal families'.

### Limited rural and regional services

Aboriginal children and young people and their workers identified challenges in accessing mental health services in rural and regional areas, including an absence of local services, distance to services and long wait times.<sup>1153</sup> These issues were also identified at Taskforce regional forums.

*I have to go to a psych in the city and it's too far.*  
– Zeke, 18

*Hardest thing is we are so isolated. We want to do all these things, but we are so removed from where everything is, massive challenge... Another is we will be working with a young person and they might disclose self-harm, get a referral to Headspace and they are put on a computer to talk to a counsellor. They need to see and connect face to face.* – Aboriginal youth worker

*Mental health support is hard up here. There's a 43 week wait at [local ACCO]. It's quite horrible.*  
– Aboriginal youth worker

*Swan Hill is extremely disadvantaged regarding mental health, psychological and health service provision. Kids have a lack of options and have to go to Mildura or Bendigo which is a 2 and a half hour drive.* – Youth lawyer

*We need someone on night patrol, and someone to talk about suicide and family violence. But one person can't do all that. It's hard to have enough time in a day. So much of it is the kids needing to chat one-on-one, and there's just me and I can't be in all of those places at once.*  
– Aboriginal youth worker

*Mental health issues are affecting the young people and going untreated. There is a lack of assessments.* – Gippsland (Bairnsdale) regional forum

Barriers to accessing mental health services in rural and regional areas were particularly acute for children and young people with complex trauma and/or those requiring specialist treatment for issues like suicidality or sexual abuse. This was highlighted at the Taskforce regional forums.

*There is a lack of mental health support for young people with significant mental health barriers. Who is responsible for the mental health portfolio of young people in community with severe trauma? There's no clear stakeholder to take on that responsibility.* – Hume (Shepparton) regional forum

*There is a long wait time for health services and visiting specialist services. Wait times can negatively impact outcomes for young people.*  
– Loddon Mallee (Mildura) regional forum

*We need to check in with young people and make them feel cared for. If it wasn't for that work being done with our youth, we would lose more to suicide.* – Hume (Wodonga) regional forum

<sup>1152</sup> RCVMS Interim Report; DHHS, *Balit Murrup*, p 18; DHHS, *Korin Korin Balit Djak*, p 43.

<sup>1153</sup> Similar barriers to accessing mental health services in rural and regional Victoria were identified by the Youth Affairs Council Victoria (YACVic) in its submission to the RCVMS: YACVic, *Beyond access*, p 36.



The absence of specialist mental health services in regional areas was also identified by family members.

*Youth Justice need to support [my granddaughter] to be in counselling. Two years ago she let out that she was raped when she was 12 – no services were in place to support her. – Nan*

Significant work needs to be done to eliminate barriers to access for mental health services for children and young people in rural and regional Victoria. The RCVMHS indicates that, while the prevalence of mental illness in rural and regional Victoria is comparable to that of metropolitan areas, access to services is poorer.<sup>1154</sup> It also highlights that people living in rural and regional Victoria have much higher rates of suicide and self-harm than people in metropolitan areas.<sup>1155</sup>

The RCVMHS also made note of mental health workforce distribution across Victoria in its interim report:

*In 2017 there were 13.9 psychiatrists per 100,000 people in metropolitan Melbourne; falling to 5.2 in inner regional areas of Victoria and just 1.2 in outer regional areas.*<sup>1156</sup>

When acute mental health treatment is required, only 6 out of 78 designated youth/adolescent mental health beds in Victoria are located outside metropolitan Melbourne. There are no designated mental health beds for children in regional Victoria (see Table 9.1).

**Table 9.1** Capacity of designated child and youth mental health beds in Victoria by region

Region	Number of designated mental health beds	
	Youth/adolescent	Child
Metropolitan Melbourne	72	20
Ballarat	2	0
Latrobe	2	0
Mildura	2	0
<b>Total</b>	<b>78</b>	<b>20</b>

Source: Victorian Ombudsman, *OPCAT in Victoria*, pp 64–65, sourced from Ambulance Victoria's Retrieval and Critical Health Information System as at 12 August 2019.

According to the Youth Affairs Council Victoria, young people in rural and regional areas experience greater levels of 'unmet need' in relation to mental health than young people in other parts of Victoria.<sup>1157</sup> One reason for this is that rural towns with high levels of disadvantage tend to have very poor access to mental health services.<sup>1158</sup> For example:

- none of Victoria's most disadvantaged rural suburbs has a psychiatrist within 10 km
- only 5% of Victoria's most disadvantaged rural suburbs have a Headspace centre within 10 km
- in 70% of Victoria's most disadvantaged rural postcodes, young people would have to travel more than 50 km to see the nearest psychologist
- in more than one-quarter (28%) of Victoria's most disadvantaged rural suburbs, young people would be required to travel more than 100 km to see a psychiatrist.<sup>1159</sup>

DHHS (now the Department of Health) data shows that Aboriginal children and young people in Victoria present at public hospital emergency departments for mental health matters more often in regional areas than in metropolitan areas.<sup>1160</sup> In 2018 and 2019, approximately 55% of emergency department presentations for mental health matters among this cohort were in the regions and 45% were in metropolitan areas. Aboriginal young people

<sup>1154</sup> RCVMHS Final Report, Volume 3, p 440.

<sup>1155</sup> RCVMHS Final Report, Volume 3, p 443.

<sup>1156</sup> RCVMHS Interim Report, p 134.

<sup>1157</sup> YACVic, *Beyond access*, p 36.

<sup>1158</sup> YACVic, *Beyond access*, p 36.

<sup>1159</sup> YACVic, *Beyond access*, p 39.

<sup>1160</sup> Data provided to the Commission by DHHS on 26 May 2020.

## 9.1 Mental health

represented approximately 11% of the total mental health presentations of children and young people in regional areas. In metropolitan areas, they represented approximately 4% of the total. Notably, girls and young women represented approximately 58% of all mental health presentations of Aboriginal children and young people.<sup>1161</sup>

### Limited culturally specific and flexible services

Culturally specific mental health services are best placed to support Aboriginal children and young people. When there are no culturally specific services, Aboriginal children and young people need, at a minimum, access to culturally safe mainstream services.

*Mental health is likely under-diagnosed and under-reported and may require more focus to gain appropriate assessments to improve young people's treatment and outcomes. We need to increase culturally sensitive services.*  
– Gippsland (Morwell) regional forum

*Mental health is seen as optional for young people – notes will say, 'We referred, they didn't engage.' We need mental health options that are appropriate for the cohort.* – Western Metropolitan regional forum

*We need alternative therapies/recreation like music and art therapy.* – Eastern Metropolitan regional forum

*We require mental health services that provide a flexible outreach model. Mental health services are predominantly office-based. It's difficult to engage young people in this environment.*  
– Hume (Wodonga) regional forum

*There needs to be an emotional intelligence focus. Psychs are coming from a purely intellectual angle, which the young people can't relate to. Too often a young person doesn't connect with a formal mental health space. Going into a clinical space with clinical lighting isn't going to fix that. They need to be connected to people and bush and be in nature.* – Aboriginal youth worker

There is evidence that racially discriminatory or culturally unsafe health practices can create barriers to health treatments, impair the correct diagnosis of mental illness and worsen ill-health.<sup>1162</sup> These barriers can prevent early intervention that might divert people from the youth justice system. They can also reduce the likelihood of a child or young person's mental ill-health being a causal factor or catalyst for offending behaviour.

### Mental health and Youth Justice community supervision

The Youth Justice Review observed that Youth Justice practice in relation to managing mental health referrals at intake was not consistent, and relied on staff to identify mental health risks and prioritise timely referrals.<sup>1163</sup> The Youth Justice Review also observed that child and adolescent programs in public mental health services are often inadequate to meet the unique needs of children and young people in the youth justice system with mental illness.<sup>1164</sup> It recommended the urgent establishment of 'youth justice frameworks for mental health and disability to embed a systems approach to identifying and meeting the needs of young offenders', with priority access to mental health services.<sup>1165</sup>

In response, Youth Justice introduced a new Case Management Framework, which provides for the delivery of multi-agency care planning to establish access to key services for children and young people

<sup>1161</sup> Data provided to the Commission by DHHS on 26 May 2020.

<sup>1162</sup> CJ Bourke, H Marrie and A Marrie, 'Transforming institutional racism at an Australian hospital', *Australian Health Review*, 2019, 43:611–618; Kelaher et al., 'Experiencing racism in health care'.

<sup>1163</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 45.

<sup>1164</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 45.

<sup>1165</sup> Recommendation 6.13: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 46.

under supervision, including mental health. The Youth Justice *Working with mental health* practice guideline directs Youth Justice case managers to respond to young people's mental health needs, make appropriate referrals, work collaboratively with mental health service providers and ensure compliance with mental health-related conditions on the young person's order.<sup>1166</sup>

Case managers are supported by the Youth Justice Mental Health Initiative, consisting of 6 clinicians employed by Child and Youth Mental Health Services and the Victorian Aboriginal Health Service. The Youth Justice Mental Health Initiative undertakes mental health assessments, facilitates referrals and assists children and young people under Youth Justice supervision to access relevant mental health services.<sup>1167</sup>

In addition, Aboriginal children and young people on bail or under community supervision may access mental health support through the Koori Intensive Support Program (discussed in Chapter 12.2 'Bail and remand') and the Community-Based Koori Youth Justice Program (discussed in Chapter 6.2 'Relationships with workers').

However, given the barriers to accessing mental health services outlined above, Aboriginal children and young people with mental health challenges who are under Youth Justice community supervision often do not receive the support they need. This places them at increased risk of failing to comply with the conditions of bail or community-based sentencing orders, and becoming further entrenched in the youth justice system.

As part of their induction, custodial staff undergo compulsory training, including modules on 'Introduction to mental health', 'Working with young offenders who have experienced trauma' and 'Working with young people and risk of suicide and self-harm'.<sup>1168</sup> In contrast, community-based staff with case management responsibilities receive training in the use

of the MAYSI-2 mental health screening tool,<sup>1169</sup> but nothing more detailed in relation to responding to the mental health needs of children and young people.

The *Youth Justice community workforce plan*, released in January 2021, commits to including a mental health module in the 3-week induction program for community-based staff, encompassing 'mental health first aid and applied suicide and self-harm training'.<sup>1170</sup> The plan also identifies mental health training as a component of ongoing practice and skills development for community-based staff.<sup>1171</sup>

## Mental health in custody

Data on the proportion of young people in youth justice custody experiencing mental health issues is varied. For example, in 2017, the Australian Psychological Society told the parliamentary committee investigating Victoria's youth justice centres that 87% of young people in custody have at least one mental health disorder, and 75% have 2 or more disorders. In contrast, the Youth Parole Board's 2018–19 annual report indicated that 48% of young people in custody on 31 December 2018 presented with mental health problems.<sup>1172</sup> Youth Justice data indicates that, on 31 December 2018, 54% of Aboriginal children and young people in youth justice custody presented with mental health issues.<sup>1173</sup>

<sup>1166</sup> Department of Justice and Community Safety (DJCS), *Working with mental health: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 20 August 2020.

<sup>1167</sup> DJCS, *Working with mental health*, p 13.

<sup>1168</sup> Department of Justice and Community Safety (DJCS), *Community and custodial training overview*, internal document provided to the Commission by DJCS on 19 August 2020.

<sup>1169</sup> MAYSI-2 is the Massachusetts Youth Screening Instrument–Version 2, a tool used to identify children and young people with mental health needs in the youth justice system.

<sup>1170</sup> DJCS, *Youth Justice community workforce plan*, p 2.

<sup>1171</sup> DJCS, *Youth Justice community workforce plan*, p 2.

<sup>1172</sup> Youth Parole Board, *Annual report 2018–19*, Youth Parole Board, Victorian Government, 2019, p 29.

<sup>1173</sup> Data provided to the Commission by DJCS on 20 February 2020.

### Impact of custody on mental health

*If you get your hopes up with trust, you get let down and that's where depression comes into it. I just keep to myself. I don't really put that much trust in no one. I've already gave my hopes up from my experience. I've learned the hard way. I've always learned the hard way. That's why I'm here right now. – Leroy, 14*

Aboriginal children and young people and their family members told us about the severe impacts of custody on their mental health.

*I felt depressed. I was locked in a room for like 4 hours. – Daniel, 17*

*Sitting here [in Parkville], it's hard. There's days that I feel safe, and days that I don't. I'm worried about what I'm going to do to myself. – Logan, 16*

*You have to get stuff off your chest because otherwise you're going to stab someone in here or go after the screws. – Watjpa, 21*

*Mental health is affected when she is in and out of custody... She's been strip-searched, which affects her mental health. – Nan*

Aboriginal children and young people in youth justice custody are self-harming at alarmingly high rates. This is discussed in detail in Chapter 13.2 'Conditions in youth justice custody'. That chapter also discusses the adverse impacts of isolation and lockdowns on the mental health of Aboriginal children and young people.

Children and young people also spoke to the Commission about the effects of their disconnection from family and culture while in custody, with particular reference to sorry business.

*We got boys in here going through big issues. One of my brother boys just lost his baby. He got to go to his funeral, but the first time he met his son he had to put him in a grave. – Watjpa, 21*

*It mentally fucks you up. I found out my nan had passed away – I made one phone call and my little sister said, 'Nan is sick in hospital', and then next morning they told me Nan passed away. I told [the ALO] I wanted my little cousin brought over and he did that. – Jasper, 17*

They spoke about how connecting with other Aboriginal young people in custody and celebrating culture improved mental health.

*I stay connected through family. Every NAIDOC, even if I'm in custody, I do dancing and stuff. We got a men's group and do smoking ceremonies and stuff, tell the brothers what we're going through. – Watjpa, 21*

The importance of connection with family, community and culture for Aboriginal children and young people in custody is examined in Chapter 7 'Family, community & culture'.

### Mental health treatment in custody

Many children and young people and their family members who spoke to us about mental health services in custody referred to negative experiences.

*They increased my meds since I got here because I have [multiple mental ill-health diagnoses]. They think I have ADHD [attention deficit hyperactivity disorder]. Once something pissed me off and I snapped. When you first come in, Health come to see you. Ever since they took me off my night medication, things are not good. Don't think they do a review for health. When I left last time, they didn't give me anything. I wanted a review for my night medication but then they took me off it. Taking me straight off them broke my sleeping pattern but they didn't come to see me, and that was months ago. – Pearl, 19*

*Staff are real slow with stuff like seeing a psych and getting meds, but my YJ worker can get it for me right away. Staff are slow. They don't do anything – we can ask them something and it takes weeks. We need our mental health to be better. I think if they really cared about us, they'd let us see a psych, not just go straight back in the fishbowl and start talking to the other staff members. People need someone to talk to them, to let them open up about what they want, and then it's easier to support them. – Pakap, 16*

### Youth Justice practice and barriers to mental health treatment in custody

*When there is complexity and failure to respond to treatment, in every other medical model you increase the intensity of support, but what we do with this younger cohort when they become more complex is we reduce the supports and project the failures onto them rather than admitting it's due to a lack of cohesive service provision. – Lead Consultant Forensic Psychiatrist, Orygen*

DJCS acknowledges the 'complex needs and significant histories of abuse, neglect and trauma' that cause higher rates of mental health issues for incarcerated young people.<sup>1174</sup> Currently, Parkville and Malmsbury have a Primary Mental Health service and a Specialist Mental Health service on site to support children and young people who present with mental illness and mental health problems in custody.<sup>1175</sup>

The Primary Mental Health service (Correct Care Australasia) is staffed by general practitioners, mental health nurses and general nurses, and is responsible for initial mental health assessments<sup>1176</sup> and the

<sup>1174</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 4.6: mental health treatment*, DJCS, Victorian Government, unpublished, accessed 24 August 2020, p 3.

<sup>1175</sup> DJCS, *Director's instruction no: 4.6*, p 5.

<sup>1176</sup> Aboriginal children and young people must receive a health and mental health screening within 12 hours of admission

development of 'at risk' treatment plans for children and young people presenting with issues related to suicide and self-harm. The Specialist Mental Health service (Orygen) is a youth-focused service staffed by psychiatrists, a psychiatric registrar, mental health clinicians and a neuropsychologist. Young people cannot automatically access support through Orygen, but may be referred by the Primary Mental Health service where appropriate.<sup>1177</sup>

Youth Justice practice guidelines state that Aboriginal young people may be referred to an Aboriginal health worker to support their mental health care, but this must be done in consultation with an ALO.<sup>1178</sup>

Correct Care Australasia is a private organisation that provides health services in Victoria's adult prisons and began delivering services in Youth Justice facilities in February 2019.<sup>1179</sup> According to Orygen's lead consultant forensic psychiatrist, this lack of youth mental health specialisation has been problematic.

*They [Correct Care Australasia, CCA] are not a specialised mental health or youth service, and I am not aware of any professional development or reflective practice available for staff in this field. Sometimes young people will not want to engage with CCA, or the referrals to Orygen are vague or they don't want to repeat their story again to a different service; and all this can lead to delays or omissions in the young person accessing our service. – Lead Consultant Forensic Psychiatrist, Orygen*

to custody and a comprehensive assessment within 3 days: DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38. DJCS advised the Commission in April 2021 that all Aboriginal children and young people are assessed within 12 hours of admission by a registered psychiatric nurse and a registered nurse, and within 72 hours by a medical officer.

<sup>1177</sup> DJCS, *Director's instruction no: 4.6*, p 5. DJCS advised the Commission that there is a referral process in place to ensure that referrals are appropriately triaged; however, Orygen will assess any child or young person who needs mental health assessment, treatment and/or ongoing care.

<sup>1178</sup> DJCS, *Director's instruction no: 4.6*, p 5. DJCS advised the Commission that, despite this guideline, referral is not required to an Aboriginal health worker, who will see every Aboriginal young person admitted to custody, in consultation with an ALO.

<sup>1179</sup> Correct Care Australasia, *Recent news: Correct Care moves into the Victorian youth justice sector*, Correct Care Australasia website, 2018, accessed 19 September 2020.

## 9.1 Mental health

In response to the draft of this report, DJCS advised the Commission that Correct Care Australasia has mental health nurses at both youth justice centres and a model of supervision to support these nurses, as well as access to education and training internally and externally.

Mental health treatment in youth justice custody has been criticised as being piecemeal and poorly integrated with other health care. According to the Murdoch Children's Research Institute:

*Among justice-involved adolescents, mental health problems rarely occur in isolation. Complex, co-occurring health problems are normative and necessitate a coordinated, multi-disciplinary response. However, the available evidence suggests that health service delivery in youth detention settings is often siloed, with mental health services poorly integrated with primary care, alcohol and other drug treatment, and other allied services.<sup>1180</sup>*

Youth Justice practice guidelines outline the responsibilities of unit staff in relation to the support of young people in custody who have existing or emerging mental health problems. These include:

- supporting young people with mental health problems at all times
- understanding the effects of treatment and medication at all times
- making referrals for mental health assessments as required
- undertaking case collaboration as required.<sup>1181</sup>

Practice guidelines emphasise that 'collaboration and proactive communication' with respect to treatment plans 'is crucial to ensure that young people receive the highest quality mental health care, are supported to achieve their health and rehabilitation goals and have appropriate supports in place for their transition back into the community'.<sup>1182</sup>

Despite these guidelines, there are barriers with respect to the implementation of mental health treatment plans developed for children and young people in custody. These include inadequate staffing levels and inadequate training and support.

<sup>1180</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents: submission to the Royal Commission into Victoria's Mental Health System*, Murdoch Children's Institute, 2019, p 1.

<sup>1181</sup> DJCS, *Director's instruction no: 4.6*, pp 6–8.

<sup>1182</sup> DJCS, *Director's instruction no: 4.6*, p 8.

*It's very difficult to get Youth Justice on board with our plans and to carry them through. Firstly, they are understaffed and traumatised themselves directly and vicariously by the young people's stories, with little support for these issues, sometimes over years. What that has created is a lot of negative counter-transferences – they are more prone to look at young people and see malevolence instead of pathology, so when we give them our strategies for behaviour management they are not inclined to utilise them. I think many people in custody have lost therapeutic curiosity and optimism. – Custodial mental health clinician*

A mental health clinician working in custody provided the following example:

*With one young 15-year-old Indigenous boy, he had assaulted staff in the context of a developing mental illness. We developed a safety and behavioural management plan and upon delivering it to the Youth Justice workers in the unit, the staff member ripped up the plan and said, 'Don't tell me something is chocolate when it's shit.' – Custodial mental health clinician*

The Commission's Independent Visitor Program has highlighted similar issues with respect to mental health treatment in youth justice custody. An Aboriginal Independent Visitor described her experience with Youth Justice staff and a distressed Aboriginal young person:

*It was very distressing to see a young man in such a state. It was like he was comatose and on another planet. He could not eat as his hands were shaking, so he ended up eating his lunch of salad with his fingers, as he could not find the fork with his hand. As we continued to talk, he found it difficult to answer questions about himself or his family, and just trying to talk, his mouth was quivering as he tried to focus on us. Staff commented that he is much better than a week or 2 ago, as he can now focus and have a conversation. I would have hated to see him a few weeks ago, then. ...*

... I felt staff found it very distressing to deal with [the young person] when he is in that state, and a female staff member commented that sometimes she had to walk away for a few moments as it was too distressing for her to deal with. I fully understand this. I came away from the visit very distressed myself. Staff advised that they are not mental health professionals and are not trained to deal with clients such as [him]. This is definitely not the place for him. He needs specialist medical/psychological treatment. I feel that Parkville will only send [him] deeper into psychosis. He looks like he is just hanging on by a thread. – Aboriginal Independent Visitor

Orygen's lead consultant forensic psychiatrist indicated that they have had more success in implementing plans with the Classification and Placement Unit in Youth Justice, whose staff assess children and young people's risks and needs to inform their classification and placement in custody. In particular, the Classification and Placement Unit works with Youth Justice behaviour support specialists to undertake behavioural assessments and develop behaviour support plans for children and young people.

Orygen's lead consultant forensic psychiatrist also identified the extremely valuable work done by ALOs to support the mental health of Aboriginal children and young people in youth justice custody, and highlighted the need for more Aboriginal workers in custody. The ALO role is discussed in more detail in Chapter 13.1 'Cultural safety and support in custody'.

It is also important to acknowledge a significant national barrier to health treatment of children and young people in custody. In Australia, children and young people in detention (like adults) are excluded from Medicare and Pharmaceutical Benefits Scheme subsidies.<sup>1183</sup> Consequently, 'funding for mental health services in detention is woefully inadequate' and 'in most settings there is no funding mechanism to support in-reach from community-based health services, importantly including Aboriginal Medical Services'.<sup>1184</sup> Recent advocacy to allow health care

<sup>1183</sup> *Health Insurance Act 1973* (Cth), s 19(2).

<sup>1184</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents*, p 2. 'In-reach' in this context refers to services provided to children and young people in custody by external, community-based organisations, in contrast to 'outreach' services.

providers in custodial settings to claim subsidies, including recommendations from the Northern Territory Royal Commission<sup>1185</sup> and submissions to the United Nations Committee on the Rights of the Child<sup>1186</sup> have demonstrated the need for this exclusion to be repealed.<sup>1187</sup>

## Mental health treatment following release from custody

*We need to work on strengthening mental health plans in community. Where does the portfolio sit after custody? How does the transition happen? – Grampians (Ballarat) regional forum*

Mental health support for children and young people following their release from custody is crucial. In its submission to the RCMHS, the Murdoch Children's Research Institute referenced its recent research into health outcomes after contact with the youth justice system, showing growing evidence that outcomes 'are typically poor'.<sup>1188</sup> It found that the rate of death for young people who have had contact with the youth justice system is more than 3 times higher than for

<sup>1185</sup> In its recommendation 15.4, the Northern Territory Royal Commission recommended that the Commonwealth Health Minister 'make the necessary directions under section 19(2) of the *Health Insurance Act 1973* (Cth) to enable the payment of Medicare benefits for medical services provided to children and young people in detention in the Northern Territory' and 'take all necessary steps to ensure that supply of pharmaceuticals to children and young people in detention in the Northern Territory is provided under the Pharmaceutical Benefits Scheme.': Northern Territory Royal Commission Final Report, Volume 2A, p 376.

<sup>1186</sup> Australian Child Rights Taskforce, *The Children's Report: Australia's NGO coalition report to the UN Committee on the Rights of the Child* [PDF], Australian Child Rights Taskforce, UNICEF Australia, 2018, p 42. Recommendation 65 is 'that the Australian Government grant an exemption under section 19(2) of the *Health Insurance Act 1973* (Cth), to permit health care providers in custodial settings to claim Medicare and Pharmaceutical Benefits Scheme subsidies for the provision of health care services not currently funded by prison health services.'

<sup>1187</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents*, p 2. See also C Cumming, SA Kinner and DB Preen, 'Closing the gap in Indigenous health: why section 19(2) of the *Health Insurance Act 1973* matters', *Medical Journal of Australia*, 2016, 205(6):283.

<sup>1188</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents*, p 1.

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those who have not, with one in 3 of those deaths attributed to suicide and one in 7 to drug overdose.<sup>1189</sup>The Murdoch Children's Research Institute did not determine whether this link is causative or correlative but called for:

*further research on the long-term health trajectories of young people who have had contact with the youth justice system, and... increased investment in evidence-based, therapeutically-oriented transitional and post-release care for young people who cycle through youth detention settings.*<sup>1190</sup>

Youth Justice custodial procedures state that 'if a young person requires ongoing mental health care on return to the community, the Primary Mental Health Service will arrange a referral to a community-based mental health service'.<sup>1191</sup> These referrals are intended to be part of collaborative case planning led by Youth Justice workers to 'ensure a smooth transition to the new mental health service'.<sup>1192</sup>

Our evidence suggests that this important transitional planning is not occurring at acceptable rates. During the Taskforce regional forums and case planning sessions, there was confusion about who was responsible for transitional case planning, particularly for children and young people involved with both Youth Justice and Child Protection (see also Chapter 6.1 'Collaboration'). In our consultations with children and young people, we heard about their fear of services ceasing when their orders ended. The Taskforce case file review indicates that 56% (n = 107) of the cohort who were identified as having mental health concerns were referred to community mental health services on release. This may be partly attributable to the limited availability of community mental health services (described above).

Ideally, Aboriginal medical services and community organisations would be funded to offer in-reach support for culturally based care in custody, and to facilitate transitional and post-release mental health treatment for children and young people.

### Current relevant Victorian mental health initiatives

There is considerable work currently underway in Victoria aimed at improving mental health outcomes for Aboriginal people and children and young people in the youth justice system. This section outlines:

- key findings and recommendations of the RCMVMS
- mental health services provided by the Children's Court
- actions in the Youth Justice Strategic Plan concerning the mental health of children and young people in the youth justice system.

### Royal Commission into Victoria's Mental Health System – relevant recommendations

In its interim report, the RCMVMS recommended that the Victorian Government expand social and wellbeing teams throughout Victoria, and that these teams be supported by a new Aboriginal Social and Emotional Wellbeing Centre, to be developed by the Victorian Aboriginal Community Controlled Health Organisation (VACCHO).<sup>1193</sup> This is to be facilitated (in part) through dedicated recurrent funding to establish and expand multi-disciplinary social and emotional wellbeing teams in ACCHOs.<sup>1194</sup>

In its final report, the RCMVMS made recommendations for system-wide change<sup>1195</sup> and a new approach to mental health and wellbeing in Victoria that is responsive and integrated.<sup>1196</sup> This new mental health system will better support Aboriginal social and emotional wellbeing:

*Aboriginal people will lead decision making in the design and delivery of Aboriginal social and emotional wellbeing services, and mainstream mental health services will engage with Aboriginal people to ensure their services are responsive to Aboriginal social and emotional wellbeing. Together with a greater emphasis on trauma-informed practice, these reforms are expected to deliver a more culturally safe system.*<sup>1197</sup>

<sup>1189</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents*, pp 1–2.

<sup>1190</sup> Murdoch Children's Research Institute, *The mental health of justice-involved adolescents*, p 2.

<sup>1191</sup> DJCS, *Director's instruction no: 4.6*, p 9.

<sup>1192</sup> DJCS, *Director's instruction no: 4.6*, p 9.

<sup>1193</sup> Recommendation 4: RCMVMS Interim Report.

<sup>1194</sup> Recommendation 4: RCMVMS Interim Report.

<sup>1195</sup> RCMVMS Final Report, Volume 1, p 9.

<sup>1196</sup> RCMVMS Final Report, Volume 1, p 191.

<sup>1197</sup> RCMVMS Final Report, Volume 3, p 194.



In recommendation 33 'Supporting Aboriginal social and emotional wellbeing', the RCMVHS recommended that the Victorian Government:

- build on the interim report's recommendation to support Aboriginal social and emotional wellbeing,<sup>1198</sup> and resource the recommended Social and Emotional Wellbeing Centre to establish 2 co-designed healing centres
- resource Infant, Child and Youth Area Mental Health and Wellbeing Services to support ACCHOs by providing primary consultation, secondary consultation and shared care
- resource ACCHOs to commission the delivery of culturally appropriate, family-oriented, social and emotional wellbeing services for children and young people
- resource VACCHO, in partnership with an Infant, Child and Youth Area Mental Health and Wellbeing Service, to design and establish a culturally appropriate, family-oriented service for infants and children who require intensive social and emotional wellbeing supports.<sup>1199</sup>

The RCMVHS also envisioned that Aboriginal people experiencing addiction and/or engagement in the youth justice system would receive more coordinated supports in the new system:<sup>1200</sup>

*A more 'joined-up' approach will prevent people from falling through the cracks between systems, and ensure that supports are more holistic and responsive to the range of factors that can affect social and emotional wellbeing.*<sup>1201</sup>

In relation to the youth justice system, the RCMVHS recommended that the Victorian Government 'expand specialist youth forensic mental health programs to a state-wide model to provide consistent and appropriately specialised treatment, care and support to children and young people in contact with, or at risk of coming into contact with, the youth justice system'.<sup>1202</sup> The RCMVHS noted that this would involve:

- expanding the Community Forensic Youth Mental Health Service (see below)

- expanding the Custodial Forensic Youth Mental Health Service (see below)
- creating a youth forensic clinical specialist program modelled on the program in adult corrections.<sup>1203</sup>

### Children's Court services

The Children's Court Clinic is an independent body located at the Melbourne Children's Court. The clinic makes psychological and psychiatric assessments of children and families and provides reports to judicial officers in both child protection and criminal cases across Victoria.<sup>1204</sup> In criminal cases, clinic involvement is initiated through a referral by the court to prepare a pre-sentence report. The clinic can also provide clinical treatment during a deferral of sentence, a period of an interim protection order or an adjournment period.<sup>1205</sup>

The Children's Court Clinic provides a valuable service, but is only available in Melbourne. In its submission to the RCMVHS, the Children's Court outlined the high and increasing demand for Children's Court Clinic court assessments, and its consequent lack of capacity to provide clinical services.<sup>1206</sup>

The Children's Court Mental Health Advice and Response Service (MHARS) is a specialist mental health service delivered by Orygen Youth Health at the Melbourne Children's Court, which commenced in mid-2019. MHARS clinicians advise the court and provide mental health assessments for children and young people who present with acute mental health concerns and/or distress while they await their court appearance. It is currently being trialled in Melbourne with a view to expanding it to all Children's Courts in Victoria.<sup>1207</sup>

<sup>1203</sup> RCMVHS Final Report, Volume 3, p 414.

<sup>1204</sup> Children's Court of Victoria, [Royal Commission into Victoria's mental health system: Children's Court of Victoria submission](#), 2019, p 15.

<sup>1205</sup> Children's Court of Victoria, *Royal Commission into Victoria's mental health system: Children's Court of Victoria submission*, p 15.

<sup>1206</sup> Children's Court of Victoria, *Royal Commission into Victoria's mental health system: Children's Court of Victoria submission*, p 16.

<sup>1207</sup> Children's Court of Victoria, *Royal Commission into Victoria's mental health system: Children's Court of Victoria submission*, p 17. The NSW Adolescent Community and Court Team (ACCT) is a similar program that places psychologists in Children's Courts to provide mental health assessments for young people coming before the court, and to assist the court to determine eligibility for diversion to community-based mental health services. The ACCT program has been highly successful in diverting young people away from the justice system, with approximately 80% of young people (Aboriginal and non-Aboriginal)

<sup>1198</sup> RCMVHS Interim Report, p 465.

<sup>1199</sup> RCMVHS Final Report, Volume 3, p 141.

<sup>1200</sup> RCMVHS Final Report, Volume 3, p 194.

<sup>1201</sup> RCMVHS Final Report, Volume 3, p 194.

<sup>1202</sup> RCMVHS Final Report, Volume 3, p 413.

### Youth Justice Strategic Plan 2020–2030

The Youth Justice Strategic Plan outlines key actions to improve mental health outcomes for children and young people in the youth justice system. In relation to mental health in custody, these include:

- ensuring that every young person entering custody receives a health and mental health screen within 24 hours of entry (12 hours for Aboriginal young people) and a comprehensive health and mental health assessment within 3 days
- giving young people 24-hour access to primary mental health nursing and access to general practitioner services
- implementing mandatory at-risk assessments within 2 hours of presenting behaviours that indicate a risk of suicide or self-harm
- providing culturally relevant supports through an Aboriginal health worker and a health promotion officer
- delivering specialist mental health responses through the Custodial Forensic Youth Mental Health Service, consisting of a multi-disciplinary team of psychiatrists, psychologists and mental health clinicians operating on site at centres 5 days a week and on call 7 days a week.<sup>1208</sup>

In April 2021, DJCS advised the Commission that these supports are all now being provided.

Non-custodial initiatives include strengthening supports for young people on bail (including links to services to meet their health, wellbeing and mental health needs) and a new assertive outreach and follow-up care service for children and young people who have self-harmed or are at risk of suicide.<sup>1209</sup>

In addition, the Youth Justice Review called for the establishment of a youth forensic mental health precinct and community mental health clinic for young offenders. The Ursula Frayne Centre at Footscray Hospital has now commenced operation and is

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assessed by ACCT practitioners diverted from custody in 2017 (Parliament of New South Wales, *The adequacy of youth diversionary programs in New South Wales*, Committee on Law and Safety, Legislative Assembly, NSW Parliament, 2018, p 96). However, access to the ACCT is mostly only available in metropolitan courts and a recent Parliamentary review recommended expanding the ACCT to all Children's Courts across NSW (recommendation 26: Parliament of New South Wales, *The adequacy of youth diversionary programs in New South Wales*).

<sup>1208</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38.

<sup>1209</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38.

receiving children and young people from Youth Justice. The Community Forensic Youth Mental Health Service has also been established and is delivering supports to young people.<sup>1210</sup> As noted above, in its final report, the RCMHS recommended expanding this service statewide.<sup>1211</sup>

### Improving the mental health of Aboriginal children and young people in the youth justice system

Considering the social and emotional wellbeing of Aboriginal young people allows for a more comprehensive understanding of how various factors in a young person's life may have placed them in contact with the youth justice system. Working from this holistic perspective, Youth Justice support services can recognise the full breadth of Aboriginal children and young people's strengths and needs, and deliver culturally appropriate and safe responses.

Mental health responses for Aboriginal children and young people in the youth justice system cannot be improved without better access to culturally safe mental health support in the community. The RCMHS acknowledged the significant deficiencies in the current Victorian mental health system. With the right resourcing, the reforms recommended in the RCMHS's final report would improve the capacity of Aboriginal communities to support the wellbeing of their

<sup>1210</sup> Several other initiatives to improve mental health outcomes are underway in Victoria. These include *Korin Korin Balit-Djak 2017–2027*, a 10-year framework for improving mental health outcomes for Aboriginal people, under which DHHS (now the Department of Health) will partner with Aboriginal communities to co-design healing, trauma-informed and recovery approaches focused on transgenerational trauma and children and young people in Child Protection and the justice system (DHHS, *Korin Korin Balit-Djak*, p 67) and the *Forensic mental health implementation plan*, which aims to 'expand mental health support for those who are in (or at risk of entering) the criminal justice system, with a focus on preventing offending in the first place.' (DHHS, *Balit Murrup*, p 15). In addition, the Victorian Government has committed to every public secondary school campus having a suitably qualified mental health practitioner to provide direct counselling support to students by 2022 (Department of Education and Training (DET), *Mental health practitioners in secondary schools*, DET website, 2020, accessed 23 February 2021) and is working in partnership with Aboriginal communities to support holistic and healing therapeutic responses for survivors of family violence with specific funding for 'specialist family violence advisors in major mental health and alcohol and other drug (AOD) services to identify and respond to alcohol, drug and mental health issues.' (DHHS, *Balit Murrup*, p 15).

<sup>1211</sup> RCMHS Final Report, Volume 3, p 414.

children and young people, including potentially those in or transitioning from the youth justice system.

Plans to introduce mental health training for Youth Justice community-based staff are positive. This training should be fast-tracked and designed to equip Youth Justice case managers with the ongoing skills needed to identify, understand and respond to the specific trauma and mental health needs of Aboriginal children and young people. Staff should complete this training with a strong understanding of different types of trauma (including intergenerational trauma in Aboriginal communities), the effects of trauma on Aboriginal children and young people and their families, and the connection between trauma, mental ill-health and challenging behaviour.

A holistic understanding of the wellbeing of Aboriginal children and young people requires a recognition of the links between mental ill-health, substance misuse and involvement in the youth justice system. In the following sections, we discuss these links and recommend the establishment of additional healing centres for Aboriginal children and young people, and the expansion of culturally based mentoring programs. These recommendations will improve the mental health of Aboriginal children and young people in the youth justice system.

The experience of custody can be severely detrimental to the mental health of Aboriginal children and young people. In response to the Commission's 2018 joint report with the Victorian Equal Opportunity and Human Rights Commission, *Aboriginal cultural rights in youth justice centres*,<sup>1212</sup> DJCS is developing a social and emotional wellbeing strategy for Aboriginal children and young people in custody. This strategy should be completed and implemented with urgency.

Youth justice custodial facilities are not meeting the mental health treatment needs of Aboriginal children and young people. Significant barriers exist within the current model of care for mental health in youth justice custodial facilities. The model lacks a youth-specific focus, Aboriginal workers, coordinated and integrated service delivery, and transitional support following release from custody.

<sup>1212</sup> Recommendation 3 is that the Department develop a social and emotional wellbeing strategy for Koori children and young people in custody that recognises the fundamental role of culture, community and spirituality in Aboriginal wellbeing: VEOHRC and Commission for Children and Young People, *Aboriginal cultural rights in youth justice centres*, p 3.

The *Our way* vision is for no Aboriginal child or young person to be incarcerated. However, until this vision is realised, youth justice custodial facilities must be safe and meet the wellbeing needs of Aboriginal children and young people. In Chapter 13 'Safe custody', the Commission makes a series of recommendations aimed at improving conditions in youth justice custody for Aboriginal children and young people in order to better support their wellbeing. These include strengthening cultural connections, spaces, services and programs; establishing culturally supportive therapeutic spaces as an alternative to isolation rooms; and fast-tracking plans to equip custodial staff with the training and skills they need to understand and respond to the trauma experienced by Aboriginal children and young people in custody.

In addition, the Commission recommends the establishment of 3 small, home-like custodial facilities for Aboriginal children and young people aged 16 years or above who are sentenced to custody (Recommendation 74). These residences would provide therapeutic, trauma-informed care and be responsive to the needs of children and young people, including their mental health needs.

Resourcing Aboriginal organisations to provide in-reach mental health care for Aboriginal children and young people in youth justice custodial facilities, including the recommended home-like residences, would best support Aboriginal children and young people in custody. In-reach transitional support would also assist Youth Justice workers to build relationships with community organisations and facilitate better referral rates to treatment following custody. Implementation of this recommendation should be coordinated with the government's response to the RCVMS. In addition, the government should sufficiently resource ACCHOs to ensure that they are not over-burdened and that workforce fatigue is minimised.

## Recommendation 45

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That DJCS fast-track plans to introduce mandatory, ongoing mental health training for Youth Justice community staff to enable them to identify, understand and respond to trauma and mental health concerns experienced by Aboriginal children and young people.

## Recommendation 46

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That the Victorian Government resource Aboriginal organisations to provide in-reach mental health support for Aboriginal children and young people in youth justice custody, and facilitate transitional and post-release mental health treatment for Aboriginal children and young people.

## 9.2 Substance use

### Finding 22

#### Most Aboriginal children and young people in contact with the youth justice system experience substance misuse.

Substance misuse is a key risk factor for offending behaviour and entering the youth justice system.<sup>1213</sup> The 2019 Youth Justice survey indicates that almost all Aboriginal children and young people under Youth Justice supervision (both in custody and in the community) on 31 December 2019 had a history of alcohol and/or drug misuse (94%) and that a high proportion had offended while under the influence (88%).<sup>1214</sup>

Participants at every Taskforce regional forum raised substance use as an issue requiring attention in their region. Many Aboriginal children and young people (43%, n = 40) spoke to us about their challenges with substance misuse, including intergenerational drug and alcohol misuse, early use of substances and self-medicating with drugs and alcohol to treat unresolved trauma. These issues are explored below.

#### Intergenerational drug and alcohol misuse

*Drugs were always around when I was younger – at home, everywhere I went.*  
– Jamil, 16

Substance use at home and in family groups increases the likelihood of young people misusing alcohol and

other drugs.<sup>1215</sup> Twenty-two per cent of children and young people consulted for the inquiry (n = 20) referred to the intergenerational use of alcohol and other drugs. Thirty per cent (n = 28) identified drug abuse as a localised issue in their community.

*My mum and dad were drug addicts. My mum still is. My dad's in jail now. I don't want to say this, but he needed it. He always walked around all droopy. He's not sleepy anymore.*  
– Reggie, 11

*Dad wasn't around... mum was on the pension and had a drug habit.* – Daniel, 17

*When I was 12, dad asked if I wanted to move with him. I said no because I knew he would relapse again. That crushed him... I met mum for the first time when I was 15. She's usually drunk or stoned.* – Joel, 22

*Dad is like an everyday drinker, and cos he was like pretty much always drunk, and mum and dad would always argue, and dad would get abusive and all that, and mum would call the cops, and dad would act like nothing happened. That was like every week.* – Dean, 15

*My stepdad would go out and you didn't know if he would come back high or drunk.* – Pakap, 16

<sup>1213</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 160.

<sup>1214</sup> DJCS, *Young people involved with Youth Justice in 2019*.

<sup>1215</sup> AC Reichelt, JC Collett, O Landmann and KT Hallam, 'Assessing the impacts of daily cannabis versus alcohol and methamphetamines on young Australians in youth AOD treatment', *BMC Psychiatry*, 2019, 19(416):1–11.

## 9.2 Substance use

*Mum gave me my first drugs – ice and heroin.  
– Dilynne, 17*

*My dad got arrested. He was doing drugs and stuff and now he's in and out of jail. – Blair, 17*

*I think a lot of mothers do alcohol and drugs and don't worry about their kids. – Tanaya, 14*

Aboriginal workers also referred to intergenerational substance use.

*A couple of the kids have lost parents to heroin overdoses. Ice, heroin, speed are the main issues here. Most of their parents are using, and they're exposed to that and it's not going to take long for them to pick up on it. – Aboriginal youth worker*

Exposure to alcohol and drug use by family members, often linked to intergenerational trauma, can lead to Aboriginal children and young people using substances at an early age. This is discussed in the following section.

### Early use of substances

*I started using drugs at 11 and started getting into trouble. When I was 12 to 15, I really needed to be linked into some support services but there wasn't any for kids under 15. I didn't have any support services until I was like 15, 16. – Karl, 21*

Age of first substance use is a key determining factor for progression to heavy and problematic use.<sup>1216</sup> Early drug and alcohol use can also negatively affect neurological development and contribute to psychological and behavioural changes that can persist

<sup>1216</sup> Reichelt et al., 'Assessing the impacts of daily cannabis versus alcohol and methamphetamines on young Australians in youth AOD treatment'.

throughout a young person's life.<sup>1217</sup> In a 2017 study conducted by the Healing Foundation, Aboriginal young people raised concerns about early alcohol and drug use in their communities, and the impact that abusing drugs and alcohol at a young age has on the development of future generations.<sup>1218</sup>

Of the children and young people who spoke to the Commission about substance use (n = 40), 33% (n = 13) told us that their drug and alcohol misuse began before the age of 16 – the age when many treatment and addiction services for young people begin.

*I started using drugs when I was like 13 or 14, and got in really hard when I was like 15.  
– Rory, 20*

*At 12 to 13 I started smoking meth and drinking and smoking yarrdi [marijuana] and everything.  
– Jack, 19*

*In Year 8 I was with my girlfriend and doing bongs and getting smashed. – Karrwin, 20*

**Q:** When did you first use drugs?  
**A:** Marijuana at 10. Popping pills at 13. Smoking ice at 16. – Zeke, 18

*At the moment I've been on the weed. I've been smoking that since I was 9 and I'm trying to get off that. I was on ice when I was 15 but my missus told me we were having a baby, so I walked out the front and threw the ice pipe in the air and it shattered and I was giving it up, but with cannabis it was different. – Patrick, 19*

*Been smoking ice since I was 12, plus Ritalin.  
– Harley, 19*

<sup>1217</sup> N Chadi, SM Bagley and SE Hadland, 'Addressing adolescents' and young adults' substance use disorders', *Medical Clinics of North America*, 2018, 102(4):603–620.

<sup>1218</sup> Healing Foundation, *Our healing our way: National Youth Healing Forum Report*, Healing Foundation, Queensland, 2017, p 17.

*I know a lot of young fellas, younger than me, that shove needles up their arm. – James, 18*

*Some of my little mates, I want them to stop smoking bongs and I want them to get better. – Dean, 15*

Workers told the Commission about the lack of support for substance use among younger age groups.

*The biggest issue that we have right now impacting our communities is that young people think drug life and alcohol is normal. We offer D&A support through YSAS [Youth Support + Advocacy Service], VAHS [Victorian Aboriginal Health Service] or any mainstream service, but options are limited for the younger ones, especially detox and rehab. – Aboriginal youth worker*

*There's nowhere you can heal on Country around here. Baroona [healing centre] is 14 years plus and the problem is the access and the age. We've got kids well below 14, and more broadly, how do we support their families as well? – Aboriginal youth worker*

## Links between substance misuse, trauma and mental health

*I started drinking when I was 13 or 14 because I had a hard life with just too much on my mind. – Pakap, 16*

The reasons that children and young people misuse substances are 'often complicated and interrelated'.<sup>1219</sup> Young people with a history of mental health issues are

<sup>1219</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 161. See also Reichelt et al., 'Assessing the impacts of daily cannabis versus alcohol and methamphetamines on young Australians in youth AOD treatment'; M Whitesell, A Bachand, J Peel and M Brown, 'Familial, social, and individual factors contributing to risk for adolescent substance use', *Journal of Addiction*, 2013, 579310.

more likely to misuse alcohol and other drugs.<sup>1220</sup> According to the RCMHS:

*Alcohol and other drug misuse can be a cause or a consequence of mental illness. The two can also mutually influence each other – with use of alcohol or other drugs maintaining or exacerbating poor mental health and mental illness or the other way around.*<sup>1221</sup>

Research also suggests a connection between vulnerable groups of young people, such as those who identify as LGBTQI+, and greater severity of substance use and subsequent related harm.<sup>1222</sup>

Children and young people in the youth justice system, and Aboriginal children and young people in particular, have 'disproportionate levels of trauma'.<sup>1223</sup> Alcohol and drug misuse are often psychological coping mechanisms for traumatic life events.<sup>1224</sup> In the 2017 Healing Foundation study, Aboriginal young people discussed 'a high incidence of people self-medicating to deal with their unresolved trauma and a general lack of support and services available to respond' in their communities.<sup>1225</sup> They also identified trauma as a key contributing factor to addiction, incarceration and recidivism.<sup>1226</sup> Trauma is also discussed in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people'.

Some Aboriginal children and young people who spoke to the Commission referred to the links between substance misuse, trauma and mental ill-health.

*I was inside when [my grandmother] got sick, so I couldn't go see her and she passed away... The funeral was very emotional. A lot of drinking, drugs. – Kirrae, 22*

*I went home and basically just got on the drugs. Home and family wasn't a good time. – Felix, 21*

<sup>1220</sup> RCMHS Final Report, Volume 3, p 285.

<sup>1221</sup> RCMHS Interim Report, p 35.

<sup>1222</sup> M Wishart, C Davis, A Pavlis and KT Hallam, 'Increased mental health and psychosocial risks in LGBQ youth accessing Australian youth AOD services', *Journal of LGBT Youth*, 2020, 17(3):331–349.

<sup>1223</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 49.

<sup>1224</sup> RCMHS Final Report, Volume 3, p 292.

<sup>1225</sup> Healing Foundation, *Our healing our way*, p 11.

<sup>1226</sup> Healing Foundation, *Our healing our way*, p 11.

*I've been on medication from the age of 13. After I started smoking bongos, I went off the medication and been off the medication since. Marijuana keeps me mellow. When I'm sober, the anger is really there. Without it, I'm more of an angry person than I am now. I have anger issues real bad. – Keegan, 15*

*Year 6 or 7 I started smoking bongos, drinking, smoking ciggies. I missed my family a lot, being away from mum and dad. – Aaron, 16*

*Nothing really addresses the drug issues. We need counselling and stuff. I reckon we need talk sessions addressing the underlying issues that make you use drugs, like your upbringing and the things that you are trying to run away from. I want to talk to people who have been through it and that can actually help you. – Rory, 20*

*Earlier this year they tested me, and I had ice in my system. I OD'd on Xanax. I was having a tough time. I went cold turkey a week later. Took me 2 months to get off ice. – Harley, 19*

Participants at Taskforce regional forums and workers also highlighted the intrinsic links between substance misuse, trauma, grief and mental health, and the need for integrated services and support.

*A lack of grief support and mental health support seems to lead to substance abuse. Substance use is a coping mechanism. – Western Metropolitan regional forum*

*Most young people have mental health and alcohol and drug issues at once. – Barwon South West (Geelong) regional forum*

*Young people are self-medicating for mental health with alcohol and drugs. We need different detox options – home-based and culturally based. We need trauma support, treating the causes not the symptoms – grief, not drugs; trauma, not criminal behaviours. – Eastern Metropolitan regional forum*

*Young people have unresolved trauma, including intergenerational trauma. They are disengaged from mainstream education, and that leads to substance use. – Northern Metropolitan regional forum*

*Mental health and drug and alcohol need to come together, not be siloed. – Grampians (Ballarat) regional forum*

*If they're in there because of drugs you need to look at treatments rather than 'here's another pill' to deal with it... you need to look at the root causes. – Aboriginal youth worker*

## Alcohol and other drug support in the community

Early intervention and harm reduction approaches underpin the Victorian Government's alcohol and other drug (AOD) program guidelines.<sup>1227</sup> However, criminalised responses to drug use and underage alcohol misuse in Victoria are prevalent, can result in a range of negative outcomes, and can inhibit a young person from seeking early support.<sup>1228</sup> The 2018 Victorian parliamentary *Inquiry into drug law reform* found that young people were disproportionately targeted by criminalised drug approaches,<sup>1229</sup> even though 'many young people age or mature out of drug-taking and continue to lead productive lives'.<sup>1230</sup>

<sup>1227</sup> Department of Health and Human Services (DHHS), *Alcohol and other drugs program guidelines, Part 1: overview*, DHHS, Victorian Government, 2018, accessed 18 August 2020.

<sup>1228</sup> Parliament of Victoria, *Inquiry into drug law reform*, Law Reform, Road and Community Safety Committee, Parliament of Victoria, 2018, pp 62–63.

<sup>1229</sup> Parliament of Victoria, *Inquiry into drug law reform*, p 160.

<sup>1230</sup> Parliament of Victoria, *Inquiry into drug law reform*, p 159.



VACCHO's 2015 study into substance use in Victoria's Aboriginal communities concluded that 'community stigmatisation of users' discouraged substance users from accessing treatment,<sup>1231</sup> and that it was problematic for 'public AOD discussion to focus solely upon policing, drug prohibition and community protection'.<sup>1232</sup> The report emphasised that for AOD treatment to be successful for Aboriginal people, it must:

*fundamentally shift the frame of perspective from one focused upon fear and anxiety and a punitive approach regarding psychoactive substance use to a primary health care frame including strategies focused on education, prevention, case management, harm reduction and long-term healing in a more holistic and comprehensive manner.*<sup>1233</sup>

In its submission to the 2018 parliamentary inquiry, the Windana Drug and Alcohol Recovery Centre advised that diverting Aboriginal people from custody into community-based treatment 'saves over \$200,000 per individual through reduced mortality and improved health outcomes, as well as a reduction in prison demand'.<sup>1234</sup> Global research reiterates that community-based treatment services substantially improve health outcomes for young people while also reducing their contact with the justice system.<sup>1235</sup>

### Youth-specific alcohol and other drug services in Victoria

The Youth Support + Advocacy Service (YSAS) is Victoria's leading youth AOD community service organisation.<sup>1236</sup> YSAS provides support and intervention for young people experiencing 'problems associated with substance use, mental health and behaviours such as offending and self-harm'.<sup>1237</sup>

<sup>1231</sup> C Halacas, B Genat and K Barney, "Not everyone has that support": an evaluation of a series of harm reduction and AOD awareness activities within Victorian Aboriginal communities, VACCHO, 2015, p 4.

<sup>1232</sup> Halacas et al., "Not everyone has that support", p 4.

<sup>1233</sup> Halacas et al., "Not everyone has that support", p 6.

<sup>1234</sup> Parliament of Victoria, *Inquiry into drug law reform*, p 83.

<sup>1235</sup> Borschmann et al., 'The health of adolescents in detention: a global scoping review', *The Lancet Public Health*, 2020, 5(2):E114–E126. See also L Chassin, A Mansion, B Nichter and S Losoya, *To decrease juvenile offending, make effective drug treatment a priority*, MacArthur Foundation, Chicago, 2014.

<sup>1236</sup> Youth Support and Advocacy Service (YSAS), *About YSAS*, YSAS website, 2020, accessed 30 July 2020.

<sup>1237</sup> Youth Support and Advocacy Service (YSAS), *Our approach*, YSAS website, 2020, accessed 30 July 2020.

Most youth-specific AOD services in Victoria are voluntary.<sup>1238</sup> Young people aged 12 to 25 years can engage in public AOD support services in Victoria through self-referral, or they can be referred by others (including Child Protection and Youth Justice staff), or required to participate through a Children's Court order. AOD services can include counselling, residential rehabilitation and detoxification programs, home-based withdrawal support, youth outreach services, group work, day programs and case management.

The Youth Justice Review found that there were significant challenges with Victoria's residential AOD system, including:

- few youth-specific programs
- prohibitive wait times for young people to get a bed in a residential AOD facility
- many young people leaving residential AOD centres early, or finding it difficult to cope with the physical and mental effects of detoxification
- limited support in the community for young people post-detoxification to abstain from drug and alcohol misuse.<sup>1239</sup>

Currently there are 61 publicly funded, youth-specific residential AOD beds in Victoria (see Table 9.2). Most are located in metropolitan Melbourne. There are currently 8 beds in regional areas (4 in Ballarat and 4 in Geelong), all of which are short-term withdrawal services.<sup>1240</sup>

**Table 9.2** Publicly funded youth-specific residential alcohol and other drug beds

Type of service	Length of stay	Number
Residential withdrawal	Short term (average 2 weeks)	34
Residential rehabilitation	Long term	15*
Koori-specific rehabilitation	Long term	12

\*A new 20-bed facility is currently in development in the Latrobe Valley and set to open in 2021.

<sup>1238</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 44.

<sup>1239</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 44.

<sup>1240</sup> Information provided to the Commission by YSAS General Manager – Residential Services on 23 August 2020.

## 9.2 Substance use

### Aboriginal-specific alcohol and other drug services in Victoria

VACCHO is the peak body for Aboriginal health in Victoria. Through its member organisations, VACCHO provides AOD and mental health programs that address both societal and cultural determinants of health (such as housing and family support) and clinical services (such as counselling, psychology and psychiatry).<sup>1241</sup>

The Victorian Government funds Aboriginal AOD workers to operate from Aboriginal community-controlled health organisations and ACCOs, which support Aboriginal community members and place a particular focus on 'reducing the uptake of alcohol and other drugs by young people'.<sup>1242</sup>

The Bunjilwarra Koori Youth Alcohol and Drug Healing Service (Bunjilwarra) is a 12-bed residential rehabilitation service for Aboriginal young people aged 16 to 25 years.<sup>1243</sup> We discuss Bunjilwarra in more detail below.

### The experiences of Aboriginal children and young people and their families

Many young people and their family members told the Commission that they wanted support with AOD issues. Some referred to delays in getting the help they needed.

*I don't want everyone to know that I'm smoking drugs. I'm trying my hardest to give it up, but I just need some help to do it. – Indiah, 20*

*Using drugs has been tearing me away from my kids and my family. I need support to stay off drugs. My family hates to see me when I'm cooked. – Watjpa, 21*

*What I needed was probably proper drug and alcohol help. I remember when I was in resi, I was basically jumping up and down for help. They waited until it got too bad and I got kicked out of there. – Summer, 18*

*We wanted to get him to rehab but no one helped us. – Mum*

They spoke about the importance of culture and wellbeing in the provision of AOD support.

*Link kids in to things that make them feel good aside from drugs, like a sporting club, but take them there and make them do it. Most kids get out and just do the same shit because they've got nothing else to do... I want to give it up one day, but I need something that will hold me for now. – Rory, 20*

*There needs to be a rehab for young people here. We need culture and strength – a fire pit for Elders to sit and yarn, instead of kids running in the streets. – Nan*

### What we heard from the regions

Participants at the Taskforce regional forums highlighted specific issues requiring attention in relation to AOD support in the community, including the need for culturally specific services, and services for Aboriginal children and young people under 16 years.

*There is a lack of detox options. We need support to address alcohol and other drug issues and supported access to Aboriginal services. – Barwon South West (Geelong) regional forum*

*There are no culturally specific drug and alcohol rehabs for women. – Northern Metropolitan regional forum*

<sup>1241</sup> Victorian Aboriginal Community Controlled Health Organisation (VACCHO), [Home page](#), VACCHO website, 2020, accessed 14 August 2020.

<sup>1242</sup> Department of Health and Human Services (DHHS), [Services for Aboriginal people: about Aboriginal alcohol and other drug treatment services](#), DHHS website, 2020, accessed 14 August 2020.

<sup>1243</sup> Bunjilwarra, [About us](#), Bunjilwarra website, 2020, accessed 14 August 2020.

*We need quicker AOD and mental health supports, not sitting on waiting lists. – Southern Metropolitan regional forum*

*Most programs are for 16 year olds plus, but the substance use starts much earlier. – Hume (Shepparton) regional forum*

*Forcing a young person to engage with a service when they aren't ready doesn't work, such as drug rehab when they aren't ready to stop using drugs. – Hume (Wodonga) regional forum*

*We have to go beyond the 'no'. If a program is refused by a young person, we need to work harder to engage with the young person in order to get a 'yes'. – Eastern Metropolitan regional forum*

## **Youth Justice community supervision and alcohol and other drug support**

Youth Justice case managers are responsible for 'responding to AOD needs when identified at any time during the supervision of a young person' including needs that are formally identified during screening and assessment and those which are informally disclosed by young people.<sup>1244</sup> Case managers must also support young people to attend and engage in AOD treatment with AOD service providers. This includes:

- working collaboratively with the AOD service provider in relation to the young person's attendance and progress in treatment
- including the AOD service provider in regular care team meetings
- working with the young person and their care team if the young person has disengaged from AOD assessment or treatment in order to resolve/reduce responsibility barriers to enable reengagement

<sup>1244</sup> Department of Justice and Community Safety (DJCS), *Referral to community alcohol and drug assessment and treatment: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 24 August 2020, p 4.

- providing referrals as needed for additional support, such as accommodation, mental health services or vocational opportunities
- seeking strategies from the AOD service provider to support the young person's AOD treatment and embedding any recommendations into their case plan.<sup>1245</sup>

Our evidence indicates that these practice requirements are not consistently adhered to. In the Taskforce case file review, 82% of the cohort were identified as using alcohol and/or drugs. More than half (54%) had accessed drug treatment services and only 13% had accessed a detox facility.

The lack of referral and access to AOD support services was also evident during the Taskforce case planning sessions. Over half (57%) of the sessions resulted in new actions concerning AOD support for children and young people, many of whom were known to have had AOD issues for some time.<sup>1246</sup>

In our consultations with Youth Justice workers, we heard that one reason for low referral rates is the lack of available services to provide AOD support for children and young people, particularly for girls and young women, and children under the age of 16.

*It's been a bugbear of ours. Young women we find are so under-resourced with access to rehab programs. We can get them into detox, but the issue is when they need long-term rehab. There is nothing specifically for girls, nothing. – Youth Justice worker*

*What do we do with a 13 year old who has been using drugs? We can't get them in anywhere. We can see the pathway, and we just think, 'We hope they can survive through this part till we can give them something'. Youth Justice can connect them with healing programs, but there's nothing specific. – Youth Justice worker*

<sup>1245</sup> DJCS, *Referral to community alcohol and drug assessment and treatment*, p 6.

<sup>1246</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

## Alcohol and other drug support in custody

*The alcohol and drug issue is huge, and we have been able to demonstrate this via data collection since Orygen started working in youth custody. Of the young people that are booked into appointments with me, all of them have AOD issues. I do not think that the youth justice system is currently equipped to manage these issues.*  
 – Lead Consultant Forensic Psychiatrist, Orygen

The number of children and young people entering youth justice custody with substance dependencies is increasing.<sup>1247</sup>

As with mental health management and treatment for children and young people in custody, Orygen’s lead consultant forensic psychiatrist identified a number of barriers to the provision of effective AOD support in custody. One barrier is responding to AOD needs in isolation from mental health:

*AOD is an adaptive measure these young people are using to survive in the world. You can’t treat it in isolation. It shouldn’t be tied to offending. It’s tied to their mental health complications and should be treated as such.* – Lead Consultant Forensic Psychiatrist, Orygen

Another is the approach to detoxification and withdrawal in youth justice custody, which has been modelled on the adult system, and lacks a youth-specific focus. Substance withdrawal for children and young people in youth justice custody is managed by Correct Care Australasia, the private organisation responsible for the Primary Mental Health service.

*They’ve modelled it off of the adult system. They use these tick box existing scales from the adult sector, which aren’t youth-informed or culturally informed. This can lead to young people being placed on rapid and harsh withdrawal scales and then that’s it, it just ends. There’s no automatic referral on to Orygen to assess the substance use or related mental health issues further. And even Orygen does not have funding for specialist alcohol and drug clinicians or psychiatrists.*  
 – Lead Consultant Forensic Psychiatrist, Orygen

The Youth Justice Review also identified that young people in custody, particularly on remand, were often detoxing ‘but not via a program that provides appropriate support’.<sup>1248</sup> It went on to emphasise that ‘a proper detox response in custody is essential to ensure effective treatment for the young person and the safety of staff’.<sup>1249</sup>

In terms of post-release support, Youth Justice case managers are required to provide a referral to a community AOD provider to assess a young person in custody prior to their release, as part of planning for parole or bail.<sup>1250</sup> The Youth Justice case manager must ensure collaboration between clinicians who have delivered custodial AOD interventions and the community AOD provider.<sup>1251</sup> It is not clear that this transitional and post-release AOD support is being consistently provided to Aboriginal children and young people.

Aboriginal children and young people in the youth justice system need better access to community AOD support services. This support needs to be culturally informed by Aboriginal principles of social and emotional wellbeing. Healing centres show how this can be achieved.

<sup>1247</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 160.

<sup>1248</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 43.

<sup>1249</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, pp 43–44.

<sup>1250</sup> DJCS, *Referral to community alcohol and drug assessment and treatment*, p 7.

<sup>1251</sup> DJCS, *Referral to community alcohol and drug assessment and treatment*, p 7.

## Healing centres

Much like the Aboriginal concept of social and emotional wellbeing, many Aboriginal people have their own understanding of healing. According to *Balit Murrup*:

*Healing is a culturally informed therapeutic approach to promote Aboriginal social and emotional wellbeing... Healing involves the application of existing cultural knowledge to address direct and cross-generational trauma using traditional and contemporary practices.*<sup>1252</sup>

Every Taskforce regional forum highlighted the centrality of culture to healing.

*Culture is healing and healing is culture.*  
– Barwon South West (Geelong) regional forum

*Young people must be connected to their culture, Country and community – essential in improving their sense of belonging and social and emotional wellbeing. Cultural connection provides young people with safety and protection.* – Loddon Mallee (Mildura) regional forum

*Taking young people out bush, on to Country, engages the young people well – being able to share that knowledge of land with young people.*  
– Hume (Wodonga) regional forum

Participants at the Ballarat forum referred to the need to ‘use cultural connections for the healing journey’, to connect children and young people to nature and Country, and to develop life skills for young people, with a focus on empowerment. Western Metropolitan and Southern Metropolitan regions advocated the use of bush settings for programs and services. Seven regional forums identified the need for healing centres for children and young people.<sup>1253</sup>

<sup>1252</sup> DHHS, *Balit Murrup*, p 31. See also C Cunneen, ‘Sentencing, punishment and Indigenous people in Australia’, *Journal of Global Indigeneity*, 2018, 3(1).

<sup>1253</sup> Grampians (Ballarat), Loddon Mallee (Bendigo and Mildura), Gippsland (Morwell), Barwon South West (Warrnambool), Hume (Shepparton) and Western Metropolitan.

## Bunjilwarra Koori Youth Alcohol and Drug Healing Service

*This place is awesome. There’s a man who comes and does men’s business with us, making didgeridoos. It’s rehabilitation. It’s changing me. I’m finding a better version of myself and I didn’t even know I had it in me.*  
– Malkar, 19

Bunjilwarra is a 12-bed residential healing centre for Aboriginal young people (male and female) aged 16 to 25 years, managed by YSAS and the Victorian Aboriginal Health Service (VAHS) in partnership with local health services. Bunjilwarra operates under a strengths-based service model that is designed to build a young person’s knowledge of and connection to culture.<sup>1254</sup> At Bunjilwarra, ‘healing is a process that respectfully turns hurt from the past into something positive for individuals, for community and for future generations’.<sup>1255</sup>

Bunjilwarra is guided by practice principles that include:

- including family, community and connection to Country in a holistic Aboriginal approach
- addressing the underlying causes of alcohol and drug use
- working at the intersection of western and traditional understandings of trauma and wellbeing
- acknowledging the identity-forming nature of young adulthood
- embedding positive role modelling and routine
- incorporating a positive gendered approach to women’s and men’s business.<sup>1256</sup>

Young people can be referred to Bunjilwarra by their family members or workers, including Youth Justice workers, but must be willing to participate in the program voluntarily.

Many young people and their families referred to highly positive experiences at Bunjilwarra.

<sup>1254</sup> DHHS, *Services for Aboriginal people*.

<sup>1255</sup> Bunjilwarra, *Healing*, Bunjilwarra website, 2020, accessed 24 August 2020.

<sup>1256</sup> Bunjilwarra, *Healing*.

## 9.2 Substance use

*Bunjilwarra has changed stuff for me. I've realised that it's better to be clean than on drugs. Bunjilwarra helped me do that. I spent 3 months there. Really enjoyed all the culture stuff out there. I had a great time making clap sticks and didge and spears. You just know more when you're clean and you're more aware of things. When you're on drugs you don't really know much. – Brad, 18*

*Bunjilwarra is beautiful. It's a safe place. The workers all want to see us go off to a better place, and a brighter future. I'm hopefully going to stay for the 3 months, and then DHHS have no excuse to keep my babies, and I will get them back and we'll have a new start. If it was me 12 months ago, I wouldn't see myself here, I would've thought I'd be dead. – Tiana, 25*

*It's culturally supportive. We made clap sticks, went to the men's group where they talked about health. Stories that I hadn't heard. – Felix, 21*

*I love it here. I think it's great. I really like the parenting. They give us a bedtime and tell us when we're doing something. And we have a set day for chores. I like all this. – Hayleigh, 21*

*Bunjilwarra workers are good. They're not here just to get paid. They feel the pain that we feel too. They get attached to all the kids that come here. There are not many places I'd like to stay – I'm usually a homesick person. But they must be good to make me want to stay here. – Seth, 16*

*Mental health and drug and alcohol are the issues for [young person]... He wants to go back to Bunjilwarra. It's like a family there. – Mum*

Bunjilwarra's success was also evident throughout the Taskforce. Over half (58%) of the drug and alcohol actions arising from Taskforce case planning sessions

involved referrals to Bunjilwarra.<sup>1257</sup> This highlights the need for additional healing centres in Victoria (discussed below).

Workers at Bunjilwarra told the Commission about the complex needs of the young people who access the service, and how they work to meet those needs.

*When you look at a sample of referrals, you can see the life experience and traumatic events the young people experience, and the barriers around life opportunities – education and work, racism, rejection, abandonment, PTSD, relationships, peer networks, young men with the absence of role modelling. We hold all of that. When you look at it – what they have been through – it's a short stay to address all those issues. Trying to put all those things in 3 months is not a long time. – Program Coordinator, Bunjilwarra*

*We get some young people who look like they are the most difficult and complex cases on paper. Some clinicians would balk at them. This is where I use the cultural element. Mostly, I will know where they come from across the state. I get on the phone, I talk to these young people and I ask them what happened. I listen to what they say, give a response in a respectful way and they calm down. I wouldn't put anyone out without good reason. – Elder, Bunjilwarra*

Bunjilwarra workers also referred to the benefits of healing centres as an alternative to custody, and identified the need for better resourcing and additional healing centres, and for expansion of Bunjilwarra's services to support young people transitioning back into the community.

<sup>1257</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

*There are so many young people that come here on the back of involvement in the youth justice system. Everything points to keeping them out through pathways that are resourced enough. When they are in court they are sent to custody. After that they send the referral from there to us. Why don't we stop that? Why don't we give them the option to be sent straight to Bunjilwarra? We experience the highest dropout rate after they've been sent to custody. – Elder, Bunjilwarra*

*We need 2 more Bunjilwarras to meet the need – one in Bendigo, to capture that cohort way out west to Mildura. There are at least half a dozen co-ops from Melbourne to Swan Hill to Mildura. And we need one for younger females. – Elder, Bunjilwarra*

*Going back home – that transition is difficult due to a lack of services and things outside. We have talked about a stage 4 of Bunjilwarra – a lead tenant-type arrangement with support. They'd have to be training or studying. For that we need a full-time dedicated vocational worker to coordinate work and study, monitor improvements and make partnerships. – Program Coordinator, Bunjilwarra.<sup>1258</sup>*

Other workers highlighted the challenge of girls and young women accessing Bunjilwarra.

*When you're dealing with a cohort of young girls, who are vulnerable, we cannot get them into rehab, because what's available, age locks them out. Even if they're on the verge of turning 17, the only avenue is Bunjilwarra. But because the cohort goes up to 25, with so many complexities, they're not accepted because of their vulnerabilities. It's also mixed. That's a real issue for us. We need a program for girls under 17, and girls only. The need is up to the age of 20. – Youth Justice worker*

<sup>1258</sup> See also the discussion of youth foyers in Chapter 8.3 'Housing and homelessness'.

## Baroona Youth Healing Place

The Baroona Youth Healing Place (Baroona) is a healing centre near Echuca for Aboriginal young men aged 14 to 22 years who have already completed a detoxification process at an approved withdrawal unit.<sup>1259</sup> Baroona is situated in a farmhouse and can accommodate up to 12 young men at a time.<sup>1260</sup> Baroona accepts young people under a court order and most of its referrals are from Youth Justice.<sup>1261</sup> However, it cannot accept young people who are deemed to be a danger to themselves or other young people (for example, those with a history of sexual or violent offending behaviour).<sup>1262</sup>

With stays ranging from 4 to 16 weeks, the program aims to reduce substance misuse among Aboriginal young people 'by identifying their strengths, networks, cultural identity and sense of belonging' in a cultural healing environment.<sup>1263</sup> Baroona is guided by practice principles that include:

- respecting the individual needs of participants
- providing holistic treatment and care to all participants
- promoting the participants' connections to family, community and culture.<sup>1264</sup>

The Commission spoke to the acting CEO of Njernda Aboriginal Corporation – the organisation that runs Baroona – about the strengths of the program. These include the cultural work performed by Elders, the involvement of participants in the local community and Baroona's home-like environment.

<sup>1259</sup> Njernda Aboriginal Corporation, *Baroona Healing Centre*, Njernda website, 2020, accessed 20 August 2020.

<sup>1260</sup> Njernda Aboriginal Corporation, *Baroona Youth Healing Place model of care* [PDF], 2015, accessed 20 August 2020, p 3.

<sup>1261</sup> Njernda Aboriginal Corporation, *Baroona Youth Healing Service model of care*, p 19.

<sup>1262</sup> Njernda Aboriginal Corporation, *Baroona Youth Healing Service model of care*, p 6.

<sup>1263</sup> Njernda Aboriginal Corporation, *Baroona Healing Centre*.

<sup>1264</sup> Njernda Aboriginal Corporation, *Baroona Youth Healing Service model of care*, p 4.

*We have Elders who work there and have a lot of knowledge of the community and have authority when speaking to the boys. And the boys respect them and listen. That's really our strength – the cultural knowledge... Another strength is that we involve the boys in all of our community events. This community doesn't treat those boys like they're just at Baroona. We take them into our community no matter where they are from, and that's a strength too, because these boys come in and they're off Country and that can be a real challenge. The community just accepts them and takes them in and that's really awesome. – Acting CEO, Njernda Aboriginal Corporation*

*The great thing about it being a house is that we try to run it like a home. These boys need a home, and this might be the only home that they actually get. This is a home for them while they're here. We all know that young people thrive in a healthy home, so we try to provide that, which is something different about Baroona, because I don't know anywhere else that is a home. – Acting CEO, Njernda Aboriginal Corporation*

The acting CEO also identified several challenges, including conflicting funding sources and catering to a large age range in a single facility.

*We have different funding bodies telling us they want different things. With 3 separate funding sources and bodies telling us what they want, we lose our self-determination... Originally Baroona was 13 to 24 [years], then DHHS told us we're not allowed to have young people over 18 anymore in the one facility with young people under 18. The over-18s were our highest intake. – Acting CEO, Njernda Aboriginal Corporation*

*Baroona is a 3-bedroom farmhouse. It's not a centre. We're expected to take 12 high-risk young men, that's our KPI [Key Performance Indicator]. We're meant to have 9 at all times. Twelve young men in a 3-bedroom house is not practical. In a normal house DHHS would call that overcrowded, so we've argued that we need an actual facility to run this. – Acting CEO, Njernda Aboriginal Corporation*

Under *Burra Lotjpa Dunguludja*, there is currently an action in progress to 'develop a residential bail support and therapeutic program for Aboriginal young people that builds upon the Baroona Healing Place model'.<sup>1265</sup> This includes program development and expanding the Baroona infrastructure to support more young people with the creation of a new centre.<sup>1266</sup>

### International healing centres

Healing centres and programs designed and managed by Indigenous communities have also shown success internationally.<sup>1267</sup> The 2018 *He Ara Oranga: inquiry into mental health and addiction* in New Zealand found that for Māori people, there was a preference for a community-based hub for addiction treatment grounded in cultural supports over hospital and psychiatric treatment.<sup>1268</sup> It also found that community-controlled Māori health services 'have made substantial gains in reducing the fragmentation [of mental health and addiction services] by forming community collectives that provide front-line mental health functions including mental health assessment, triage, early intervention, respite care and ongoing support'.<sup>1269</sup>

The Canadian Urban Native Youth Association offers the Young Bears Lodge, a culturally based 5-bed residential facility for Indigenous children and young people aged 13 to 18 years who need support to heal

<sup>1265</sup> Victorian Aboriginal Justice Agreement, *Residential bail support for Aboriginal young people*, Victorian Aboriginal Justice Agreement website, 2020, accessed 13 July 2020.

<sup>1266</sup> Victorian Aboriginal Justice Agreement, *Residential bail support for Aboriginal young people*.

<sup>1267</sup> J McKendrick et al., *Aboriginal and Torres Strait Islander healing programs: a literature review* [PDF], Healing Foundation, 2017, pp 2, 24–40.

<sup>1268</sup> New Zealand Government, *He Ara Oranga: report of the government inquiry into mental health and addiction*, New Zealand Government, 2018, p 84.

<sup>1269</sup> New Zealand Government, *He Ara Oranga*, p 84.



from alcohol and/or drug abuse issues.<sup>1270</sup> Young people can stay at the home for 4 months, during which they have access to self-paced education programs, which include life skills such as obtaining a driver's licence.<sup>1271</sup>

## Current Victorian alcohol and other drug initiatives

The Youth Justice Strategic Plan outlines key actions to improve alcohol and other drug treatment and support for children and young people in the youth justice system. These include:

- maximising supports available in custody and on remand by expanding new and non-offence specific programs, including those that cover alcohol and drug issues and alcohol and drug treatment readiness support
- referring and supporting young people to access outreach, withdrawal services, supported accommodation services and residential rehabilitation
- increasing regional support through the development of a new 20-bed youth residential rehabilitation facility being developed in Traralgon. This will provide 24-hour services to young people aged 16 to 21 years experiencing problematic substance use, and will support behavioural change through social and life skills development, relapse prevention, individual counselling and group work.<sup>1272</sup>

As mental health and drug and alcohol misuse issues are often inextricably interlinked, many of the mental health initiatives outlined above are also relevant here.

Other Victorian initiatives for alcohol and drug treatment are also underway.

- Culturally appropriate Aboriginal rehabilitation programs are being developed to reduce recidivism that 'have a focus on cultural strengthening, healing, family violence, parenting and women's programs'. The 2016–17 Victorian Budget committed \$2.5 million to support this.<sup>1273</sup>

- Under *Balit Murrup*, 34 Aboriginal AOD positions were funded between 2017–18 and 2019–20 to support Aboriginal Victorians facing alcohol and other drug addiction.<sup>1274</sup>
- The Aboriginal Metropolitan Ice Partnerships initiative provides assertive outreach to Aboriginal people who are affected by ice or other drugs. Aboriginal community-controlled health organisations and non-Aboriginal service providers work together to assist access to culturally safe treatment and rehabilitation services.<sup>1275</sup>
- The Centre for Youth AOD Research and Practice was recently launched by YSAS to provide the youth AOD workforce and wider community with access to resources, evidence-based training opportunities and research on young people and substance use.<sup>1276</sup>

## Improving alcohol and other drug support for Aboriginal children and young people in the youth justice system

As noted above, the reasons that children and young people abuse substances are complex and inter-related. This makes effective community rehabilitation strategies less straightforward and points to the need for youth-specific, therapeutic and holistic service responses. For Aboriginal children and young people, it is essential that responses are based on Aboriginal understandings of social and emotional wellbeing.

Given the extremely high rates at which Aboriginal children and young people in the youth justice system experience substance misuse and mental ill-health, there is a clear need for more culturally based residential programs with a holistic approach to wellbeing. Healing centres are best placed to provide such support. The Commission believes that the establishment of additional healing centres would reduce the number of Aboriginal children and young people in contact with the youth justice system, and

<sup>1270</sup> Urban Native Youth Association, *Young Bears Lodge*, Urban Native Youth Association website, 2020, accessed 16 November 2020.

<sup>1271</sup> Urban Native Youth Association, *Young Bears Lodge*.

<sup>1272</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 39.

<sup>1273</sup> DHHS, *Balit Murrup*, p 15.

<sup>1274</sup> *Balit Murrup* committed to funding 24 positions: DHHS, *Balit Murrup*, p 13.

<sup>1275</sup> Department of Health and Human Services (DHHS), *Aboriginal alcohol and other drugs (AOD) initiatives: information paper*, AJF 56 Agenda paper, Aboriginal Justice Forum, 2020, unpublished.

<sup>1276</sup> The Centre for Youth AOD Research and Practice, *About us*, The Centre for Youth AOD Research and Practice website, 2020, accessed 20 August 2020.

## 9.2 Substance use

the recidivism rates of those already in contact with the system.

As noted above, the RCMHS recommended that 2 healing centres be developed to support 'intergenerational healing and resilience'<sup>1277</sup> and Aboriginal social and emotional wellbeing in Victoria.<sup>1278</sup> Although the recommended healing centres would not be specific to children and young people, they should be developed based on local Aboriginal needs and be owned, designed and evaluated by Aboriginal people.<sup>1279</sup> In addition, according to the RCMHS, the healing centres may seek to:

- provide a place for Aboriginal-led trauma-informed healing that integrates traditional and contemporary practice
- restore language, knowledge systems, kinship and Aboriginal customs
- create paid employment opportunities for Elders who will play a critical role in the healing of young people and communities.<sup>1280</sup>

The Commission agrees that healing centres must be designed by Aboriginal communities, drawing on the experiences of Aboriginal young people, and be guided by Aboriginal principles of wellbeing and healing. Healing centres must involve and be accessible to families and communities, and support children and young people to be strong in their identity and connected to Country.

Based on consultations throughout the Taskforce and the inquiry with Aboriginal children and young people and their families and communities, the Commission envisages that healing centres would:

- be voluntary and non-secure
- have the ability to accept and support children and young people on bail, on a community-based sentencing order or on parole, as well as children and young people not formally involved in the youth justice system
- provide clinical mental health support and counselling

- provide intensive, therapeutic, holistic wellbeing support, including AOD support and support for those experiencing crisis
- provide connection to culture, community and identity through mentoring and other supports
- involve in-reach by community services to support transition into the community on completion of the program
- receive referrals from children and young people, family members, police, Child Protection, Youth Justice and other services.

Our consultations revealed specific mental health and AOD service gaps for Aboriginal girls and young women, and for children and young people under the age of 16 years. Healing centres should be established for these groups. The Victorian Government should undertake further work with Aboriginal communities to determine the size and location of each new healing centre.<sup>1281</sup>

## Recommendation 47

That the Victorian Government work with the Aboriginal community to design and establish at least 2 healing centres for Aboriginal children and young people, in addition to Bunjilwarra and Baroona. Consideration should be given to establishing a dedicated healing centre for Aboriginal girls and young women, and another for Aboriginal children and young people under the age of 16 years.

<sup>1277</sup> RCMHS Final Report, Volume 3, p 175.

<sup>1278</sup> Recommendation 33: RCMHS Final Report, Volume 3, p 141.

<sup>1279</sup> RCMHS Final Report, Volume 3, p 173.

<sup>1280</sup> RCMHS Final Report, Volume 3, p 173.

<sup>1281</sup> The Ballarat regional forum identified the need for a healing centre to be established in the Grampians region.

## 9.3 Mentoring

### Finding 23

Many Aboriginal children and young people and their families and community members believe that Aboriginal cultural mentoring programs improve young people's mental health and wellbeing, make a positive difference in their lives and reduce offending behaviour.

*We need to create a cycle of mentors and mentees looking after people.*  
– Elder

As discussed in Chapter 7.4 'Connection with culture' and throughout this report, for many Aboriginal children and young people, connections to culture, spirituality and traditional knowledge systems can be key strengths, providing identity, pride, self-esteem and ways of interpreting and existing in the world around them.<sup>1282</sup> All of these factors can be protective against contact with the youth justice system.<sup>1283</sup>

Culturally based mentoring was highlighted throughout the Taskforce and this inquiry as a highly valuable support for Aboriginal children and young people. More than half (57%) of the Taskforce case planning sessions identified actions aimed at connecting young people with a cultural mentor.

<sup>1282</sup> M Salmon et al., *Defining the indefinable: descriptors of Aboriginal and Torres Strait Islander peoples' cultures and their links to health and wellbeing*, Mayi Kuwayu and The Lowitja Institute, 2019; Dhelk Dja Partnership Forum, DHHS, *Dhelk Dja*.

<sup>1283</sup> J Ravulo, *The role of holistic approaches in reducing the rate of recidivism for young offenders*, Children's Court of NSW Resource Handbook website, 2019, accessed 24 February 2021.

*One thing that makes a mentor, especially an Aboriginal mentor, is their connection to people. They are connected to family and the community, they know where they live, they get to know families and can talk to them person to person. This helps when departments are looking for kids. Aboriginal mentors have the time and space to build rapport with young people. This connection is built over time and cannot be overestimated. Young people trust their mentors for this reason. Aboriginal mentors are community members themselves and this means that they can understand young peoples' situation in a way [non-Aboriginal] workers can't. They have standing in the community that others don't. – Commissioner for Aboriginal Children and Young People*

### The protective role of cultural mentors

The Commission heard from Aboriginal children and young people about the importance of culture in relation to their social and emotional wellbeing, the positive relationships that could be built with a cultural mentor, and the protective role of mentors. These issues are also discussed in Chapter 6 'A child-centred system'.

*We need more Elders to sit down and talk to us. More things to do for us blackfellas. I want us to have a better life. Like, I dunno, people that actually come to your house and help you, sit down and talk to you. – Peyton, 16*

*I wish I had a mentor who could help me go through this world better. I just want a mentor – someone who can help me. – Chelsea, 16*

### 9.3 Mentoring

*I reckon some of the youth wouldn't be walking the streets if they had someone. – Bodhi, 23*

*Back then I would've liked a mentor. That would've helped. – Harley, 19*

Children and young people also referred to mentors as role models, and their own role as mentors for the younger generation.

*We need more role models. There were barely any when I was growing up and it's the same now. Now we have Koori Academy of Excellence. No one in my family has ever worked – I'm the first person with a job in my family – but now I'm my sister's role model cos I'm working at [co-op], and now they look up to me and want to work here. It's really about role models for kids – they've got to see it. – Grace, 20*

The protective role of mentors was strongly reinforced at the Taskforce regional forums. Most forums identified the importance of mentors in protecting children and young people against contact with the youth justice system.

*Young people working with people they trust, such as Elders or community members, works well. – Hume (Wodonga) regional forum*

*Regular contact with Aboriginal mentors is very successful – a strong and safe connection. – Barwon South West (Warrnambool) regional forum*

*The boredom of kids in rural towns – there's not enough to do. Strong youth groups and mentoring works well. The next generation of youth are clearly emerging to become the next generation of leaders. – Gippsland (Bairnsdale) regional forum*

### Men's business and women's business

Some young people and family members identified the benefits of a traditional approach to mentoring structured around men's business and women's business. Research suggests that men's groups contribute to improved social and emotional wellbeing outcome in Aboriginal men.<sup>1284</sup> Some young men and community members referred to these benefits.

*[Worker] is good. We make stuff in the men's shed – clap sticks and stuff, and cultural stuff, drive motorbikes out bush. – Haydn, 13*

*I've been on a few men's group camps up in the mountains. It was really good. I got a lot of things off my chest. It's good being around men that know what I'm going through. – Watjpa, 21*

*We need more access to men's groups across different age groups to give young people more opportunities to contribute to their community. – Elder*

At some Taskforce regional forums, participants referred to the protective role of gender-specific role models and the need for more male mentors.

*Young men need Aboriginal male role models and young women need Aboriginal female role models. – Gippsland (Morwell) regional forum*

*We have strong leadership and innovation from women as Elders and mentors in this community. Strong leadership from Aunties is very evident. Increased involvement of male Elders and mentors would be beneficial for young people. – Loddon Mallee (Mildura) regional forum*

<sup>1284</sup> M Henwood et al., 'Men's health and communities of practice in Australia', *Journal of Health Organisation and Management*, 2017, 31(2):207–222.

*Many young people are missing a connection to their fathers. If there is no strong male presence in a young man's life, they look for the closest one – often an older sibling. There are limited mentors available, or it's a slow process to find a mentor. We need more resourcing to support this work to grow. Maybe utilise young people successfully engaging with YJ to become mentors for other young people in YJ – create mentor training for YJ young people. – Hume (Shepparton) regional forum*

Young women and their families told us about a lack of programs for women.

*I know they do a men's group but I don't think they have a women's group. You know how back in the old days all the women would go basket weaving and all the men would go hunting, why don't they do anything like that? – Indiah, 20*

*The [local mentoring] program has been the best thing ever for [young person]. She gets depressed easily and attempts suicide and self-harm. It would really be better if there were more female workers because in our culture there is women's business and men's business. She doesn't have any female workers that she feels safe going to or talking to. – Nan*

## Victorian mentoring programs

The Aboriginal youth mentoring programs described in this section highlight many of the features identified throughout this report as being crucial in supporting Aboriginal children and young people (see especially Chapter 5 'A just & age-appropriate system', Chapter 6 'A child-centred system' and Chapter 7 'Family, community & culture'), namely intervening early, focusing on young people's strengths, establishing trusting relationships and providing connections to family, community and culture.

## Marram Nganyin

*Marram Nganyin* is a youth mentoring program for Aboriginal children and young people funded by the Office for Youth.<sup>1285</sup> Under *Marram Nganyin*, there are 5 mentoring programs run by Aboriginal organisations and supported by the Koorie Youth Council and Youth Affairs Council Victoria.<sup>1286</sup>

The Commission spoke to *Marram Nganyin* and the Koorie Youth Council about the program. Staff identified the following factors as critical in the design of Aboriginal youth mentoring programs.

### Self-determination

Staff emphasised the importance of self-determination and tailoring programs to the needs of specific communities.

*It's really important that the mentoring programs are made and run by Aboriginal communities, and for government to understand the Aboriginal ways of doing things. Mentoring has always been a part of our culture. With Marram Nganyin, each community runs their mentoring programs differently based on the needs of their community. It's really important that communities get to identify what they need. It can't be a one size fits all approach. – Marram Nganyin Project Officer, Koorie Youth Council*

### Strengths-based approach

Staff also highlighted the strengths-based approach adopted by *Marram Nganyin*.

*Marram Nganyin is strengths-based. Anyone who meets the age range can join – they don't have to have been referred by Youth Justice or Child Protection. We need to start supporting our kids before it gets to that point, with programs that have a focus on strengths-based ways of operating, are preventative and provide early intervention. – Marram Nganyin Project Officer, Koorie Youth Council*

<sup>1285</sup> Previously in the Department of Premier and Cabinet (DPC), and now in DFFH.

<sup>1286</sup> Koorie Youth Council, *Marram Nganyin (we are strong)*, Koorie Youth Council website, 2020, accessed 27 July 2020.

## 9.3 Mentoring

### Youth participation

Young people should have a voice in designing mentoring programs.

*The programs are designed in consultation with the young people in the region so that they are truly led by what young people want, not just what adults think they need. It gives young people ownership of the program. For these programs to be for young people they need to be made with young people. Koorie Youth Council will go to the communities and have yarning circles with the young people in communities to see what is important to them and what issues and barriers might be there. Sometimes it's really important for it to be us yarning and not the community – someone who can have the discussion externally and not within the community, because the young people might not feel comfortable talking to or raising issues with Aboriginal organisations in smaller communities, as they might be related to the workers and don't want to be seen to be disrespecting their family, Elders or community. Young people need to be given a safe space to be able to open up and sometimes having mob from KYC [Koorie Youth Council] support these discussions really enables open yarns. – Marram Nganyin Project Officer, Koorie Youth Council*

Marram Nganyin was evaluated by the Department of Premier and Cabinet (DPC) in June 2019 and was found to be delivering positive outcomes for Aboriginal young people.<sup>1287</sup> The evaluation identified the key enablers of the program's success:

- The mentoring model is strengths-based with a focus on individual empowerment. The model shows potential for transferability to other vulnerable youth cohorts.
- There is strong leadership and commitment within the organisations involved. Key personnel play an instrumental role in the delivery and sustainability of the program elements.

<sup>1287</sup> Department of Premier and Cabinet (DPC), *Evaluation of Marram Nganyin Aboriginal Youth Mentoring Program: evaluation report*, DPC, Victorian Government, 2019, unpublished.

- The lead mentor approach, with a supporting mentor framework, has increased participation, retention and long-term engagement of participants.

The evaluation also identified factors to consider in future:

- The partnership model has the potential to support self-determination, but continued refinement is required to ensure this potential is reached.
- The current funding structure weakens the potential of the programs. Organisations rely heavily on volunteers and community members to deliver the program.
- Coordination between and among youth programs would enable the sharing of learnings.

Notably, with respect to the youth justice system and crime prevention, the evaluation found that *Warran Warran Maar*, one of the *Marram Nganyin* programs, 'demonstrates that young men and boys do not have to come into contact with the tertiary service system to share in and benefit from a cultural mentoring program' and that 'the mentoring program is a protective measure for the young person to prevent them entering into the youth justice system'.<sup>1288</sup>

### Strong Brother Strong Sister

Strong Brother Strong Sister operates from Geelong and works to empower Aboriginal children and young people through mentoring, youth groups, a leadership program and school groups. *Koling wada-ngal* (let us walk together), the cultural mentoring program, offers holistic support for Aboriginal children and young people aged 4 to 26 years.<sup>1289</sup>

Data provided by the program indicates that, by May 2020, Strong Brother Strong Sister had supported over 573 Aboriginal children and young people through a variety of tailored services. This includes assisting:

- 63 Aboriginal students with mentoring in school
- 89 young Aboriginal women with healthy relationship guidance
- 55 Aboriginal young people facing family violence
- 106 Aboriginal young people with mental health-related issues

<sup>1288</sup> DPC, *Evaluation of Marram Nganyin Aboriginal Youth Mentoring Program*, p 42.

<sup>1289</sup> Strong Brother Strong Sister, *About*, Strong Brother Strong Sister website, 2020, accessed 22 August 2020.

- 42 Aboriginal young people returning safely to school
- 26 Aboriginal young people with employment and training
- 23 Aboriginal young people returning safely back to home and family from out-of-home care
- 19 Aboriginal young people facing homelessness who are no longer homeless
- 7 Aboriginal young people from remote communities.<sup>1290</sup>

The Commission spoke to the founder of Strong Brother Strong Sister, and 2 of the program's Aboriginal youth mentors. They highlighted the following key aspects of the program's success.

### **Providing individualised, strengths-based support**

Staff emphasised the importance of tailoring mentoring to the individual needs of a child or young person.

*We provide one-on-one mentoring and there's a few sort of tiers to that, from intensive to less intensive. All of our programs are designed to meet a young person's needs through their strengths and passions. The key thing for us as a whole organisation is that obviously each young person is different to the next. So it's about having conversations with that young person about how to best support them and being respectful of that young person... We might look at going out on Country and learning about cultural identity. It's really important for each young person to be connected to culture, but understanding that each young person's journey is different and respecting their journey.*  
– founder, Strong Brother Strong Sister

*Each young person is different. For some, culture is the most important aspect and they love that the most. For some, it's getting outdoors and surfing or kicking the footy. For some of them it's arts and craft. For some, it's learning about themselves and goal-setting. For each young person it's different.* – Aboriginal youth mentor

### **Building trusting relationships with young people by being caring, reliable and flexible**

Mentors explained that the key to building trusting relationships with children and young people was to be reliable, flexible and caring. This reflects the qualities young people told us they valued in their workers (see Chapter 6.2 'Relationships with workers').

*Having a reliable mentor is important as well – most of the kids I work with haven't had a reliable person in their life.* – Aboriginal youth mentor

*A lot of the kids that have had broken families or gone through stuff like that, when you share that you've gone through similar experiences, it allows them to open up more. But it's not the be all and end all – if you're really genuine and really care and are really there for them, that's what they need to build trust.* – Aboriginal youth mentor

*Being flexible in your approach is one of the most important things. Having goals, but understanding that you might not always reach them, there are setbacks and that's ok. It makes kids feel safer and makes progress happen faster. They're feeling so much pressure already in their lives.* – Aboriginal youth mentor

*I do lots of art – painting and drawing and craft stuff. I find that lots of the girls I work with, when they're doing their art, it creates conversations. It's easier for them to talk about their lives and their families and it helps them to open up about stuff.* – Aboriginal youth mentor

<sup>1290</sup> Strong Brother Strong Sister data provided to the Commission on 11 September 2020. The Department of Health advised the Commission that it funded Strong Brother Strong Sister \$250,000 in 2020–21 to expand the delivery of Aboriginal social and emotional wellbeing programs: Information provided to the Commission by the Department of Health on 8 April 2021.

### 9.3 Mentoring

#### **Involving family, carers and community to provide holistic support**

Staff highlighted the importance of connecting with family and community in order to provide children and young people with holistic support.

*They might want their whole family involved, with mum or dad or whoever is caring for them. Or there are sometimes domestic violence or breakdowns of relationships in a household, so then we utilise certain leaders in community. We have good relationships with traditional owners who have passion for young people and have mentored all of us as young people as well. And we have a really good relationship with Wathaurong [local ACCO]. – founder, Strong Brother Strong Sister*

#### **Mentoring programs to address offending behaviour**

*Maybe there should be a program, like a group of kids that have gotten out to meet up, like ex-clients, come and tell their stories. Someone who has changed their life around like that would maybe help someone.  
– Dustin, 15*

The benefits of proactive and strengths-based mentoring programs are discussed in the previous section. However, mentoring programs aimed at supporting children and young people already in contact with the youth justice system are also important, particularly for those transitioning back to life in the community. Mentoring programs to address offending behaviour that use peer intervention or mentors with ‘lived experience’ have reported success in Australia and internationally.<sup>1291</sup> Successful programs

<sup>1291</sup> E Hodgson et al., ‘A qualitative study of an employment scheme for mentors with lived experience of offending within a multi-agency mental health project for excluded young people’, *The Journal of Behavioral Health Services & Research*, 2019, 46(1):140–150; V Ware, *Mentoring programs for Indigenous youth at risk*, Closing the Gap Clearinghouse resource sheet no. 22, Closing the Gap Clearinghouse, Australian Government, 2013. Examples

focus on connecting children and young people with mentors who can act as ‘credible messengers’ in providing advice and support.<sup>1292</sup>

Aboriginal children and young people told the Commission about their desire to be mentors themselves, and to help others in similar situations.

*I try to help the younger lads in here [custody] and talk to them and connect with them. They look at workers as screws and don't trust them, and think that the screws set them up to fail because every time they get out, they come back. But because I'm their mate, I have more power to connect with them and I want to try to help them stay out of the system. When I get out, I want to talk to young Aboriginal people about my story and try to talk them out of the habit of going in and out of the system. – Pakap, 16*

*I mentor the younger kids, go out with them on weekends. I don't get paid, but I don't care. I find it rewarding and I get a lot of stuff that I missed out on with my dad. I didn't have a father figure. Stuff I wanted back then, but I'm getting it now. I could've made better decisions if I had this earlier. – Bailey, 18*

*I want to be a youth worker. I might not be that book smart, but having someone who has lived it makes it so much better. – Tiana, 25*

*I want to work, maybe running some Koori programs with younger fellas. I want to get myself together and then speak to the co-op and see if I can help out. – Karl, 21*

of effective international programs include the *Arches Transformative Mentoring Program* and the *Advocate, Intervene, Mentor* programs in New York City, both of which have been favourably evaluated: M Lynch et al., *Arches Transformative Mentoring Program: an implementation and impact evaluation in New York City*, Urban Institute, 2018; L Cramer et al., *Evaluation report on New York City's Advocate, Intervene, Mentor Program*, Urban Institute, 2018.

<sup>1292</sup> NYC Probation, *Arches*, NYC probation website, 2020, accessed 10 April 2020.



## Victorian mentoring initiatives

Current Victorian mentoring initiatives include:

- Under *Balit Murrup*, the Victorian Government is providing \$1.8 million to extend the Aboriginal youth mentoring programs delivered by ACCOs.<sup>1293</sup>
- Under *Burra Lotjpa Dunguludja*, the Wayapa Wuurk Aboriginal Wellness Foundation cultural mentoring program and the Dardi Munwurro *Bramung Jaarn* program have been selected to deliver local intensive diversion programs for Aboriginal children and young people who have had, or are vulnerable to, involvement with the criminal justice system. A process to identify another 2 community-based, intensive diversion programs has recently commenced.<sup>1294</sup>
- The Frontline Grants program provides ACCOs with opportunities to develop pro-social pilot initiatives, including mentoring programs, which reduce risk of contact with the youth justice system. The grants are offered every 2 years.<sup>1295</sup>
- Two Elders are providing cultural mentoring to Aboriginal children and young people in youth justice centres (see also Chapter 13.1 ‘Cultural safety and support in custody’).<sup>1296</sup>
- The Sports Academy program will draw on sportspeople from Aboriginal communities, including Aboriginal AFL and AFLW players, to be positive role models and mentors for children and young people in custody.

## Increasing the availability of cultural mentoring programs for Aboriginal children and young people

Cultural mentoring programs provide invaluable supports for Aboriginal children and young people and can deliver positive outcomes in their lives.<sup>1297</sup> For young people experiencing difficulties accessing mental health services, mentoring programs can provide culturally appropriate healing underpinned by Aboriginal models of social and emotional wellbeing.<sup>1298</sup>

Despite these strengths, existing mentoring programs face funding insecurity, under-resourcing, over-reliance on unpaid community volunteers, and insufficient capacity to support all children and young people in their region. A greater investment in cultural mentoring programs for Aboriginal children and young people is required.

For young people already in contact with the youth justice system, mentoring programs have also been shown to decrease offending behaviour.<sup>1299</sup> The Youth Justice Review found that there was a lack of offending-based mentoring programs in Victoria, which ‘limits the chances to increase prosocial connections that would help the young person desist from offending’.<sup>1300</sup> It recommended the establishment of ‘a Youth Justice Mentoring Program for young offenders, particularly targeting those who do not have pro-social adults or peers’.<sup>1301</sup>

In response to this recommendation, the Youth Justice Strategic Plan commits to ‘expanding the Aboriginal Youth Mentoring Program’,<sup>1302</sup> and the 2019 Youth Justice Case Management Framework recognises ‘the

<sup>1293</sup> DHHS, *Balit Murrup*, p 13.

<sup>1294</sup> Victorian Aboriginal Justice Agreement, [Community-based diversion programs](#), Victorian Aboriginal Justice Agreement website, 2020, accessed 13 July 2020.

<sup>1295</sup> Victorian Aboriginal Justice Agreement, [Evidence based prevention programs](#), Victorian Aboriginal Justice Agreement website, 2020, accessed 13 July 2020.

<sup>1296</sup> Victorian Aboriginal Justice Agreement, [Elders mentoring in youth justice centres](#), Victorian Aboriginal Justice Agreement website, 2020, accessed 13 July 2020.

<sup>1297</sup> Koorie Youth Council, *Ngaga-dji*; L Peralta, R Cinelli and A Bennie, ‘Mentoring as a tool to engage Aboriginal youth in remote Australian communities: a qualitative investigation of community members, mentees, teachers, and mentors’ perspectives’, *Mentoring & Tutoring: Partnership in Learning*, 2018, 26(1):30–49; DJ DeWit, S Wells, T Elton-Marshall and J George, ‘Mentoring relationships and the mental health of Aboriginal youth in Canada’, *The Journal of Primary Prevention*, 2017, 38:49–66.

<sup>1298</sup> Koorie Youth Council, [Koorie Youth Summit 2016 Ideas Report](#) [PDF], Koorie Youth Council, Melbourne, 2016.

<sup>1299</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 202.

<sup>1300</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 202.

<sup>1301</sup> Recommendation 7.10: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 203.

<sup>1302</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 23. The Aboriginal Youth Mentoring Program is the Koorie Youth Council’s *Marram Nganyin* program.

### 9.3 Mentoring

importance of mentoring in supporting rehabilitation'.<sup>1303</sup> DJCS has also indicated that it is progressing work to scale up available mentoring programs with a fully structured day for young people in custody.

More work is required to implement this recommendation. There is a need for more targeted mentoring programs for Aboriginal children and young people in the youth justice system. These programs should be informed by the lived experience of Aboriginal children and young people through consultation on design, as well as training for them to become mentors.

It is important that any new mentoring programs for Aboriginal children and young people be developed in partnership with Aboriginal organisations, and in accordance with youth participation principles. The Koorie Youth Council is well-placed to consult with Aboriginal young people and communities across Victoria on the expansion of cultural mentoring programs and to assist in designing new mentoring programs.

## Recommendation 48

That the Victorian Government:

- a) resource additional strengths-based cultural mentoring programs for Aboriginal children and young people across the state, designed in partnership with local Aboriginal communities and in accordance with youth participation principles
- b) in expanding the Aboriginal Youth Mentoring Program under the Aboriginal Youth Justice Strategy, establish dedicated programs for Aboriginal girls and young women, and for Aboriginal children and young people in custody.

<sup>1303</sup> Information provided to the Commission by DJCS on 6 August 2020.

# 10 Education & learning

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*The long journey is there to represent each part in life you go through – it's a journey. The 4 women around the fire are keeping their culture alive, keeping it living, like our mothers have always done. The spiral campsite represents doing traditional dance with an Auntie. It's about turning the children around and bringing them back to make a better future. The stars are also included, which are to show there is still light, even when it's dark. – Young people of the Eastern & Southern Metropolitan regions, Wurundjeri & Boon Wurrung Country*

## Our way

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*In 1985 there were 2 Aboriginal Year 12 graduates in Victoria. We started at ground zero. There's always more work to be done. – General Manager, VAEAI<sup>1304</sup>*

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An education is fundamental to children and young people's development and growth in both Aboriginal and western societies. For Aboriginal peoples, the concept of education includes cultural learning, which, in contemporary society, many Aboriginal children and young people miss out on. The transmission of cultural knowledge is fundamental to the functioning of Aboriginal society. This occurs through many methods, including various cultural expressions, and contact with Elders, community and Country. A strong identity produces confident and resilient children and young people who understand their place in society.

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*Being proud of who they are and knowing their identity, which is important for their self-development, I'd say first and foremost that is what it is about. – Principal, Worawa College*

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*I can tell you after all these years, we need to invest in the cultural affirmation of our families and children. If we want them out of [custody], we need them to be comfortable in their own skin, their families and their lines. That is key, nothing else will work. That, I know. – General Manager, VAEAI*

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Throughout history, the western education system has failed to acknowledge or respect Aboriginal peoples, or incorporate their diverse cultures into the education and teaching curriculum. Based on what we heard from children and young people, mainstream education

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<sup>1304</sup> Victorian Aboriginal Education Association Incorporated.

often fails to provide accurate and fair information about Aboriginal peoples and their ways of knowing, being and doing.

Western educational institutions are not always inclusive environments that are culturally safe for Aboriginal children and young people to learn and develop in. More efforts are required to resolve this problem. Schools need to engage with Aboriginal knowledge systems and communities to improve Aboriginal student engagement and learning outcomes.<sup>1305</sup>

DET's *Marrung Education Plan 2016 (Marrung)*, developed in partnership with the Aboriginal community, contains the vision that:

*Victoria will be a state where the rich and thriving culture, knowledge and experience of our First Nations peoples are celebrated by all Victorians; where our universal service systems are inclusive, responsive and respectful of Koorie people at every stage of their learning and development journey; and where every Koorie person achieves their potential, succeeds in life, and feels strong in their cultural identity.<sup>1306</sup>*

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<sup>1305</sup> C Burgess et al., 'A systematic review of pedagogies that support, engage and improve the educational outcomes of Aboriginal students', *The Australian Educational Researcher*, 2019, 46(2):297–318.

<sup>1306</sup> Department of Education and Training (DET), *Marrung: Aboriginal Education Plan 2016–2026*, DET, Victorian Government, 2016, accessed 27 May 2020, p 6.

# Karrwin's story

Karrwin<sup>1307</sup> is a young man who grew up loving school.

*I loved English, history, maths, sport – I just loved it.*

Karrwin's father left his family when Karrwin was young, and his mother's health and capacity to provide a safe home environment for Karrwin deteriorated. Karrwin also had an older sibling pass away. Karrwin felt compelled to take on greater family responsibilities, which made engagement with school difficult.

*Mum hit the alcohol hard, stopped working and went a bit unstable. I lost my [older sibling], so I was looking after the... younger ones and was doing it a bit hard. Things like power would get cut off and it would get hectic.*

He struggled at school and his behaviour escalated to the point where he was repeatedly sent home. As a young boy he became involved in minor offending behaviour.

*Between Prep and Year 6 I was suspended all the time for fighting. I was robbing the... club when I was 9 or 10, breaking into it and stealing chocolates.*

Karrwin eventually stopped attending school and his offending behaviour escalated.

*I dropped out in Year 8. As I got older, it [offending] worked its way into thieving from shops, then burglaries, to agg burgs [aggravated burglaries], to assaults, more assaults, more agg burgs.*

Karrwin spent time in custody and attempted to re-engage with his education after his release. However, his experiences in the youth justice system,

including time spent in custody, created additional barriers to engagement and learning for him.

*I went back in Year 10, but it was cooked because I was so used to being locked up, not with a bunch of kids putting their heads down doing their work. I didn't want to ask the teacher for help.*

Nonetheless, he had hopeful aspirations for his future and a strong desire to resume his education.

*I really wanted to go to Year 12.*

He received support from a Koorie Engagement Support Officer in his school with whom he developed a positive connection and felt motivated to learn.

*We had a Koorie support worker, but we needed more support workers. Like, he would come check up on me, but he had so many other boys to check up on. If there were more workers like him, it would help so much. He really gave a fuck. He was one of the best people in my life – he helped me good. Like, even now – if he sees me, he's like, 'You have so much potential'. He still cares about me.*

Karrwin cares about supporting younger Aboriginal children and young people with their education. When asked what he thought would make a difference he talked about his Koorie Engagement Support Officer.

*More people like him.*

<sup>1307</sup> Karrwin is a pseudonym meaning 'dance' in Kirrae Wurrung.

## Chapter at a glance

- Aboriginal children and young people have lower rates of school attendance, are more likely to be suspended or expelled from school and have lower levels of educational attainment than non-Aboriginal students. They also experience unacceptable rates of racialised bullying, which contributes to their disengagement from education.
- Most Aboriginal children and young people in contact with the youth justice system have experienced disengagement and exclusion from education. There is a clear link between exclusion from school and contact with the youth justice system.
- Aboriginal children and young people want to learn about and feel connected to their culture in education and learning environments. Educational reform is needed to create culturally safe schooling options for Aboriginal students, to allow them to thrive academically and to protect them from contact with the youth justice system.
- Aboriginal children and young people in custody want their education to be strengths-based and embedded in culture, and to support employment upon release.

### Key data

- 96% of children and young people who were the subject of a Taskforce case planning session had experienced chronic absenteeism, periods of disengagement and low educational attainment.
- 65% of Aboriginal children and young people under Youth Justice supervision (in the community and in custody) on 31 December 2019 had been previously suspended or expelled from school, and 78% had a highest completed level of education of Year 9 or less.
- Aboriginal students experience higher rates of formal and informal expulsions from Victorian schools than non-Aboriginal students.
- 22% of young people who raised educational matters with the Commission talked about being suspended or expelled.
- Almost 40% of children and young people in the Taskforce case file review had an attendance rate of between zero and 10%.
- 22% of children and young people who raised educational matters with the inquiry discussed bullying and racism in schools.

# Current context

Outside family, school is a key source of structure, motivation and socialisation, which is crucial to the development and growth of a child or young person. Safe and engaging educational experiences support young people's development and place them on the pathway towards achieving their aspirations. Education is also key to breaking the cycle of economic disadvantage experienced by many Aboriginal people in Victoria, as the socio-economic exclusion of colonisation continues to be felt today.

*Marrung*, which was developed in partnership with the Aboriginal community, is the key piece of strategic work outlining the Victorian Government's 10-year plan for improved educational outcomes for Aboriginal children in Victoria. It states that:

*Access to high-quality education provides significant short-term and lifelong benefits, not just in terms of academic outcomes, but also in terms of resilience, creativity, health and wellbeing, and economic participation. Education is the cornerstone of economic development and self-determination. Education increases a person's opportunity and choice in life, equipping them with personal and practical skills to get the jobs they want and live healthier and more prosperous lives.*<sup>1308</sup>

Many Aboriginal children and young people experience success in school, and educational outcomes for Aboriginal students in Victoria continue to show improvement.<sup>1309</sup> However, Aboriginal students are more at risk of disengaging from school than non-Aboriginal students,<sup>1310</sup> and Aboriginal children and young people experience higher rates of formal and informal expulsions from Victorian schools than non-Aboriginal children and young people.<sup>1311</sup>

Suspensions and expulsions punish young people for their behaviour in ways that only serve to further exclude them from the educational and social opportunities that are essential to their wellbeing and future.

Young people who disengage from school are at increased risk of contact with the justice system, as they do not have the structure and support that positive school experiences can provide.<sup>1312</sup> The Youth Justice Review observed that many young people in the youth justice system have experienced significant disruption to their education, and many experience difficulties with literacy and numeracy, cognitive impairment, intellectual disability or language and communication disorders.<sup>1313</sup> A sample of young people in contact with Youth Justice showed that, among young people aged 13 to 17 years, 94% of those serving a custodial sentence and 80% of those on community orders recorded truancy in the previous year.<sup>1314</sup> Further, 77% of those on a custodial sentence recorded low academic achievement and 77% of those on community orders recorded disruptive behaviour at school.<sup>1315</sup>

According to the 2019 annual survey of young people in Youth Justice, 65% of Aboriginal children and young people under Youth Justice supervision (in the community and in custody) had been previously suspended or expelled from school, and 78% had a highest completed level of education of Year 9 or less (see Table 10.1).<sup>1316</sup>

<sup>1308</sup> DET, *Marrung*, p 7.

<sup>1309</sup> Department of Education and Training (DET), *The State of Victoria's Children Report 2018: recent trends in adolescent health, wellbeing, education and safety*, DET, Victorian Government, 2019, accessed 17 June 2020, p 96.

<sup>1310</sup> L Ockenden, *Positive learning environments for Indigenous children and young people*, Closing the Gap Clearinghouse resource sheet no. 33, Closing the Gap Clearinghouse, Australian Government, 2014.

<sup>1311</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, Victorian Ombudsman, Melbourne, 2017, accessed 7 September 2020.

<sup>1312</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 66.

<sup>1313</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 162.

<sup>1314</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 162.

<sup>1315</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 162.

<sup>1316</sup> DJCS, *Young people involved with Youth Justice in 2019*, p 6.



**Table 10.1** Educational history of children and young people in Youth Justice (community and custody) by Aboriginal status, 31 December 2019

Educational history	Young person	
	Aboriginal (%)	Non-Aboriginal (%)
Had previously been suspended or expelled from school	65	63
Had a highest completed level of education of Year 9 or less	78	52
Was participating in education	37	36

Source: Department of Justice and Community Safety (DJCS), *Young people involved with Youth Justice in 2019: annual survey – summary*, DJCS, Victorian Government, unpublished.

Evidence suggests that schools in Victoria are failing to engage Aboriginal children and young people and address behavioural issues in a supportive way. In a 2017 investigation into expulsions from Victorian government schools, the Victorian Ombudsman found that, although help was available for Aboriginal students, it was often brought in too late.<sup>1317</sup> The causes of disengagement from school are varied and complex. They include physical and mental health, disability, learning difficulties, behavioural issues, poverty, family dysfunction, caring obligations, and relationships with teachers and peers.<sup>1318</sup> For Aboriginal students, poor attendance is often linked to not feeling comfortable, valued or supported at school, which can be driven by poor teacher–student relationships, feelings of social isolation, racial discrimination or bullying, and learning difficulties.<sup>1319</sup> However, there is a gap in current research as to the specific reasons why Aboriginal children and young people are being excluded from education.<sup>1320</sup>

<sup>1317</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 2.

<sup>1318</sup> J Watterson and M O’Connell, *Those who disappear: the Australian education problem nobody wants to talk about*, Melbourne Graduate School of Education, University of Melbourne, 2019, pp 14–15.

<sup>1319</sup> L Doyle and R Hill, *Our children, our future – achieving improved primary and secondary education outcomes for Indigenous students: an overview of investment opportunities and approaches*, AMP Foundation, Effective Philanthropy and Social Ventures Australia, 2008, p 44.

<sup>1320</sup> G O’Brien, *Excluding Indigenous youth from schools may severely increase their risk of incarceration*, The

Research indicates that culturally safe schools that allow Aboriginal students to feel safe, welcome and valued, promote Aboriginal culture and include Aboriginal perspectives in the curriculum, develop strong partnerships with families and communities, and demonstrate effective leadership can improve educational engagement and outcomes for Aboriginal children and young people.<sup>1321</sup> This in turn can act as a strong protective factor against contact with the youth justice system.<sup>1322</sup> For Aboriginal children and young people in custody or under Youth Justice community supervision, educational supports must also be able to work in culturally appropriate ways, basing their services on each young person’s strengths, needs and aspirations. Youth Justice educational services need to give young people the practical skills they need to succeed in life outside the youth justice system. This can only be accomplished by recognising that connection to culture is central to educational achievement for Aboriginal children and young people.

In this chapter, we make recommendations that aim to improve engagement and inclusion of Aboriginal children and young people in education, create more flexible educational options that are embedded in Aboriginal culture, and improve educational support for those in custody.

This chapter is divided into 4 parts:

- 10.1 ‘Engagement in education’ examines the exclusion of Aboriginal children and young people from mainstream education.
- 10.2 ‘Connection to culture in education’ considers children and young people’s desire to be connected to culture.
- 10.3 ‘The Koorie Education Workforce’ examines the role of Koorie Engagement Support Officers in schools and the need for direct educational support for Aboriginal students.
- 10.4 ‘Education in custody’ examines the education and learning experiences of Aboriginal children and young people in youth justice custody.

Conversation, 29 September 2017, accessed 4 January 2021.

<sup>1321</sup> L Ockenden, *Positive learning environments for Indigenous children and young people*.

<sup>1322</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 66.

# 10.1 Engagement in education

## Finding 24

Most Aboriginal children and young people in contact with the youth justice system have experienced disengagement and exclusion from education.

*This generation that's coming up to high school, I want support for them, instead of kicking them out on the street. I'm worried about the younger generations. If they muck up, give them an alternative. They should have more support in school. – Macy, 23*

Young people and their families and communities overwhelmingly spoke to us about the importance of education and learning. Almost every young person that we spoke to who raised their experience with education wanted to attend school. It is therefore important to emphasise that, when we refer to disengagement and exclusion from education, we are not referring to young people who have chosen to stop attending school because they do not value education. Disengagement from education is not a failure of Aboriginal students.

Leaving school early or experiencing chronic difficulties engaging in education while at school can push some children and young people towards the youth justice system, especially when other sources of support or structure may be missing from their lives.<sup>1323</sup> *Marrung* notes that in recent years there has been an overall trend of improvement in educational outcomes for

Aboriginal students. However, gaps remain between the educational engagement of Aboriginal young people and their non-Aboriginal peers.<sup>1324</sup> These gaps flow from a variety of barriers, including culturally unsafe schooling and the socio-economic disadvantage experienced by many Aboriginal families (see Chapter 7.3 'Challenges experienced by Aboriginal families' for a discussion of this issue).

As outlined in our methodology (see Chapter 1 'About this report'), our consultations with young people followed a format where young people told their stories in a way that emphasised what was important to them. We didn't specifically ask every young person about their experiences with education; however, 65 of 93 young people (70%) discussed it with us. Their experiences are described in the following sections.

Educational disengagement was a key theme arising in the Taskforce case planning sessions. Almost every young person (96%) for whom a session was held had experienced chronic absenteeism, periods of disengagement and low educational attainment. Of all actions created in case planning sessions, 9% related to education.<sup>1325</sup> A further 39% of young people involved in Taskforce case planning sessions had reported cognitive or learning disabilities.<sup>1326</sup>

<sup>1324</sup> DET, *Marrung*, p 7.

<sup>1325</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>1326</sup> DET data identifies approximately 7% of Aboriginal children with intellectual disability in government schools: DET data provided to the Commission on 9 April 2021. DET data also shows that incidences of identified intellectual disability are almost 3 times higher for Aboriginal students than for their non-Aboriginal peers: DET data provided to the Commission on 27 May 2020. In 2020, the Victorian Government announced an investment of \$1.6 billion in disability inclusion reforms to improve the identification of and support for all students with disabilities and additional needs, including Aboriginal students: Department of Education and Training (DET), *Disability Inclusion: increased support for students with disabilities*, DET website, 2020, accessed 18 April 2021.

<sup>1323</sup> Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 97.

Participants at every Taskforce regional forum raised educational engagement and retention as an area requiring attention in the region. For example, participants at the Morwell forum referred to efforts to support and retain children within the education system and the early identification of children at risk of disengagement as critical interventions to prevent contact with the youth justice system. The Shepparton forum discussed the intergenerational impacts of disengagement from education, and the need for a holistic re-engagement and retention model that involves parents and families. Other regions highlighted different areas of focus, and these are referred to below.

*Marrung* stipulates that schools will work to support Aboriginal students at risk of disengagement to continue their education. Our evidence shows that this support is not always provided. This is evident across 4 key areas:

- low school attendance
- suspensions and expulsions
- bullying and racism
- level of attainment.

## Low school attendance

Of the young people who raised educational matters with the Commission, 32% discussed external socio-economic and environmental factors that affected their capacity to engage in education and stay in school, including family circumstances and the practical challenge of getting to school.

*Things were hectic out of school. The weight of that was full on. – Jack, 19*

*It's hard to get to school because the bus comes at 8:25 am. – Xavier, 11*

*I was doing VCAL but some things got in the way. It was a bit too easy. I was bored and using a lot of drugs and that got in the way. – Rory, 20*

*When I was growing up in school it was just horrible. There was one fella who used to take us to school and give us a feed, then he left – went to Darwin. Then there was no one... School was good for me, but it was hard getting there. They didn't have any help for us fellas. – Bodhi, 23*

*Stuff at home was happening... I wasn't really engaging. They didn't really care or try to engage me again. – Nataya, 21*

*I'm not going back to school. I'd have no money. – Drew, 19*

*I went to school and as soon as my mum died, I got angry and took it out on other kids at school. – Lachie, 12*

*It was hard for us kids to settle into a school. We'd be somewhere for like 5 months and then have to move again. – Pakap, 16*

Some children and young people referred to school as a place where they felt unwelcome or unsafe, often due to punitive responses to challenging behaviour. These experiences may indicate a degree of unconscious bias on the part of school staff, and/or a failure to equip staff with the skills and strategies necessary to manage and support children and young people exhibiting difficult behaviour in the classroom.

*I think the teacher was trying to get rid of me because he didn't like me. – Rhea, 16*

*I don't like the principal. He doesn't hurt kids, but he just talks to the parents and sends them home. But if there's a fight at school he will ring the coppers first and then straight after he gets off the phone and he rings the parents, when kids be naughty. – Miles, 15*

## 10.1 Engagement in education

*I hate school. Teachers don't get me, so what's the point of being there. – Bailey, 18*

*I went to [enrolled school] before but I didn't like it. I didn't like the principal. I want to go to [different school]. I think things would be different out there, I have more cousins there and more help, uncle and all them. At [enrolled school] I've got no one. – Kyla, 14*

*I didn't like school. Teachers were too harsh. They would say things like, 'Now do your work boy, or you're gonna get expelled!' – Cole, 16*

*I don't go to school because I was assaulted by a teacher and [a relative] pulled me out of school and I haven't been back to school since. It happened 4 years ago – I was 6 or 7, I think. The teacher dragged me down the hallway by my collar and then I kicked him in the balls, and he dropped me. Then they put me in this room they call [redacted] to calm down, but I didn't like it in there. – Will, 11*

Young people also talked about how their lack of agency in education affected their engagement.

*I went to school for one week earlier in the year. I want to do reading and writing. They thought it would be a good idea to put me outside to do building and hands on shit... men's shed stuff, woodwork. – Keegan, 15*

**Q:** *What would have made it better?*  
**A:** *Letting us have a say. More support.*  
– Macy, 23

*Going to actual school would have been nice instead of listing me with the other bad kids. I tried to go to [a school] – they said if you do a few months of trial at [alternative program] we will consider it, and there was like no chance for me to make it, which is really annoying.*  
– Summer, 18

*I went until Year 7 and then mucked up – just started doing crimes and drugs and stuff. Then I got enrolled but I didn't go because I was in Melbourne at [a school] and I didn't know anyone there. I just got enrolled for bail [purposes]. It would have been better to be enrolled back home... but I didn't have a say.*  
– Jasper, 17

*Maybe if the kids had more of a voice [in school] there wouldn't be as much of kids screwing stuff up. – Cameron, 17*

These experiences indicate that some Aboriginal children and young people in Victoria are not being provided with an education that is 'directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential'.<sup>1327</sup>

DET policy articulates that schools are required to create and implement individual education plans for Aboriginal students. *Marrung* recommends the development of individual education plans that focus on the goals and aspirations of Aboriginal students.<sup>1328</sup> DET acknowledges that individual education plans for Aboriginal students 'can assist to lift student engagement'.<sup>1329</sup> The Taskforce case file review showed that only 31% (n = 75) of children and young people in the cohort had an individual education plan. In addition, in the Taskforce case planning sessions, over one-third of the education actions (36%) were to develop individual education plans for the child or young person.<sup>1330</sup>

The young people we spoke to during the inquiry cared about their education and told us that they wanted to attend school. However, Aboriginal children and young people in Victoria have poorer school attendance than their non-Aboriginal peers.<sup>1331</sup> For Aboriginal students in Victorian government schools in 2019, the average number of absence days per student was

<sup>1327</sup> Convention on the Rights of the Child, article 29(1)(a).

<sup>1328</sup> DET, *Marrung*, p 28.

<sup>1329</sup> Department of Education and Training (DET), *Developing culturally inclusive education plans for Koorie students*, DET website, 2019, accessed 23 February 2021.

<sup>1330</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>1331</sup> DET, *The State of Victoria's Children Report 2018*, p 92.

approximately 30, whereas for non-Aboriginal students it was 17.6.<sup>1332</sup>

Where attendance rates were known for the children and young people in the Taskforce case file review, almost 40% (52 young people) had an attendance rate of between zero and 10%. Such low attendance should trigger a support response for young people. Despite this, it could only be said with certainty that 10 of the 52 young people were part of a re-engagement program to continue their education.

Aboriginal children and young people are also chronically absent (defined by DET as absent more than 30 days per year) at higher rates than non-Aboriginal students in Victoria.<sup>1333</sup> Research indicates that chronic absenteeism is more common among students who report:

- being bullied
- negative attitudes to attendance
- low levels of resilience
- low confidence in their ability as a learner
- low sense of connectedness to their school.<sup>1334</sup>

This disengagement and fragmented contact with education services is a risk factor for contact with the youth justice system.<sup>1335</sup>

While the school attendance of children and young people is the legal obligation of parents and carers, schools share this responsibility.<sup>1336</sup> The Victorian school attendance guidelines state that:

*Victorian Government schools are required to provide active support (including targeted responses and effective intervention strategies) for full student attendance and retention until the completion of Year 12 or its equivalent and respond to individual student*

<sup>1332</sup> DET data provided by DET to the Commission on 27 May 2020.

<sup>1333</sup> DET, *The State of Victoria's Children Report 2018*, pp 92–93.

<sup>1334</sup> DET, *The State of Victoria's Children Report 2018*, p 93.

<sup>1335</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 46.

<sup>1336</sup> This is reflected in principle 1.2.1(b) of the *Education and Training Reform Act 2006* (Vic), according to which all Victorians, irrespective of the education and training institution they attend, where they live or their social or economic status, should have access to a high quality education that (i) realises their learning potential and maximises their education and training achievement; (ii) promotes enthusiasm for lifelong learning; and (iii) allows parents to take an active part in their child's education and training.

*circumstances when regular attendance is not consistent.*<sup>1337</sup>

Schools are each required to develop their own student engagement policy, which outlines the processes and actions the school will take to address low or inconsistent student attendance. According to Victorian school attendance guidelines, schools should:

- focus on prevention and early intervention by creating a positive school culture
- intervene and provide targeted responses for individual students
- immediately follow up individual student absences
- correctly use student attendance data management systems
- monitor and analyse school attendance records regularly and use tools for early identification of students at risk of poor attendance
- understand the causal factors of absence and the need for targeted interventions
- provide out-of-school programs, including breakfast and homework clubs
- collaborate with other schools, community groups and agencies.<sup>1338</sup>

For Aboriginal students, schools are also required to:

- work in partnership with the local Aboriginal community to improve student outcomes
- support the development of individual learning plans for Aboriginal students
- create a learning environment for all students that acknowledges, respects and values Aboriginal culture.<sup>1339</sup>

It is also important for schools to acknowledge cultural reasons that Aboriginal students may be absent and offer support to families. Sorry business following the death of community members can result in a number of absence days for Aboriginal students. DET advised the Commission that since the start of 2020, it has distinguished between sorry business and other absences in its attendance recording advice to schools. DET has also provided advice to schools on Koorie

<sup>1337</sup> Department of Education and Training (DET), *Victorian school attendance guidelines*, DET website, 2018, accessed 7 April 2020, part 3.

<sup>1338</sup> DET, *Victorian school attendance guidelines*, part 3.

<sup>1339</sup> DET, *Marrung*.

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cultural absences being an accepted educational absence.

### Suspension and expulsion

*I'm not at school. I've been waiting and waiting and waiting and waiting.*  
– Toby, 15

Of young people who raised educational matters with the Commission (n = 65), 22% (n = 14) talked about being suspended or expelled. Some children and young people described experiences amounting to informal expulsion (also known as 'soft expulsion', 'exclusion', or 'soft exit'), where a student is encouraged or forced to leave a school without a formal expulsion.<sup>1340</sup> This is discussed further below.

*I don't know if I'm allowed to go back to school.*  
– Kevin, 16

*I didn't have a problem with school, but I had a problem with authority. I was suspended around 60 to 70 times... I never got expelled on my record, but I was asked to leave schools 3 or 4 times.* – Rory, 20

*I got kicked out. They couldn't even tell me why I was kicked out. I had to go to a little school on the outskirts of town after that. I lost a lot of years of knowledge.* – Macy, 23

*Teachers picking on me for shit I wasn't doing. If someone was doing something, and it wasn't me, then I'd go off on them and I'd get kicked out or suspended.* – Paul, 15

*I went to school up to like the start of Year 7. I didn't like the teachers and students. I was getting in punch-ons every day and getting detentions and they asked me to leave school because I just wouldn't follow rules.* – Chris, 20

<sup>1340</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 67.

Some family members also shared their experiences.

*He got expelled at 12 for fighting and we tried to put him back in, but they wouldn't give him a second chance. Aboriginal kids don't get a second chance.* – Nan

The link between suspension and expulsion from school and contact with the youth justice system is clear. As noted above, the 2019 annual Youth Justice survey indicates that 65% of Aboriginal children and young people in youth justice custody or under community supervision had previously been suspended or expelled from school.<sup>1341</sup>

Compared to their non-Aboriginal peers, Aboriginal children and young people are more likely to be suspended or expelled from school. Victorian school suspensions data for 2019 provided by DET showed that Aboriginal students had on average 4.0 suspension days per student as opposed to 3.1 for non-Aboriginal students.<sup>1342</sup> Further, despite making up approximately 2% of the Victorian student population, Aboriginal students accounted for 8% of the suspension days that occurred in 2019.<sup>1343</sup>

The accuracy of suspensions data is critical to providing a complete understanding of the extent of Aboriginal children and young people's exclusion from education. Prior to 2018, there were significant questions about the quality and reliability of suspensions data. In April 2021, DET advised the Commission that the quality of suspensions data has significantly improved since 2018 and is now considered reliable. Suspensions are recorded as part of mandatory daily attendance reporting. According to DET, while the relatively small number of Aboriginal students in Victoria can cause significant fluctuations in the suspension rate for this group over time, it does not impact on the accuracy of the total number of suspensions or the proportion of suspensions that are assigned to Aboriginal students compared to non-Aboriginal students.<sup>1344</sup>

Nevertheless, the suspensions data provided by DET does not capture situations where a student stops

<sup>1341</sup> DJCS, *Young people involved with Youth Justice in 2019*, p 6.

<sup>1342</sup> DET data provided to the Commission on 24 August 2020.

<sup>1343</sup> DET data provided to the Commission on 24 August 2020.

<sup>1344</sup> Information provided to the Commission by DET on 9 April 2021.

attending school for a period of time without being formally suspended, and thus does not provide an accurate measure of the extent to which schools are failing to support students who are at risk of disengagement from education.

Data on expulsions is from Victorian government schools is now publicly available. A key recommendation recently implemented from the Victorian Ombudsman's 2017 investigation into government school expulsions was that DET collect and report publicly each year on the total number of expulsions, with particular reference to Aboriginal students, in order to develop policies and programs aimed at preventing disengagement.<sup>1345</sup> This followed the Commission's earlier recommendations in *Always was, always will be Koori children* for improved accountability and transparency with respect to data on suspensions, expulsions and disengagement of Aboriginal students in out-of-home care.<sup>1346</sup>

In 2017, the Victorian Ombudsman found that, while Aboriginal young people made up less than 2% of the Victorian student population, they accounted for approximately 6% of the expulsions that occurred in 2016.<sup>1347</sup> Published DET expulsions data for 2017–2019 (Table 10.2) indicates that, although the total number of expulsions from Victorian government schools has decreased since 2017, Aboriginal children and young people remain over-represented in expulsions. In 2019 they accounted for 6.5% of all expulsions, broadly consistent with the proportion observed by the Ombudsman in 2016.

<sup>1345</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 92.

<sup>1346</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 89.

<sup>1347</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 34.

**Table 10.2** Victorian school expulsions by Aboriginal status, 2017–2019

Year	Aboriginal students		Non-Aboriginal students		Total students (No.)
	No.	%	No.	%	
2017	18	6.3%	267	93.7%	<b>285</b>
2018	7	3.6%	185	96.4%	<b>192</b>
2019	12	6.5%	172	93.5%	<b>184</b>

Source: Department of Education and Training (DET), [Expulsion data for Victorian government schools in 2018](#) and [Expulsion data for Victorian government schools in 2019](#), DET, Victorian Government, 2020, accessed 20 January 2021.

DET policy states that if a school is considering expelling an Aboriginal student, supports should be put in place early, including contact with the Koorie Education Coordinator in the region.<sup>1348</sup> The Ombudsman's 2017 report found this was not occurring regularly. The Ombudsman referred to the lack of early intervention for Aboriginal students, and the fact that help was available but was often brought in too late.<sup>1349</sup>

The Ombudsman also found that informal expulsions, while not officially recorded, were prevalent,<sup>1350</sup> and that their use affected Aboriginal students more than other groups.<sup>1351</sup> In order to prevent informal expulsions, the Ombudsman recommended that DET:

- implement mandatory and timely reporting to the relevant regional office by the principal when a student leaves a school via means outside a formal expulsion, where this is preceded by behaviour or discipline issues involving that student
- require that the parents or guardians complete a form regarding the student exit, including whether they agree to the exit, and report on the next

<sup>1348</sup> Department of Education and Training (DET), [Expulsion policy for Victorian government schools \[PDF\]](#), DET, Victorian Government, 2017, accessed 15 March 2020, p 11.

<sup>1349</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 2.

<sup>1350</sup> The Ombudsman estimated that the number of informal expulsions in Victoria was between 278 (the number of students formally expelled in 2016) and 6,800 (the number of students between Year 9 and Year 12 who disengage from government education each year).

<sup>1351</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 74.

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educational, employment or training opportunity for that student.<sup>1352</sup>

Since the Ombudsman's investigation, the Victorian Aboriginal Education Association Incorporated (VAEAI), Victoria's peak Aboriginal education body, has worked to reduce the number of expulsions of Aboriginal students. Its focus has been on improving and outlining the process that schools and principals must follow to expel an Aboriginal child. VAEAI told the Commission that while it has noted a lower number of expulsions, the number of suspensions has increased over the same period.

*Making sure that there is continuous involvement with groups like ourselves, or parents, has made it harder for young people to be expelled, and so we saw a rapid increase in the number of suspensions. – General Manager, VAEAI*

The Commission was unable to confirm this, as we only obtained suspensions data for 2019. However, we note that, although the small number of Aboriginal students in Victoria means that the data should be read with caution, expulsions data from 2017 to 2019 shows a reduction in the number of Aboriginal students expelled from government schools in 2018 (see Table 10.2).

VAEAI identified 2 key issues with the use of suspensions for Aboriginal young people:

- their subjectivity
- the punitive approach which further entrenches disengagement and exclusion.

*What behaviour is classified as suspension worthy? Schools differ and teachers' interpretations differ. Swearing might warrant a suspension in one school – there are so many variables. And the students' stories will be at the heart of it. – VAEAI worker*

*There should always be alternate measures in place and suspensions should be a last resort. They should also be carried out in schools – sending students home takes them out of the school environment even more and is just punishing them. – VAEAI worker*

The Northern Metropolitan Taskforce regional forum also identified the need to keep young people physically present in school instead of employing a punitive suspension and expulsion approach that further entrenches disengagement.

The experiences of Aboriginal children and young people, and the available data on suspensions and expulsions, indicate that there is still considerable work to be done to improve school engagement and retention, and in particular, access to early intervention and support for Aboriginal students at risk of suspension or expulsion from school.

### Bullying and racism

Among children and young people who raised educational matters with the Commission (n = 65), 22% (n = 14) discussed bullying and racism in schools. For some, bullying and racism resulted in their disengagement from school.

*I dropped out of school because of bullying. I had just been bullied too much and I was just over it. – Callum, 17*

*I get nervous when I think about school. I was the odd one out. I love doing work, but I felt like I was treated different. I was pushed aside cos they knew I was Aboriginal... Students were racist too and that's why I left. – Corei, 17*

*School was very hard for me. I used to be large in school. I used to get picked on and bullied a lot. That's where my anger got bad, because I just used to keep it in. I never really liked school. I didn't have friends. I always had to do something for my friends. I couldn't just join in and stuff. School was just fucked for me. I didn't like it. – Frazer, 17*

<sup>1352</sup> Recommendation 8: Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 93.



*I went to 6 different schools. There was a lot of racism, especially for a young Aboriginal boy. Especially because I had light skin, they said I couldn't be Aboriginal. – Kobe, 19*

*There's a lot of bullying that goes around in school and the police bully people and then they bully other people, and everyone is bullying. – Cameron, 17*

*I didn't like school. I was really anxious – I always thought people were talking about me, paranoia. Like, if I was late for school, I didn't want to go because I thought everyone would talk about me. – Karl, 21*

*I'm having troubles reading and writing. I went the whole way at school, but the school was like a special school and I got bullied the whole way and the principals didn't care or anything. – Jamie, 18*

A parent also shared her experience with us at a community forum.

*My daughter has never had a fight until this year. It was all because of racism. They urge them on with the racism until the Koorie kids arc up and then they are the ones in trouble. Suspended, expelled, missing out on their education, and that's been going on since Nan's days... and some of the teachers are just as racist, they just tell the Koorie kids to get their bags and send them home... High school and trying to work out how to help the Koorie kids in there, and getting the Elders to come and speak to them. There's a lot of racism going on and the kids don't know how to deal with the racism. When the Koorie kids stand up for themselves, it's them that get in trouble. – Mum*

There is significant evidence surrounding the effects of racism on Aboriginal students, including the connection between racism and disengagement from education,

lower attendance or withdrawal from school, and poor academic performance.<sup>1353</sup>

DET acknowledges that racialised bullying 'continues to occur in our school communities and can have long-term negative effects on students' physical and mental health, school attendance and educational attainment'.<sup>1354</sup> Table 10.3 shows that there has been an overall decrease in the proportion of Aboriginal students who reported bullying behaviour at school from 2017 to 2018, and a continued decrease from 2018 to 2019, except for students in years 10 to 12.<sup>1355</sup>

**Table 10.3** Percentage of Aboriginal students experiencing bullying behaviour at school, 2017–2019

Year level	Aboriginal students (%)		
	2017	2018	2019
Year 4–6	25.6	23.7	21.9
Year 7–9	28.4	25.9	24.6
Year 10–12	22.3	16.8	18.8

Source: Department of Education and Training (DET), *Marrung Central Governance Committee February 2020 data report card*, DET, Victorian Government, 2020.

While this is a welcome reduction, Aboriginal children and young people continue to experience rates of bullying in school between 6.1 and 7.9 percentage points higher than their non-Aboriginal peers.<sup>1356</sup> An objective of the Victorian Aboriginal Affairs Framework is an improvement in educational outcomes and engagement for Aboriginal students and their families by encouraging schools to act on incidents of racism and bullying, thus 'increasing the confidence that Aboriginal students and their families have in the school system'.<sup>1357</sup>

In July 2019, under the auspices of the Aboriginal Justice Forum, DET commenced consideration of a project to examine racism in schools. A pilot program

<sup>1353</sup> N Moodie, J Maxwell, and S Rudolph, 'The impact of racism on the schooling experiences of Aboriginal and Torres Strait Islander students: a systematic review', *The Australian Educational Researcher*, 2019, 46:273–295.

<sup>1354</sup> Department of Education and Training (DET), *Racist bullying*, DET website, 2020, accessed 7 April 2020.

<sup>1355</sup> Department of Education and Training (DET), *Marrung Central Governance Committee February 2020 data report card*, DET, Victorian Government, 2020.

<sup>1356</sup> DET, *Marrung Central Governance Committee February 2020 data report card*.

<sup>1357</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 38.

## 10.1 Engagement in education

was undertaken to measure cultural safety within a particular DET area, using a psychometric profile tool. Consideration is being given to using this tool on a broader scale.<sup>1358</sup>

The Commission considers that more needs to be done to address racism in Victorian schools.

### Level of attainment

Of young people who raised educational matters with the Commission (n = 65), 48% (n = 31) discussed barriers to their engagement with education. Some spoke directly about disengaging from school before Year 12.

*The last year I went to school was Year 6.  
– Keegan, 15*

*I dropped out of school at Year 7 and went to one of my mates, turned to selling and using drugs. I was 14 at the time. I needed to make money for myself and be independent.  
– Pearl, 19*

*I went to [a school]. It was alright. Didn't go past Year 9. – Nataya, 21*

*Schools don't care about you in Years 7, 8, 9, 10.  
– Joel, 22*

Some young people discussed a lack of educational support affecting their level of attainment.

*Mum was fighting from primary school to try and get me an aide and one-on-one support, but the school never did it. – Keegan, 15*

**Q:** *What would you have wanted?*  
**A:** *To get to Year 12 and maybe get to university. I wish schools would do that [get Aboriginal kids to Year 12] for all the kids out there. – Macy, 23*

*When I asked for help it felt like I got pushed aside... They sent my parents wrong reports, made my parents pay full fees, but I didn't have to... I was trying hard but had to leave... I haven't gone back to school... I should be in Year 12... There are no Aboriginal kids there [in Year 12]. If there were more tutoring, they'd still be in Year 12. There are only 2 or 3 kids I know finishing school right now. – Corei, 17*

*Tutors gave up so easily. They thought it was too tough. I feel like I needed that guidance to really understand education. I kept thinking, 'Oh you're just too weak, you couldn't handle it.' – Joel, 22*

Low levels of attainment were apparent in Taskforce case planning sessions, where over one-third of the young people involved (38%, n = 26) did not complete any years of secondary school.

The Taskforce case file review also revealed relatively low levels of school attainment (see Table 10.4).

**Table 10.4** Level of attainment for Aboriginal children and young people at time of Taskforce case file review

Level of education	Aboriginal children and young people	
	No.	%
Year 12 Certificate	2	1%
Year 11	14	5%
Year 10	52	19%
Year 9	59	21%
Year 8	50	18%
Year 7	39	14%
Primary school	35	13%
Other	3	1%
Unknown	21	8%
<b>Total</b>	<b>275</b>	<b>100%</b>

Level of attainment was a focus of discussion at several Taskforce regional forums. For example, Mildura identified the need to address the high number of young people leaving in Years 8, 9 and 10, while

<sup>1358</sup> Department of Justice and Community Safety (DJCS), *AJF actions arising*, AJF 58, Aboriginal Justice Forum, 2020, unpublished.

Bendigo set a performance target to increase the proportion of students going on to higher education.

Lower levels of educational attainment are associated with increased contact with the youth justice system. The Victorian Ombudsman discussed the link between lower levels of educational attainment and higher levels of incarceration by highlighting that over 90% of incarcerated adults in prisons did not complete secondary school.<sup>1359</sup> Aboriginal young people who complete Year 12 are 14 times less likely to be imprisoned.<sup>1360</sup> However, Aboriginal young people are much less likely to complete Year 12 than other Victorians. In 2018, 71% of Aboriginal young people aged between 20 and 24 had attained a Year 12 or equivalent level compared to 91% of other Victorians.<sup>1361</sup> A key outcome of the Victorian Aboriginal Affairs Framework and *Marrung* is to see Aboriginal young people successfully complete Year 12 and to 'halve the gap for Aboriginal Australians aged 20–24 in Year 12 attainment or equivalent attainment rates by 2020'.<sup>1362</sup>

## Current Victorian initiatives to address disengagement from education

There are several initiatives in Victoria aimed at addressing disengagement from education among Aboriginal and non-Aboriginal students. Some of these are outlined below.

### Local Aboriginal Education Consultative Groups

Local Aboriginal Education Consultative Groups (LAECGs) are groups of volunteer Aboriginal community members who provide advice, planning, development and evaluation of Aboriginal education programs at a local level. Thirty LAECGs meet regularly across 8 regions in the state. They are constituents of VAEAI and have representation in the VAEAI council.<sup>1363</sup>

LAECGs sustain community presence and embed local cultural knowledge within education, which has a lasting positive effect on the engagement of Aboriginal

young people in schooling. According to the VAEAI *protocols for Koorie education in Victorian primary and secondary schools*:

*LAECGs fulfil a significant role in providing the links between Koorie communities, the VAEAI structures, Government departments and education and training institutions. They are best placed to provide local perspectives on education and training matters and highlight the needs and aspirations of local Koorie communities.*<sup>1364</sup>

### Education Justice Initiative

The Education Justice Initiative (EJI) is a service delivered by DET to support children and young people of school age who come before the Children's Court and are not enrolled in or attending school or a training program. The EJI works to connect or reconnect these young people with education and training. For Aboriginal young people, the EJI operates in every Children's Koorie Court across Victoria and employs Koorie Education Children's Court Liaison Officers (KECCLOs):<sup>1365</sup>

*The cultural background and experience of EJI KECCLOs working across Victoria in Koorie Children's Courts provides a culturally appropriate and sensitive model of service delivery to young people and builds capacity that allows schools to offer education options and alternatives that value and respect Aboriginal and Torres Strait Islander culture.*<sup>1366</sup>

In 2018–2019, the EJI supported 829 young people to re-engage with education.<sup>1367</sup> The 2018 *Inquiry into youth justice centres in Victoria* by the Victorian Parliament found that the EJI had shown a 75% success rate in reconnecting young people with education since 2014, and had significantly improved enrolment and attendance rates for the young people it supports.<sup>1368</sup>

<sup>1359</sup> Victorian Ombudsman, *Investigation into Victorian government school expulsions*, p 2.

<sup>1360</sup> PwC, *Indigenous incarceration*, p 23.

<sup>1361</sup> DPC, *Victorian Government Aboriginal Affairs Report 2019*, p 41.

<sup>1362</sup> DET, *Marrung*, p 27.

<sup>1363</sup> Victorian Aboriginal Education Association Incorporated (VAEAI), *Local Aboriginal Education Consultative Groups*, VAEAI website, 2020, accessed 20 March 2020.

<sup>1364</sup> Victorian Aboriginal Education Association Incorporated (VAEAI), *Protocols for Koorie education in Victorian primary and secondary schools* [PDF], VAEAI, 2015, p 5.

<sup>1365</sup> Department of Education and Training (DET), *Education Justice Initiative operating guidelines*, DET, Victorian Government, 2016, accessed 27 May 2020.

<sup>1366</sup> DET, *Education Justice Initiative operating guidelines*, p 14.

<sup>1367</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 18.

<sup>1368</sup> Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 99.

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### Navigator program

Navigator is a DET program that provides case management support to young people aged between 12 and 17 years who are disengaged from education.<sup>1369</sup> In 2018, approximately 13% of Navigator clients were Aboriginal young people (96 out of 735 clients), with the highest representation in the Mallee and Goulbourn regions (32% and 21% respectively).<sup>1370</sup> In the Navigator outreach model, community service organisations work with young people to provide holistic support.<sup>1371</sup> Re-engagement plans identify their strengths and goals and involve their family, school and community supports.

A 2017 evaluation of the program showed early success, pointing to factors such as:

- skills in trauma-informed case management
- a client-centred approach that supports a young person while understanding the broader context of their family
- adaptable communication and engagement approaches.<sup>1372</sup>

An investment of \$6.9 million into Navigator was announced in August 2020 to assist case management, reduce waitlists, fast-track return to education where possible and boost the mental health support offered through the program. DET is also revising the Navigator operational guidelines to ensure referrals identified as being involved with Youth Justice are prioritised for response in concert with other services, including those administered by DJCS. DET has advised that this may mean Navigator service providers do not take on case management responsibility, but work as part of care teams with a focus on educational re-engagement.<sup>1373</sup>

In its submission to this inquiry, Jesuit Social Services suggested lowering the age of eligibility for the

<sup>1369</sup> In addition, the School Focused Youth Service supports students at earlier stages of disengagement from Year 5 to Year 12.

<sup>1370</sup> *Navigator Census 2018*, unpublished, provided to the Commission by DET on 27 May 2020.

<sup>1371</sup> Department of Education and Training (DET), *Navigator pilot: evaluation snapshot*, DET, Victorian Government, 2018.

<sup>1372</sup> DET, *Navigator pilot: evaluation snapshot*.

<sup>1373</sup> Information provided to the Commission by DET on 23 December 2020.

Navigator program to 10 years in order to assist more at-risk young people.<sup>1374</sup>

### LOOKOUT centres

Victorian LOOKOUT centres build the capability of schools, Child Protection practitioners and out-of-home care services to understand the educational needs of children living in out-of-home care, provide support and improve educational outcomes. LOOKOUT supports are variously provided by schools, Student Support Services, DET area teams and Child Protection. They include:

- learning mentors
- student support groups
- individual education plans
- educational needs analysis
- engagement with Koorie Engagement Support Officers (KESOs) in student support groups
- cultural plans.

As noted in Chapter 8.1 'Child Protection involvement', Aboriginal children and young people are over-represented in out-of-home care. LOOKOUT data from 2019 provided by DET shows high rates of Aboriginal children receiving some LOOKOUT supports. However, other key LOOKOUT supports only benefited around half of Aboriginal students involved in the program, indicating a need for further resourcing and investment (Table 10.5).

**Table 10.5** Selected LOOKOUT supports provided to Aboriginal students in Semester 2, 2019

LOOKOUT supports	Percentage of Aboriginal students who received LOOKOUT support (%)
Learning mentor	84
Student support group	94
Individual education plan	93
Educational needs analysis	49
Koorie Engagement Support Officer engagement in student support groups	50

Source: Data provided to the Commission by DET on 20 August 2020.

<sup>1374</sup> Jesuit Social Services, Submission to *Our youth, our way* inquiry, p 12.

An investment of \$5.35 million in LOOKOUT was announced in August 2020. This included funding for 8 specialist practitioner positions, several of which have elements designed to improve responses to young people in contact with the youth justice system.<sup>1375</sup>

We heard positive feedback about the LOOKOUT program during Taskforce community engagement. However, LOOKOUT is not accessible to those children and young people in the youth justice system who are not also living in out-of-home care. The VAEAI is in favour of expanding LOOKOUT to support all children and young people in the youth justice system.

## Out Teach

Out Teach is an educational re-engagement program run by Save the Children. It operates in the Shepparton area and works with young people referred by DET or DJCS who have high levels of recidivist behaviour and are at risk of long-term involvement in the youth justice system. Ninety per cent of the young people involved in the program are Aboriginal.<sup>1376</sup>

Out Teach is a '2-on-1' dual worker program for children who are not otherwise attending school. A social worker and a registered teacher (employed by Save the Children) work with a young person out of a mobile classroom at least once per week. Out Teach operates under child-centred, trauma-informed and strengths-based practice principles. The social worker and teacher work collaboratively with the young person to develop an individual plan detailing their interests and strengths to inform their educational goals. They also work to identify and develop personal goals for the young person that complement their education plan. These could include goals relating to physical fitness, mental health or better intrapersonal relationships. Out Teach workers connect young people with community, sporting and cultural organisations for support with their personal goals, helping to establish an ongoing support network for when they graduate from the program. Another key aspect of the program is its flexibility.

<sup>1375</sup> Information provided to the Commission by DET on 23 December 2020.

<sup>1376</sup> Victorian Government, *Spotlight on the Department of Justice and Community Safety regions: Hume*, Community Crime Prevention Victoria website, 2020, accessed 5 September 2020.

*Our experience shows that a 'one size fits all' response is unsuccessful in the context of complex overlapping issues young people in the justice system are facing, and flexibility is key to a successful outcome.*<sup>1377</sup>

A 2017 evaluation of the Tasmanian Out Teach program conducted by Monash University demonstrated success in reducing recidivist behaviour (78% of participants did not return to court, and 88% of participants did not return to detention).<sup>1378</sup> Preliminary data from the Shepparton Out Teach program indicates some key successes, including improved educational engagement and attendance, improved literacy and numeracy, and enhanced intrapersonal skills.<sup>1379</sup>

## Aboriginal Early School Leavers program

The Aboriginal Early School Leavers program is funded by DJCS as part of the Koori Youth Justice Program and provided by 2 ACCOs – Mallee District Aboriginal Services (MDAS) and Bert Williams Aboriginal Youth Services (BWAYS) – to support Aboriginal children and young people who are disengaged, or at risk of disengaging, from education or employment. During the 2018–19 financial year, BWAYS worked with 89 Aboriginal children and young people, and MDAS worked with 46. The Aboriginal Early School Leavers program provided support to Aboriginal children and young people by supplying items such as school uniforms, stationery and textbooks; paying enrolment fees; and funding school holiday engagement programs, including a 3-on-3 basketball tournament.

In the 2018–19 State Budget, DJCS secured ongoing funding for 3 Aboriginal Early School Leavers program worker positions. There would be considerable benefit in expanding this program to more ACCOs across the state.

<sup>1377</sup> Information provided to the Commission by DET on 10 September 2020.

<sup>1378</sup> K Reimer, L Pangrazio and N Selwyn, *Out Teach mobile education program evaluation: final report*, Monash University and Save the Children, 2017, accessed 5 September 2020.

<sup>1379</sup> Victorian Government, *Spotlight on the Department of Justice and Community Safety regions: Hume*.

## 10.1 Engagement in education

### Youth Justice Education Pathway Coordinators

In 2020, DET announced 2 Youth Justice Education Pathway Coordinator positions to assist in supporting young people to successfully transition from the youth justice system into school, higher education (such as TAFE) or employment opportunities.<sup>1380</sup> Key functions of the Youth Justice Education Pathway Coordinator role include:

- providing advice and a case management function to young people transitioning from Parkville College<sup>1381</sup> and involved in the courts
- establishing a community of practice between Parkville College, DET's Youth Participation Unit, Youth Justice, Court Services Victoria and regional and local area DET staff
- following up with the young person to make sure the transition has been successful
- overseeing the integrity and maintenance of essential records and data.

### NSW Youth on Track program

Early intervention and diversion are key elements of the youth justice model in NSW, receiving significant investment from government and proving effective in reducing contact with the justice system for children and young people.

Youth on Track is an early intervention scheme for children and young people aged 10 to 17 years who are at risk of disengagement from education and learning. The NSW police or Department of Education can refer young people they deem to be at risk to support services without needing a court or other mandate. The young person's involvement is voluntary.

The NSW Government funds non-government organisations to deliver Youth on Track in 7 locations across NSW. Youth on Track service providers organise individual case management for each young person. They can provide access to interventions including family supports, behavioural supports, engagement with education and referral to other programs.<sup>1382</sup> Youth

<sup>1380</sup> Information provided to the Commission by DET on 9 July 2020.

<sup>1381</sup> Parkville College is a Victorian government school for children and young people in custody. It is discussed in Chapter 10.4 'Education in custody'.

<sup>1382</sup> NSW Department of Communities and Justice, *The Youth on Track model*, Department of Communities and

Justice, New South Wales Government, 2019, accessed 13 December 2019.

on Track caseworkers liaise with service organisations and government agencies to promote coordinated services, avoiding duplication or fragmentation in supports provided to young people.

A 2020 snapshot indicates that Youth on Track demonstrably improves outcomes for young people engaged in the service.<sup>1383</sup> In 2020, 358 children and young people participated in the service (mostly via automatic referrals from the police database).<sup>1384</sup> Of these participants:

- 76% were male
- 59% were Aboriginal
- 75% were aged 14 to 17 years.<sup>1385</sup>

In the 3 months after commencing the program, 65% of participants had reduced their risk of reoffending.<sup>1386</sup> By completion, 75% of participants had lowered their risk of reoffending score to 'low' or 'medium'.<sup>1387</sup>

A parliamentary review into the adequacy of NSW's diversionary programs, released in 2018, found that Youth on Track is highly effective but is not available statewide.<sup>1388</sup> The review recommended the expansion of the scheme to facilitate more equitable access.

The Youth Justice Review recommended the development of a pilot program to respond to 'pre-offending at-risk youth who have been suspended or expelled from school for threatening or violent behaviours'. According to the Youth Justice Review, such a pilot would provide useful input for the design of a Youth on Track style program in Victoria.<sup>1389</sup>

Justice, New South Wales Government, 2019, accessed 13 December 2019.

<sup>1383</sup> NSW Department of Communities and Justice, *Youth on Track: Snapshot report 2020 calendar year*, Youth Justice NSW, Department of Communities and Justice, NSW Government, accessed 3 March 2021.

<sup>1384</sup> NSW Department of Communities and Justice, *Youth on Track: Snapshot report 2020 calendar year*, p 8.

<sup>1385</sup> NSW Department of Communities and Justice, *Youth on Track: Snapshot report 2020 calendar year*, p 9.

<sup>1386</sup> NSW Department of Communities and Justice, *Youth on Track: Snapshot report 2020 calendar year*, p 4.

<sup>1387</sup> NSW Department of Communities and Justice, *Youth on Track: Snapshot report 2020 calendar year*, p 3.

<sup>1388</sup> Parliament of New South Wales, *The adequacy of youth diversionary programs in New South Wales*.

<sup>1389</sup> Recommendation 7.4: 'In partnership with the Department of Education and Training, develop a pilot program that will seek to respond to pre-offending at-risk youth who have been either suspended or expelled from school for threatening or violent behaviours. This pilot would provide useful input for the design of a Youth On Track style program in Victoria.'; Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 181.

In response to this recommendation, DJCS indicated that it is considering the inclusion of elements of Youth on Track in its redevelopment of the Youth Support Service (YSS) and the Aboriginal Youth Support Service (AYSS), which was established to provide a culturally informed approach. The YSS/AYSS is an early intervention support service for at-risk children and young people who have already come into contact with police, but are not yet statutory clients of either Child Protection or Youth Justice. AYSS is provided in Mildura and the North West Metropolitan region (via Dardi Munwurro's *Bramung Jaarn* program, which is discussed in Chapter 4.1 'Advancing self-determination').

The Commission is concerned that the redevelopment of the YSS/AYSS will not provide a sufficient focus on Aboriginal children and young people who have been suspended or expelled from school, or who are otherwise disengaged from education. In particular, we are concerned that the program is focused more on police referrals than on referrals from schools. DJCS should consider strengthening referral pathways to the YSS/AYSS from education providers. This is a key strength of the Youth on Track model.

In April 2021, DJCS advised the Commission that the redesign of the AYSS will maintain the existing police referral pathway. According to DJCS, educational engagement will remain a core focus of the AYSS; however, programs such as LOOKOUT and Navigator are focused on school referrals to address disengagement from education.

## **Improving Aboriginal children and young people's engagement in education**

Aboriginal children and young people told us that they value education and want to attend school. However, evidence from the Taskforce and this inquiry shows that Aboriginal children and young people in contact with the youth justice system are likely to have experienced prior disengagement and exclusion from school. Our evidence is consistent with other data, which shows that Aboriginal children and young people have lower rates of school attendance, are more likely to be suspended or expelled from school, and have lower levels of educational attainment than non-Aboriginal students. They also experience unacceptably high rates of racialised bullying, which contributes to their disengagement from education. Each of these factors

increases the risk of contact with, and entrenchment in, the youth justice system.

Current early intervention and diversion initiatives aimed at addressing young people's disengagement from education in Victoria are positive. However, more is needed to meet the education and learning needs of Aboriginal children and young people who are involved in, or at risk of contact with, the youth justice system. Existing programs such as Navigator, Out Teach and the Aboriginal Early School Leavers program should be expanded.

Improvement is also required in DET reporting practices to measure how and why Aboriginal children and young people are suspended from government schools. This data transparency and accountability is required to create informed solutions to keep Aboriginal children and young people engaged in education. In addition, the Victorian Government should implement the Victorian Ombudsman's recommendations regarding informal expulsions in order to identify the scope and key drivers of informal expulsions among Aboriginal children and young people.

### Recommendation 49

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That the Victorian Government improve Aboriginal children and young people's engagement in education by:

- a) expanding the Navigator program to include children aged 10 years and above
- b) ensuring targeted educational support for Aboriginal children and young people in the youth justice system, whether through the expansion of the LOOKOUT program, the Youth Justice Education Pathway Coordinator role, the Education Justice Initiative program or the role of Parkville College
- c) resourcing the expansion of the Out Teach program to another region, with consideration given to it being led by an Aboriginal organisation
- d) expanding the Aboriginal Early School Leavers program to enable more Aboriginal organisations to provide material support to Aboriginal children and young people in contact with the youth justice system
- e) considering the expansion of referral pathways to the Aboriginal Youth Support Service from education providers
- f) regularly publishing data on the suspension of Aboriginal children and young people from Victorian government schools
- g) implementing mandatory reporting of informal expulsions and requiring parents or guardians to provide information regarding the student's departure from school, in line with the Victorian Ombudsman's 2017 recommendations
- h) strengthening efforts to tackle and eliminate racism in schools.



# 10.2 Connection to culture in education

## Finding 25

Aboriginal children and young people want to learn about and feel connected to their culture in education and learning environments.

*Make more stuff so [the younger generation] can learn culture – they don't know much about their culture – so they can be proud. – Lachie, 12*

As discussed in Chapter 7.4 'Connection with culture', connection to culture is a protective factor and a source of strength for Aboriginal children and young people. Our evidence also highlights the value of culture for Aboriginal children and young people in education and learning environments.

Many Taskforce regional forums identified the importance of embedding Aboriginal culture in education. The centrality of culture was also a feature of the Taskforce case planning sessions, where 49% of case plan actions involved a cultural element as a means of re-engaging the young person.<sup>1390</sup>

Aboriginal children and young people have cultural rights that are protected in Victoria.<sup>1391</sup> Further, article 14 of the United Nations Declaration on the Right of Indigenous Peoples provides that:

*States shall, in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children, including those living*

<sup>1390</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

<sup>1391</sup> Charter of Human Rights and Responsibilities, s 19(2).

*outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.*<sup>1392</sup>

## Embedding culture in government schooling

*For Aboriginal learners to excel at school, it is vital that schools are culturally supportive and responsive learning environments. Cultural safety and connection to culture is a critical foundation that supports Aboriginal children to be confident learners and makes schools more inclusive of Aboriginal students and their aspirations.*<sup>1393</sup>

Of children and young people who raised educational matters with the Commission (n = 65), 22% (n = 14) said that they wanted the educational curriculum to reflect the true history of colonisation and to value Aboriginal people's experiences and culture.

*They should talk about Aboriginal communities in primary school. They should teach that we were the first people here, it wasn't the English. – Malkar, 19*

<sup>1392</sup> United Nations Declaration on the Rights of Indigenous Peoples, article 14(3). Article 14(2) provides that 'Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.'

<sup>1393</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 38.

## 10.2 Connection to culture in education

*Back in primary school, I didn't know what was going on. I was always listening, putting my hand up, but I remember thinking there must be something else going on out there that I should be a part of. I knew a bit about my totem, but I didn't know much. There's not much teaching for culture in my home town... There was a school for Aboriginal people, but that shut down. There's nowhere to go now. I don't know if the funding ran out or it wasn't working. – Kirrae, 22*

*There's no cultural worker at school.*

**Q:** *Would that be good?*

**A:** *Yeah. – Xavier, 11*

*I can't speak my language... I'd love to speak the Gunaikurnai language. – Jared, 11*

*I don't really know much about my history. I should start asking about my Koorie culture. – Karl, 21*

*I wanted to enjoy school but the only subject I liked was PE. I never got to learn my language. In my primary school I learned my language and I loved it... culture makes me forget about bullying. It makes me open up. There was an Indigenous program that helped, but it stopped around Year 9. The worker just dropped me and left. As soon as I did something not right I lost my spot, they just dropped me... In science we were talking about history and the teacher said colonisation is over 1,000 years old. I said that was wrong and he said, 'Who are you?' I said, 'I'm Aboriginal.' He said, 'I thought Aboriginal people were only in America.' I got sent to the principal's office... I got a detention for swearing and getting angry. – Corei, 17*

Several Taskforce regional forums discussed barriers to embedding culture in education. For example, the Bairnsdale forum identified a lack of support in classrooms to maintain engagement and build pride in Koorie heritage, while the Geelong forum identified a

lack of cultural knowledge in schools in the Barwon region. The Eastern Metropolitan regional forum noted a gap in cultural knowledge within DET. Consistent with the views of children and young people, the Shepparton forum identified a need for a greater emphasis on culture for young people in schools.

Among the children and young people we consulted, a positive connection to their school was uncommon. It is important when considering government schools to acknowledge that, historically, such educational institutions have been a source of displacement and trauma for Aboriginal peoples.<sup>1394</sup> For Aboriginal students to feel connected and thrive educationally, schools and the learning environment must value their unique identity and see culture as a strength.

In order for government schools to be culturally safe environments for Aboriginal students, they must develop partnerships with the local Aboriginal community. VAEAI outlines that schools should have 2 types of partnerships with the local Aboriginal community: one to ensure the educational success of each individual Aboriginal child, and one to facilitate learning about local Aboriginal histories and cultures across the curriculum for every child. Both of these partnerships must be guided by local community members, including parents and LAECGs.<sup>1395</sup>

Similar points were made at the Taskforce regional forums. For example, participants at the Bendigo and Ballarat forums indicated that all Aboriginal children and young people should have individual learning plans tied to cultural plans, while participants at the Geelong forum expressed the need for Aboriginal knowledge systems to inform education because 'culture works'.

Australia has recently made positive improvements to both the national curriculum and the professional standards for teachers with respect to the importance of Aboriginal cultural understanding in schools. These include new curriculum requirements for incorporating Aboriginal histories and cultures across all subject areas, for all students. Improvements have been made in pre-service teacher training and graduate-level teachers are required to promote reconciliation through 'broad knowledge of, understanding of, and respect for

<sup>1394</sup> VAEAI, *Protocols for Koorie education in Victorian primary and secondary schools*, p 6.

<sup>1395</sup> VAEAI, *Protocols for Koorie education in Victorian primary and secondary schools*, p 11.

Aboriginal and Torres Strait Islander histories, cultures and languages'.<sup>1396</sup>

In Victorian government schools, *Marrung* reiterates the national focus:

*A positive climate is a prerequisite for good learning and development outcomes. For Koorie learners this includes an environment where they are able to feel proud and strong in their cultural identity – evidenced through an environment where Koorie culture is acknowledged, respected and, above all, valued.*<sup>1397</sup>

Schools in Victoria are also required by law to apply the Child Safe Standards to protect children from harm.<sup>1398</sup>

An overarching principle of the Child Safe Standards is that the cultural safety of Aboriginal children must be promoted.

A 2019 survey of 1,534 Victorian schools found that:

- 1,449 (94%) incorporated Aboriginal perspectives in the curriculum
- 1,401 (91%) had an Acknowledgement of Country at school assemblies
- 1,269 (83%) flew the Aboriginal and/or Torres Strait Islander flag
- 1,249 (81%) had Koorie students enrolled
- 1,004 (65%) actively encouraged parents, carers and families of Koorie students to be involved in the student's learning and school activities
- 618 (40%) had a sign acknowledging the Traditional Owners
- 537 (35%) had staff receive professional learning focused on Koorie education outcomes
- 25 (2%) teach an Aboriginal language.<sup>1399</sup>

## Victorian education programs showing success for Aboriginal students

The Commission observed some education programs during the Taskforce that provide Aboriginal children and young people at risk of disengagement with appropriate opportunities to re-engage and succeed. The following case studies are stand-out examples – in particular, Worawa College, which places Aboriginal culture at the centre of its operating model.

### Worawa College

Worawa College is a boarding school for Aboriginal girls based in Healesville, which was established in 1983. It is the only Aboriginal school in Victoria, and the only boarding school in Australia for Aboriginal girls. It caters for up to 70 girls and young women in secondary school (Years 7 to 12) who come from Aboriginal communities across the country.

According to the principal of Worawa College:

*The founder of Worawa [Hyllus Maris] saw the need for a holistic approach that combined academic learning, wellbeing and celebration of culture. Those are the 3 pillars of the college that we still have today. – Principal, Worawa College*

Worawa's holistic model of education focuses on physical, social, spiritual, cultural and emotional wellbeing to bring each student to her full potential. Students have access to education, pastoral care, primary health care, psychologists, sports associations and work experience, and are taught independent living skills.

<sup>1396</sup> ZM Rhea, PJ Anderson and B Atkinson, *Improving teaching in Aboriginal and Torres Strait Islander education: Australian professional standards for teachers*, The Australian Institute for Teaching and School Leadership, Melbourne, 2012.

<sup>1397</sup> DET, *Marrung*, p 16.

<sup>1398</sup> Child Wellbeing and Safety Act, Part 6.

<sup>1399</sup> Department of Education and Training (DET), *Marrung Aboriginal Education Plan 2016–2026: 2019 August schools survey data*, DET, Victorian Government, 2019, provided to the Commission on 27 February 2020.

*Many, if not all, of our students come from difficult family situations involving stress factors such as poverty, family violence, over-crowded housing, substance abuse, incarcerated family members, poor health and mental illness... I firmly believe that a child can't focus on their education if they have what we call 'worries'. If they have mental health issues, they won't be able to settle into a learning environment. That's why it's an integrated approach here. What makes a difference is the ability to celebrate culture, but also to live it. At Worawa, our story is evident in all that we do. Because we are a boarding school, all of our curriculum and pedagogy is around Aboriginal learning and ways of being. – Principal, Worawa College*

The type of holistic education that Worawa provides can be a strong protective factor against contact with the youth justice system.

*There are too many of our kids getting into trouble, so we have to take that on board. But we have to deal with it in a therapeutic way where they will learn from their mistakes. We're not going to say everything is fine, because we have to have a way of dealing with things behaviour-wise. It needs to be culturally appropriate and therapeutic. For example, we have a weekly 'respect circle', where each student speaks, giving voice to the student. We are committed to the principles of group conferencing and restorative practice to repair harm. – Principal, Worawa College*

Worawa College shows high attendance rates in its 2019 annual report, with 87% attendance overall and 90% attendance in Year 12.<sup>1400</sup> In 2019, 100% of Worawa's Year 12 students successfully completed their qualification. Of the Year 12 graduates, 80% were successful in gaining admission to tertiary institutions. The remaining 20% deferred study to work in their home communities for 12 months before pursuing tertiary education in 2021.<sup>1401</sup>

<sup>1400</sup> Worawa Aboriginal College, [Annual report 2019 \[PDF\]](#), Worawa Aboriginal College, 2019, accessed 12 November 2020, p 14.

<sup>1401</sup> Worawa Aboriginal College, *Annual report 2019*, p 12.

### Changing Lanes

Changing Lanes is an alternative education program at Bairnsdale Secondary college which the Taskforce team visited during regional engagement. It is a 35-place VCAL learning centre which some Aboriginal children and young people in the region attend. A key feature of the program is the stability it provides for the students, who know that they aren't going to be suspended or expelled for misbehaviour.

*This school is a lot better than seco [secondary college]. We have kids down here that do the wrong thing but with Michael [principal], they don't just jump and suspend them. It doesn't matter what year level you're in, we are all in one group getting help. It might take us longer, but we know that they're not giving up on us, not suspending us, not expelling us. Even after school hours, if we get in trouble, we can ring Michael up and he goes out of his way to make sure we are ok. They take the extra time. – Aboriginal Changing Lanes student*

Aboriginal students also told us about how they connect to culture at Changing Lanes.

*I do like my own little Koorie paintings. I've done a wood burning hand and I've done some boomerangs. Up at my old school we had a big possum skin cloak. I've done paintings to tell stories. I like doing stuff like that, that's what I want to do more of, like do painting, but as I'm doing painting, tell a story while I'm painting. It's keeping me out of trouble. – Aboriginal Changing Lanes student*

Changing Lanes has been an important protection against contact with the youth justice system for local young people and has an open-door policy for graduates to maintain the social connection and structure it provides as they transition into employment.

*I've already graduated school, but I come here to Changing Lanes so that I stay out of trouble. I don't want to go to jail. I might do dumb stuff, but I don't want to do dumb stuff that will make me end up in jail. – Aboriginal former Changing Lanes student*

## Designing learning options for Aboriginal children and young people

*We need more schools, but not just general schools – more schools that Koorie kids feel good at, because when Koorie kids go to general schools, they don't really feel good at them. – Peyton, 16*

The young people and community members we spoke to during the Taskforce and inquiry described the various ways in which the current school system in Victoria is not designed for, or responsive to, the needs of Aboriginal students. The mainstream education system has failed many of the young people we spoke to.

Worawa College is a strong example of how an education model embedded in culture can provide an opportunity for Aboriginal students to succeed.

Nationally, holistic education models based on Aboriginal knowledge systems that involve a young person's family and community and consider broader factors such as cultural connection, emotional wellbeing and economic wellbeing have proven successful.<sup>1402</sup>

Educational reform is required to create culturally safe schooling options for Aboriginal students, to allow them to thrive academically and to protect them from contact with the youth justice system. This reform needs to be led by Aboriginal people. Consultation should be undertaken with Aboriginal young people to design schooling options that meet their needs, and with local communities to avoid a 'one size fits all' approach. LAECGs provide an existing framework for consultation on local educational issues with communities across the state.

## Recommendation 50

That DET consult Aboriginal children and young people and work in partnership with Aboriginal communities to design and deliver additional schooling options embedded in culture for Aboriginal students, taking into consideration the example of Worawa College.

<sup>1402</sup> J Lorains and J Vadiveloo, *Children's Ground in Kakadu West Arnhem: final evaluation – 2013 to 2017*, Children's Ground, 2019, accessed 24 February 2021.

# 10.3 The Koorie Education Workforce

## Finding 26

Aboriginal children and young people, their families and community members believe an operational Aboriginal engagement role located in schools and dedicated to supporting at-risk young people would reduce contact with the youth justice system.

At the time of writing, DET's Koorie Education Workforce (KEW) was made up of:

- 110 KESOs, responsible for 'providing strategic advice, support and guidance to schools so that they are better equipped to support their Koorie students'<sup>1403</sup>
- 10 Koorie Education Coordinators, line managers responsible for support and coordination of the KESOs
- 4 Koorie Education Managers, regional leadership roles supporting regions to be more strategic, consistent and inclusive of the KEW, and supporting the implementation of Aboriginal initiatives.<sup>1404</sup>

KESOs also work with departments, education and family service providers, and the Aboriginal community to improve student engagement, wellbeing and outcomes.

The Commission observed in its engagement with communities that there was confusion surrounding the

KEW, and in particular the KESO role. Most people we consulted considered KESOs to be a support that could be called on to work directly with Aboriginal children and young people at risk of disengagement from education. However, this contrasts with the primary duty of KESOs, which is to provide strategic advice on embedding cultural understanding and competency with schools. This is discussed in the following section.

### Current strategic focus of the KESO role

According to the KESO position description, the purpose of the role is to work with departments, agencies, education and family service providers, 'key stakeholders' and the Aboriginal community to improve student engagement, wellbeing and outcomes.<sup>1405</sup> In addition, KESOs 'provide advice to assist the coordination of services to support re-engagement of at-risk Koorie children and young people'.<sup>1406</sup> KESOs work across a number of schools and 'do not work directly with students'.<sup>1407</sup>

KESOs are also responsible for the delivery of Cultural Understanding and Safety Training (CUST), which all Victorian government schools are expected to undertake. The aim of the CUST program is improved cultural understanding within school workforces, particularly school leadership. The CUST program commenced in 2018, with a target to train 1,700 schools by 2022. As of February 2020, 950 schools had completed the training, representing approximately 54% of the DET target.<sup>1408</sup>

<sup>1403</sup> Department of Education and Training (DET), *Distribution mapping of Aboriginal children at schools alongside the KESO/Aboriginal workforce data (AJF 53, Action 44)*, AJF 55 Information paper, Aboriginal Justice Forum, 2019, unpublished.

<sup>1404</sup> Announcements in 2020 outlined funding for an additional 16 KESOs and 8 KECs: Premier of Victoria, *Thousands of tutors to bring students up to speed* [media release], Victorian Government, 13 October 2020, accessed 24 February 2021.

<sup>1405</sup> KESO position description provided to the Commission by DET on 9 July 2020.

<sup>1406</sup> KESO position description provided to the Commission by DET on 9 July 2020.

<sup>1407</sup> DET, *Distribution mapping of Aboriginal children at schools alongside the KESO/Aboriginal workforce data (AJF 53, Action 44)*.

<sup>1408</sup> Information provided to the Commission by DET on 27 May 2020.

Despite the enormous amount of work occurring under this program, there were mixed views about the effectiveness of the CUST program.

*Our accountability is delivering CUST – it's cultural understanding at best, and schools get certificates after the training, but I'd be questioning how many schools hold that authentically. – KESO*

One KESO described their experience of the challenges of delivering CUST, including inadequate training and resourcing.

*It's tough to take up a role as a cultural awareness trainer. It's had a massive impact on the [Koorie education] workforce. DET don't really understand the pressure it places on the workforce and also the lack of strategy around it. We're required to train all these schools – it's a massive strain and it's not an effective strategy. There's no training for KESOs in facilitation and presentation and adult learning. As an initiative, it's just a generic PowerPoint that's rolled out across the state and KESOs have to drill it down to a local level. It doesn't align with adult learning principles. It's way behind where it should be. One outcome is that people know the difference between a welcome to Country and an acknowledgement. Last term the training would have occupied at least half of my job. – KESO*

Resourcing issues for KESOs are discussed further below.

## Community expectations of the KESO role

Throughout the Taskforce, it was apparent that Aboriginal families and community members expected KESOs to provide direct support to at-risk Aboriginal children and young people in schools, rather than performing the strategic role described above. This was echoed at the Taskforce regional forums.

*Use KESOs to connect with the young person, not just in school, but also to facilitate going to school and to motivate the young person. – Loddon Mallee (Bendigo) regional forum*

*Bring KESOs and support back into the schools, out of head office. – Grampians (Ballarat) regional forum*

Some services expressed similar views.

*If you have a look at the original role or position, they are engagement support officers, not education officers – the original design was to have them reach out to families and students and engage. It's the school's responsibility to provide education. The focus of the workforce is being placed in a difficult position; they are expected by the region to work with school to change the school's focus. There are other ways the department could do that. If you have a family with 4 kids missing a lot of school, why isn't the KESO working with that family? That's what an engagement support officer does. – General Manager, VAEAI*

*I think they need to be back in schools. They're just delivering cultural awareness training and it takes away the support from the students who need that support. Their roles have been changed and there is not as much support to those kids. When I was a kid, I was the only Aboriginal kid in my school and I'd never seen my KESO, so I think we need to review. – Regional youth mentoring service*

This expectation of the KESO role was also reflected in Taskforce case planning sessions, where 33% of actions related to education case plans (13 out of 39) referred to one-on-one operational support for educational engagement.<sup>1409</sup> These included:

<sup>1409</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

### 10.3 The Koorie Education Workforce

- flexible KESO engagement where the KESO goes to the young person, instead of waiting for them to show up at school (when this is unlikely based on previous non-attendance)
- the KESO attending court to build rapport and strengthen the young person's sense of the KESO's commitment to support.

While some KESOs do provide direct support to Aboriginal students and their families, this occurs outside of their formal responsibilities. This adds to confusion about the role. Many people we spoke to didn't understand what a KESO was responsible for, or what support they could provide to Aboriginal students.

*The biggest thing that we found was that families need support from KESOs. All the high-risk families we got referred to from the schools, none of them knew what a KESO was. They'd never met their KESO. Most of the schools we worked with didn't know what a KESO was, who their KESO was, and had never seen one at their school. – Regional youth mentoring service*

When they are able to work directly with young people and their families, KESOs can play a pivotal intervention role for young people at risk of disengagement from education and contact with the youth justice system. Some KESOs value this direct engagement work.

*One-on-one case work with individual kids is the priority of individual KESOs. By default, we end up doing the one-on-one work with young people and supporting the community. There's no consistent vision across the state about how we work with families, it's just a given that we will. Each individual takes it in their stride to do what's necessary. We're there to serve the community at the end of the day. – KESO*

*The frustrating thing for me is that it's not massive numbers of kids at risk of going into custody that need targeted interventions. I can count them on one hand. The vulnerable kids we work with end up getting squished out. We need more flexible services. – KESO*

The Commission heard that interventions by KESOs can change the trajectory of a young person's life, as in Frankie's story, described in Chapter 4.1 'Advancing self-determination'. Frankie was about to be expelled from school when a KESO referred him to Dardi Munwurro's *Bramung Jaarn program*. Through his work with mentors in this program, Frankie became connected with culture for the first time. This strengthened his relationship with his Aunty, an Elder, and had a positive impact on his whole family. Frankie was also appointed to a senior leadership position in his school.

#### Resourcing challenges

The Commission noted workforce issues in the KESO program in 2016 during Taskforce 1000.<sup>1410</sup> In *Always was, always will be Koori children*, the Commission recommended a review of the KESO program to ensure that all KESO positions were filled on an ongoing basis and that all Aboriginal children in out-of-home care were engaged with a KESO.<sup>1411</sup>

As noted above, the KEW consists of 124 DET staff, including 110 KESOs. The Commission heard from the community that more work was needed to engage and support young people and their families in schools, and that this need could be met by increasing the number of KESOs. Seven Taskforce regional forums discussed the importance of the KESO role, and 5 regions identified the need for more KESOs.<sup>1412</sup> In October 2020, the Victorian Government announced funding for an additional 16 KESOs.

Related to the number of KESOs in the workforce is the issue of how they are distributed around the state, and the concern that they are not allocated based on student enrolments.

*If we're looking at dispersal rates, how are KESOs going to interact with all of those children and those families? There needs to be more numbers. There's not enough people to fulfil the workforce need for KESOs. – General Manager, VAEAI*

<sup>1410</sup> Commission for Children and Young People, *Always was, always will be Koori children*, p 89.

<sup>1411</sup> Recommendation 8.9: Commission for Children and Young People, *Always was, always will be Koori children*, p 20.

<sup>1412</sup> Barwon South West (Geelong), Loddon Mallee (Bendigo), Eastern Metropolitan (Kilsyth), Northern Metropolitan and Gippsland (Bairnsdale).



*There would be enough KESOs if positions were reallocated based on student enrolments. There's enough KESOs, but they're not allocated properly. – KESO*

The issue of KESO distribution has been raised at the Aboriginal Justice Forum, highlighting the inherent relationship between educational engagement and contact with the youth justice system. DET responded to an October 2019 Aboriginal Justice Forum action around mapping of Aboriginal children in schools alongside KESO/Aboriginal workforce data with information on:

- the number of Aboriginal students enrolled in each of the 17 DET regional areas
- the number of schools in each DET area with Aboriginal students
- the number of full-time KEW staff in each DET area
- the average number of Aboriginal students for each full-time KEW staff member
- the average number of schools for each full-time KEW staff member.<sup>1413</sup>

This information indicated that the average number of Aboriginal students per full-time KEW staff member varied from 65.9 in inner Gippsland to as many as 248.8 in Western Melbourne. The average number of schools per full-time KEW staff member varied from 3 in the Mallee to as many as 33.6 in the Inner Eastern Melbourne area. These numbers clearly demonstrate that the workforce is not equipped to provide one-on-one support for every Aboriginal child or young person.

### **'Team Around the Learner' approach**

DET promotes a 'Team Around the Learner' model of practice, which is a flexible, person-centred and family-sensitive approach developed to respond to individual students' needs.<sup>1414</sup> It provides a framework to bring people together as a team to coordinate a plan to support the student to continue to engage, or to re-engage, in education and learning. Learners are viewed within the context of their family and their environment, and are supported by a team to help ensure that the needs of the learner are met and

<sup>1413</sup> DET, *Distribution mapping of Aboriginal children at schools alongside the KESO/Aboriginal workforce data (AJF 53, Action 44)*.

<sup>1414</sup> Information provided to the Commission by DET on 9 July 2020.

sustained. The members of the team can include family, principals, teachers, advocates, health, wellbeing and inclusion staff (including KESOs), community service staff and other professionals.

A Lead Professional is nominated, whose role is to coordinate the process and ensure that outcomes are achieved and the learner experiences proper service delivery. The Lead Professional may be from within education or from an external agency; however, it is important that they have a good relationship with the learner. A KESO may be nominated as the Lead Professional.

The Commission believes that this approach is good practice; however, it was not referred to throughout Taskforce regional forums or in case planning sessions.

### **Increasing direct support for Aboriginal children and young people in schools**

Schools must take ownership of providing support to Aboriginal children and their families. The Commission heard from the community that resourcing KESOs to provide more direct support and intervention for at-risk children and young people and their families would help to limit involvement with the youth justice system. Similarly, many Taskforce regional forums indicated that an operational or one-on-one Aboriginal education support role could reduce offending behaviour and contact with the youth justice system for Aboriginal children and young people.

Many people who spoke to the Commission during the Taskforce said 'Koorie business is everyone's business'. The work being undertaken by KESOs in building culturally safe schools and improving student engagement, wellbeing and outcomes is important. The Commission recognises the passion and commitment of KESOs in these endeavours. However, a tension exists between the community's expectations of the KESO role and its current strategic focus.

KESOs are well-placed to identify Aboriginal children at risk of disengagement from education, and to mobilise support that can protect them from youth justice system involvement. However, given the strategic focus of the KESO role, and, in turn, their limited capacity to assist with providing or coordinating support for Aboriginal students, there is an unmet need for assisting those who are, or who are at risk of becoming, disengaged.

### 10.3 The Koorie Education Workforce

The Commission considers that all Aboriginal children and young people in contact with the youth justice system should have priority access to direct educational support. This may require an expansion of the KESO workforce, including the development of a specific KESO position for Parkville College (this is discussed below under 'Education in custody'). Alternatively, it may require the creation of a new role.

## Recommendation 51

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That DET review the supports provided to Aboriginal children and young people, including the Koorie Engagement Support Officer (KESO) role, with a view to increasing direct support for Aboriginal children and young people in schools, and prioritising access to educational support for Aboriginal children and young people in the youth justice system.

## 10.4 Education in custody

### Finding 27

Aboriginal children and young people in custody want their education to be strengths-based and embedded in culture, and to support employment upon release.

International human rights standards such as the Beijing Rules and the Havana Rules outline the rights of young people in custody to access holistic education that is age-appropriate and suitable to their needs.<sup>1415</sup> For Aboriginal children and young people, this means that education and learning must be strengths-based and embedded in culture.<sup>1416</sup>

### Children and young people's experiences

The children and young people we interviewed in custody had a clear understanding of their strengths, and what they did and did not enjoy learning.

*I like maths and literacy. I don't like inquiry. We just sit in a room for like an hour doing nothing.*  
– Daniel, 17

*I like art and music. Sport is alright sometimes.*  
– Leroy, 14

*I finished the music program. English and maths were alright.* – Clarise, 17

**Q:** *Do you go to school?*

**A:** *Sometimes. Some of them are alright – engineering, carpentry and hospitality are good.*  
– Aiden, 17

They identified some of the barriers to education in custody, including restricted movements within youth justice centres.

*I don't like the school here, the way they do the learning in here. Normal school would give you an assignment. You have to radio in to go to school. It doesn't feel right.* – Logan, 16

*You have to be over the wall to do woodwork and all that sort of stuff.* – Leroy, 14

Children and young people were also able to identify the ways in which education worked well for them, specifically by providing access to certificates that increased employment options.

*You can get education. They got a laptop program to get courses done online. I'm doing a Cert III in health and fitness. I like how open [Malmsbury] is. You let yourself out of your room. I'm just trying to keep my head down and get through it.* – Chris, 20

*I'm getting heaps of qualifications in here, traffic control... Everything that gets put forward to me, I do it, and they do offer a lot of stuff.*  
– Carson, 19

<sup>1415</sup> Beijing Rules, rule 13.5; Havana Rules, rules 18(b), 38 and 39.

<sup>1416</sup> DET, *Marrung*.

## 10.4 Education in custody

They also indicated that a greater emphasis on culture would make a positive difference to education in custody.

*I like a lot of the Koorie staff. They come to the units. I wish they'd teach language and that shit. It would be a lot better. – Daniel, 17*

*We need more culture programs in custody. Programs end at 4 o'clock, then you've got nothing. That's what makes people behave crazy. – Dustin, 15*

### Parkville College

Parkville College is a Victorian government school for children and young people in custody (including on remand) or transitioning from custody. It operates from the Parkville and Malmsbury youth justice centres, and also has 2 secure welfare campuses for children and young people under the care of DFFH, and a transitional flexible learning centre in Collingwood.<sup>1417</sup>

To support Aboriginal children and young people, Parkville College runs an Aboriginal education program and employs an Aboriginal Education Leader at Parkville and Malmsbury youth justice centres. The Aboriginal education program aims to establish and maintain connection to culture, family and community for Aboriginal children and young people. It supports the development of classroom content and curriculum that incorporates Aboriginal perspectives and cultural understandings. The Aboriginal Education Leader provides input into Parkville College student plans<sup>1418</sup> and transition plans that support children and young people's transition from custody into the community.

The Parkville College staff we consulted referred to the impact of Aboriginal children and young people's fragmented contact with education prior to custody. This can make educational re-engagement especially challenging.

<sup>1417</sup> Parkville College, *Campuses*, Parkville College website, 2020, accessed 2 August 2020.

<sup>1418</sup> A Parkville College student plan identifies goals, tracks engagement and progress (including engagement in cultural education programs and supports) and lists key contacts for the student. The information in a Parkville College student plan can feed into an individual education plan for the student.

*Often the literacy and numeracy level of Aboriginal children and young people is so much lower than their peers. Plus, there is all the intergenerational trauma, and the intergenerational issues around unemployment and schooling. Their literacy and numeracy skills might be so low because of dropping out of school, or being kicked out. I've seen a young person just put in the corner with a word search or something because it's almost like the too hard basket. – Aboriginal Education Leader, Parkville College*

In this context, they emphasised the importance of adopting a strengths-based approach to encourage engagement, and of embedding culture in the education of Aboriginal children and young people in custody.

*In the [Aboriginal education] program we look at how we can ground a young person in their identity, recognising that they will be at different points in their journey. So we try to build their sense of connection to family and community. – Aboriginal Education Leader, Parkville College*

*Music hands down would be everyone's favourite, because it's the one class that they'd get 99% attendance. They get laptops to look up music, and some have been getting creative making their own stuff. Some have said it's the one time they can be themselves, listening to what they like. Particularly for Aboriginal young people, they like art – normal art classes, like learning to mix colours. Everything marries up to the VCAL and VET, and teachers are pretty creative about how to do that, so if a young person wants to make something for their family or learn about symbols or something, then they can work with that. And then they try to incorporate that in their other classes, so they might work in literacy on writing up the story of a painting. I'm trying to get better ways of working across programs. – Aboriginal Education Leader, Parkville College*

*We've become astute at trying to find ways to increase engagement, including a huge push on culturally responsive practices across the school. – Executive Principal, Parkville College*

Parkville College delivers Maggolee Mang, a cultural program that incorporates elements of language, storytelling, art, history and cultural identity, and is intended for all Aboriginal children and young people at Parkville and Malmsbury youth justice centres each week. Cultural programs in youth justice custody are discussed further in Chapter 13.1 'Cultural safety and support in custody'.

Parkville College staff also identified transition out of custody and into education or employment as an important area requiring more focused attention and support. Parkville College employs a transitions team to support young people to successfully transition from the youth justice system into school, higher education (such as TAFE) or employment opportunities. As noted above, in 2020, DET announced 2 Youth Justice Education Pathway Coordinator positions to assist the Parkville College transitions team for 12 months.<sup>1419</sup>

However, Parkville College emphasised that, for Aboriginal children and young people, it is important that transitional support be culturally responsive and come from an Aboriginal staff member.

*I'm working pretty closely with the transitions team, because we need to have things in place for when they leave. We need to make sure there are options that are culturally responsive to their needs... A lot of young people don't want to go back to school so I ask what other options there are, like employment or adult learning like TAFE. – Aboriginal Education Leader, Parkville College*

*I also work very closely with ALOs and get their buy-in to support the young people. So it could be through helping with transition plans – what school will they go to, their education or employment plan. It's about making sure that everyone has an Aboriginal education contact as part of their transition plan. – Aboriginal Education Leader, Parkville College*

<sup>1419</sup> Information provided to the Commission by DET on 9 July 2020.

Aboriginal children and young people's transition from custody is discussed further under 'Employment' below, and in Chapter 13.3 'Leaving custody'.

## Barriers to education in custody

Parkville College staff identified several challenges in delivering the Aboriginal education program. These included inadequate staffing levels, a lack of oversight and support for teachers, and rotations and lockdowns that limit children and young people's access to school.

*When I started in this role there was no structure around what the program would do, what it should look like. I had no staff, no support, and I felt like I couldn't build a meaningful relationship with these young people. If they're not going to class, then why not? And how can I support that? How can I support teachers to provide better and more meaningful content? I could sit in classrooms and support the young people, but we also need someone dedicated to overseeing the whole program. There is so much need to support the teachers in the classroom that [the oversight] is not happening. We have one consistent Aboriginal worker, but it's still not enough. – Aboriginal Education Leader, Parkville College*

*Malmsbury secure site, I've only been able to run one program all term because of either lockdown or rotations. The one time it happened was from the unit manager letting them stay up past the lockdown lunch. – Aboriginal Education Leader, Parkville College*

*We're reliant on Justice bringing children from across the facility to school, so sometimes children and young people can't attend because they don't have the support of the staff to attend – rotations and lockdowns. – Executive Principal, Parkville College*

Isolations and lockdowns and their impact on Aboriginal children and young people in youth justice custody are discussed in more detail in Chapter 13.2 'Conditions in youth justice custody'.

## 10.4 Education in custody

Parkville College also told the Commission that not mixing students from different units in youth justice centres presents an operational challenge that significantly limits Aboriginal students coming together for education.

Parkville College does not currently have an allocated KESO, and staff identified this gap.

*I've been advocating for a KESO – if we're trying to replicate what they have access to in the community then we should have a KESO role for the school. – Aboriginal Education Leader, Parkville College*

*A really key part for Parkville College is that there is no KESO support. Staff in the Aboriginal program are employed from our own funding stream. – Executive Principal, Parkville College*

Another constraint on educational engagement in custody is the physical space in which classes occur. As noted in 'Chapter 13.1 Cultural safety and support in custody', Youth Justice and Parkville College have attempted to create normalised learning environments for children and young people in custody. Education and program areas have some natural light, and most feature posters or other decoration on the wall. However, the rooms do not feel like classrooms, and this affects learning. In Chapter 13, we recommend significant changes to the design of youth justice facilities for Aboriginal children and young people.

### Improving education in custody for Aboriginal children and young people

For Aboriginal children and young people in custody, education must be strengths-based and embedded in culture. Parkville College aims to deliver such a program for Aboriginal children and young people; however, it is constrained by factors including limited physical spaces, unit and centre lockdowns, and inadequate resourcing to support Aboriginal students in their learning.

Children and young people in youth justice custody are often disengaged from education, and have been for some time prior to custody. This can make re-

engagement in a custodial setting challenging.<sup>1420</sup> More classroom support is needed for children and young people in the Parkville College Aboriginal education program.

A greater focus on transition from custody into education or employment is also required (discussed further below). The Youth Justice Strategic Plan emphasises reintegration planning by building strategies into case plans that support 'transition from Parkville College into schools, including through the Parkville College Transitions Team'.<sup>1421</sup> Parkville College staff reiterated the importance of transition planning and support for Aboriginal children and young people, and indicated that this support must be led by an Aboriginal person.

## Recommendation 52

That DET develop and fund an ongoing identified Aboriginal education support role for Parkville College at each youth justice centre. The role should have a particular focus on directly assisting Aboriginal students in the classroom and with planning transition into education or employment pathways in the community.

### Employment

Almost half of the young people we interviewed told us about their aspirations for employment in a variety of fields.

*I just wanna get home, fix up, prove to the judge, prove to everyone in the community that I can change, get a proper job and stay active on a daily basis. – Ronan, 15*

*I just want to get a job, that's what I want to do – I want to be a builder. – Dion, 15*

<sup>1420</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 68.

<sup>1421</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 27.

*I want to be an English teacher in Europe – in France – and then I want to learn Spanish and Italian. – Hayleigh, 21*

*I want to have my own place, have my own job – bricklaying or fitness. Hopefully finish my cert on the outside. – Chris, 20*

*I want to see myself be a psych or a mental health nurse... I could see myself doing that. I need to work on myself, get enough knowledge and tools to back me up and be where I wanna be. I gotta do things within myself to get there and once I do that I'll be set, I'll be right. – Grace, 20*

*I would love to get a job, but I want to get my son into childcare first. Like retail or coffee or a barista course. – Monica, 17*

*I want to work, maybe running some Koorie programs with younger fellas. I want to get myself together and then speak to the co-op and see if I can help out. – Karl, 21*

*I have a massive passion for animals. I want to help animals who do not have a say – animal rights. And I want to be the voice of animals, particularly with poaching. I'm going to do work experience with the vet. – Brooke, 15*

*I want my own house where my siblings can live, to be working as a mechanic and getting back to my culture. – Daniel, 17*

*I wanna do aged care and work in community. – Bailey, 18*

*I want to change, I want to see the world become a better place... I'm going to go to TAFE and I'm going to be a brickie. It will be the best thing for me. – Malkar, 19*

Despite the clear desire for vocational training and employment opportunities, Aboriginal children and young people in contact with the youth justice system experience poor participation rates in both, and at lower rates than non-Aboriginal young people (Table 10.6).<sup>1422</sup>

**Table 10.6** Employment and vocational training participation rates for Youth Justice-involved young people by Aboriginal status, 31 December 2019

Participation type	Aboriginal (%)	Non-Aboriginal (%)
Was participating in vocational education and training	5	8
Was participating in employment	3	17

Source: Department of Justice and Community Safety (DJCS), *Young people involved with Youth Justice in 2019: annual survey – summary*, DJCS, Victorian Government, unpublished.

The Taskforce case file review indicated that of those young people aged 15 and older, few (17%, n = 39) were known to be in paid work. This was also highlighted in the Taskforce case planning sessions, where over one-third (38%) of education case plan actions were to assist young people with gaining employment.<sup>1423</sup> Most of the Taskforce regional forums identified employment pathways for young people as an important factor in reducing contact with the youth justice system for Aboriginal children and young people.

<sup>1422</sup> DJCS, *Young people involved with Youth Justice in 2019*.

<sup>1423</sup> This does not include actions arising from the Taskforce case planning session held for one young person who withdrew from the Taskforce process after the 8-week review.

### Current Victorian initiatives

According to the Victorian Aboriginal Affairs Framework:

*Aboriginal learners must be supported to pursue their pathway of choice, whether that be further education, training or formal employment. This means making these opportunities more accessible for Aboriginal young people, as well as ensuring young people feel supported to follow their ambitions.*<sup>1424</sup>

The Youth Justice Review highlighted the connection between recidivism and lack of employment opportunities upon release from youth justice custody. To combat this, it recommended ‘a priority objective that links young offenders to education/skills training and employment’.<sup>1425</sup> In response to this recommendation:

- Youth Justice has implemented a new Case Management Framework that provides for the delivery of multi-agency case planning for engagement with education, skills, training and employment
- Multi-Agency Panels have been established in selected metropolitan areas to promote additional multi-agency case planning, including reducing barriers for young people to link into education and employment
- the Secretaries of DET and DJCS have established a Youth Justice Education Steering Committee that is overseeing and driving improvements for the delivery of education services to young people in Youth Justice
- Deputy Secretaries across DJCS, DET, DFFH, DPC and the Departments of Treasury and Finance, and Jobs, Precincts and Regions have established the Employment Policy Steering Committee to drive improvements in employment outcomes, including for young people in Youth Justice.

<sup>1424</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 39.

<sup>1425</sup> Recommendation 6.15: ‘As part of multi-agency case planning, establish a priority objective that links young offenders to education/skills training and employment. DOJR should work with the Department of Education to establish a strategy for working with public schools to provide education to young offenders on bail or community orders. Increased attention is required to develop skills training and preparation for employment for young offenders in custody and those in the community.’: Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 47.

A key objective of the Youth Justice Strategic Plan is ‘supporting young people in Youth Justice to be prepared for and linked into a sustainable employment pathway’.<sup>1426</sup> The plan outlines current initiatives to improve education, training and employment outcomes for young people, which include:

- the STREAT cafe, a social enterprise run in partnership with DJCS and Parkville College that delivers hospitality training and employment pathways for young people involved in the youth justice system<sup>1427</sup>
- referrals to the Justice Employment Training and Transition Service to develop individualised training and employment plans<sup>1428</sup>
- the continuation of 4 regional employment pathways brokers to identify local vocational training options for young people and refer them to local Registered Training Organisations<sup>1429</sup>
- a new partnership agreement between the Department of Jobs, Precincts and Regions and Youth Justice to address system-level barriers to employment, such as employer recruitment practices.<sup>1430</sup>

Out for Good is a 2019 initiative to assist young people with previous involvement in the justice system to find work on Victorian Government-funded infrastructure and construction projects, including the Westgate tunnel. To establish Out for Good, the government partnered with community organisations and construction companies to support up to 50 young people aged 17 to 26 years with employment and training.<sup>1431</sup> GOAL Indigenous services is a community organisation that has partnered with DJCS to deliver Out for Good for Aboriginal children and young people. One of the young people we spoke to had work lined up with Out for Good upon his release. He spoke to us about how it was motivating change in his life:

<sup>1426</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 36.

<sup>1427</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 29. The STREAT cafe opened in February 2020.

<sup>1428</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 27.

<sup>1429</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 37.

<sup>1430</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 37.

<sup>1431</sup> Minister for Crime Prevention and Minister for Transport Infrastructure, *Keeping young people out of the justice system for good* [media release], Victorian Government, 11 September 2019, accessed 24 February 2021.



*I know when I get out, I just get on the shit right away. But I have a job set up... and I can't test positive for drugs. I don't want to lose it.*  
– Rory, 20

## **Improving employment opportunities for Aboriginal children and young people in custody**

*Maybe something in the community would help people get on the right path. You need to have something going for you on the outside... Help getting work lined up. People need help finding jobs but it's harder to keep it.* – Karl, 21 (in custody)

Education and employment reduce the likelihood of offending and reoffending.<sup>1432</sup> It is therefore essential that education for Aboriginal children and young people in youth justice centres support their skill development and enable them to continue their education or gain employment following release from custody.

Partnerships between government, private industry and community organisations, such as those involved in Out for Good, are a promising strategy for creating employment opportunities. This approach can address the barriers to employment that Aboriginal children and young people involved in the youth justice system can face, particularly on release from custody. The young people we spoke to expressed interest in a variety of employment fields, pointing to the need for similar partnerships that extend beyond the construction industry.

## **Recommendation 53**

That the Victorian Government expand partnerships with community organisations and implement a strategy to create more employment opportunities in a variety of fields for Aboriginal children and young people in contact with the youth justice system, with priority for those leaving custody.

<sup>1432</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 180.



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*The shield and spear are there because they represent protection. These weapons are also about being mindful not to overuse your power. The people sitting around the campfire, that's us gathering to yarn and make stories alive – it's about kinship and connection. The campsite at the water hole is also there as it represents cleansing. The kangaroo tracks are there, because if you watch one, it never jumps backwards. We're also jumping forward and making positive changes in our lives.*

*– Young people of the Northern Metropolitan region, Wurundjeri Country*

## Chapter at a glance

- Interactions with police are typically the first point of entry for children and young people into the youth justice system.
- Examining the exercise of police powers falls outside the Commission's inquiries jurisdiction. This means the Commission is unable to make recommendations directed to Victoria Police.
- Nevertheless, the experiences children and young people shared with us, and our research, raise significant concerns about police systems, practice and culture. These concerns include:
  - an unacceptable discrepancy in the use of cautions between Aboriginal and non-Aboriginal children and young people
  - allegations of racism and racial abuse
  - mistreatment by police during arrest and other contact
  - excessive detention and mistreatment during detention in police cells
  - a lack of faith in the police complaints process.

### Key data

- From January 2018 to December 2019, Aboriginal children and young people were cautioned in 13% of incidents compared to 21% of incidents involving non-Aboriginal children and young people.
- 47% of incidents involving Aboriginal children and young people resulted in arrest, compared to 35% of incidents involving non-Aboriginal children and young people.
- 41% of children and young people in the Taskforce case file review were aged 14 years or younger when they first experienced contact with the youth justice system.
- 21% of children and young people who spoke to the Commission about their first experience of the youth justice system referred to violence or mistreatment in their first contact with police.

# Entering the youth justice system

## The Commission's jurisdiction and limitations of the inquiry

Police are the gatekeepers of the youth justice system. They determine the nature and intensity of initial responses to children and young people suspected of offending, including whether to arrest, question, caution, charge and/or remand the child or young person, or to take no formal action. The systemic over-representation of Aboriginal children and young people in the youth justice system therefore cannot be properly understood without examining the role of police. For this reason, experiences with police were a major focus for children and young people, family members, Elders and service stakeholders throughout the Commission's consultations.

The conduct of police and the exercise of police powers fall outside the Commission's inquiries jurisdiction under the Commission for Children and Young People Act. The Commission's jurisdiction limits this inquiry's ability to make recommendations directed to police.

In order to accurately represent children and young people's voices and provide important context for the inquiry, the Commission has summarised the views and experiences of Aboriginal children and young people raised in consultations. We have also referred to contextual information and research on children and young people's entry into the youth justice system and relationships with police. This chapter describes Aboriginal children and young people's experiences of initial contact with police; cautioning; police custody; and racism, mistreatment and violence by police, including complaints processes.

The Commission heard many compelling and concerning stories that illustrate a pressing need for change. The Victorian Government must take urgent action to address these injustices.

## First contact with the youth justice system

Children think and act differently from adults. Children's brains are not fully developed, and children may be more likely to act impulsively and with less regard for the consequences.<sup>1433</sup> Immaturity and developmental differences can put children and young people at risk of contact with police and the youth justice system.

In addition, unlike adults, children and young people tend to engage in behaviour that is 'attention-seeking, public and gregarious; and episodic, unplanned and opportunistic'.<sup>1434</sup> This means that children and young people who engage in offending behaviour are far more likely to come into contact with the criminal justice system than adults.

Police have primary responsibility and crucial decision-making powers that can determine the quality and severity of youth justice system experiences and trajectories for a child or young person alleged to have committed an offence. Police have discretion as to the nature and intensity of any responses in relation to childhood offending, including whether to give a child or young person an informal warning or a formal caution, arrest and take them into custody, speak with them informally or formally question them in an interview, refer them to diversion, or charge them with an offence.

Rule 12 of the Beijing Rules provides that police officers who frequently or exclusively deal with children and young people should be specially instructed and trained, and in large cities special police units should be established for this purpose.

<sup>1433</sup> Grover, *Youth justice in Victoria*, p 6.

<sup>1434</sup> Cunneen et al., *Juvenile justice*, p 55.

## Young people's experiences

*Me and my mates were walking around and going through cars. We got caught at like 2 in the morning and they arrested us. It was kind of racist, the police were like, 'Can you get on the floor, you black pricks'. I was probably 13 or 14. – Tyronne, 15*

Ninety children and young people talked to the Commission about their first contact with the youth justice system. Most children and young people consulted were under 14 years at the time of first contact (n = 65). Most early contact involved minor alleged offences, such as theft from shops or cars, graffiti and property damage, driving without a licence and trespass. Children and young people commonly mentioned being with other young people in public spaces at the time.

*I was going to school, but I first got locked up when I was 13 for stupid stuff, stealing shit. – Dustin, 15*

*I was really young and I stole my teacher's iPhone in Year 4, and one of my friends snitched on me and the teacher called the police. They came to my house and I think I got a caution because I was really young. – Gabrielle, 15*

Some children and young people indicated that their first contact with the youth justice system related to stealing out of necessity (see also Chapter 7.3 'Challenges experienced by Aboriginal families'). Others referred to a connection with drug and alcohol use (see Chapter 9.2 'Substance use'). Some children and young people in the child protection system said that police contact related to their child protection circumstances, for example, damaging property in residential care units (see also Chapter 8.1 'Child Protection involvement'). Young people also spoke of being targeted by police due to their race or family background (discussed further below).

*I stole a Sprite from Coles and I got arrested for it. I was 10 in Coles. I just stole it cos me and my mates were out thirsty, hot and had no money. – Taj, 16*

*I remember I was walking with my friends and police pulled up and tried to say we stole something from the shop, but we just left school. Police see a black kid on the street and assume it is wrong. – Chelsea, 16*

Despite a trend of low-level offending, other children and young people talked about pathways that led to initial contact with the youth justice system being due to more serious offending behaviour, including robbery, violent assault or family violence.

*Around 14 was the first police contact for me – unlawful assault, charged and intervention orders on me. – Pearl, 19*

*When I was 13 I stabbed someone, like just all the anger from when I was 5, I took it out on someone that didn't really deserve it. – Peyton, 16*

Forty-two per cent of children and young people who spoke about their first contact with police referred to negative experiences, which made them feel upset, scared, angry or disrespected (n = 38). Many reported mistrust or dislike of the police as a result. Eight children and young people explicitly mentioned racism. Disturbingly, of the children and young people who spoke to the Commission about their first contact with the youth justice system (n = 90), 21% (n = 19) mentioned police violence or mistreatment (this is also discussed below).

*I said I was only 13 cos I thought they'd be less rough, but they weren't. Still rough... I came home crying. I was so angry and I hadn't even done anything wrong... that's what kicked me out of school too. – Corei, 17*

## 11. Entering the youth justice system

*I don't really like them. My school was based in town and on my lunch break we weren't in school so we went to Macca's, who would kick us out and call the police, who would chase us, belt us, spray us with pepper spray. – Mitch, 16*

*My first experience with police was when I was 14 years old and I did an armed robbery. I was running away and this copper, he came after me and hit me in the side of the face and I crashed to the ground. And the others came after and laid their boots into me. I've got scars from this, I've got bad memories. – Malkar, 19*

Only 8 children and young people referred to one or more positive interactions and experiences during their first contact with police. These included being treated fairly and being respected by police, in addition to receiving better outcomes.

*Some treated me with respect. – Jade, 15*

*I was treated really well and I got a good behaviour bond. – Taylah, 20*

*They were pretty good. I just had to do my statement, cos they saw me on camera anyway. – Bodhi, 23*

### Further contact with the youth justice system

*I started using drugs at 11 and started getting into trouble – just little stuff – and as soon as the police know ya, that's it, it doesn't take much. They see you on the street, pull over and harass you. – Karl, 21*

Sixty-one children and young people talked to the Commission about their ongoing experiences with police, including further interactions with the youth justice system following first contact. A common story

they told was of the progression from low-level offending behaviour to more serious offending, including aggravated property offences, assaults and culpable driving.

*First interaction was while I was in school – graffiti and that. That started like 4 or 5 years ago, that's when I got caught and that. Then I laid off it. This year heavy crime started to happen. Stealing motorbikes, assaults, aggravated home invasions. – Ronan, 15*

*Probably when I was younger, I was robbing the ... club when I was 9 or 10, breaking into it and stealing chocolates. As I got older it worked its way into thieving from shops then burglaries to agg burgs [aggravated burglaries] to assaults, more assaults, more agg burgs. – Karrwin, 20*

*I've got mostly assault charges and stealing cars and stuff... It started off with something so small and it got into things that were so big. – Djiran, 19*

Children and young people indicated that their experiences with and treatment by police worsened over time. Several children and young people pointed out that once they had a 'reputation' or were known to police, their rate of contact with police increased. Children and young people also reported being harassed and targeted by police. They talked about feeling unfairly judged and pigeonholed, and about the stigma of low expectations from police officers. Most children and young people's subsequent experiences with police were negative. These experiences indicate that poor relationships with police contributed to increased contact and adverse outcomes in the youth justice system (see also 'Racism, mistreatment and violence by police' below).

*They treated me bad. They said things that were bad, that they were gonna chuck me in a cell and bash me and then they did. – Will, 11*



*It became continuous. Every time they saw me after that they asked me for my name and what I was doing, and they'd do that sometimes 3 times a week. – Zaine, 19*

*Cops look down on us and judge us straight away. If cops actually knew us it would be better. Cops just see us and assume we're doing bad stuff. – Nataya, 17*

*The treated me alright that [first] time. Once I started getting regular, they started treating me like shit. Getting arrested all the time. – Aiden, 17*

*It was hard. Every time they saw me on the street, they'd search me and tell me they don't want me in their town. – Cadell, 17*

Only a minority of children and young people indicated that police interventions were fair or positive, or at best a mixed experience.

*Some jacks are alright, but some treat you like shit, like there's nothing to you. – Alexis, 18*

*Cos [my home town] is a good community, most of the coppers know me, because of my footy and that. So they know me and they give me lectures, tell me to stay out of trouble, that it's not worth it. – Ronan, 15*

*They were actually really nice, cos I was home by myself. I actually went to the police station and they put in a good report about me. They didn't have to handcuff me, they said, 'Because you've been so good we'll just handcuff you when we get to the car.' – Bodhi, 23*

Aboriginal children and young people offered clear ideas for improving relationships. The key message that children and young people had was that if they were treated fairly and with respect, and not harmed, then this would support them and help them to feel safe.

Several children and young people talked about the importance of police not profiling them, and trying to understand their context.

*Police should talk to us with respect. Don't hate us. Some of them just yell at us. They don't think of it as doing wrong, they're thinking of it as fun. – Pearl, 19*

*For cops, don't jump the gun, don't look at me and profile me, just have a chat with me... I just learn behaviours from my childhood that you shouldn't know how to do. Don't profile me for what I like to wear. They look at me like I'm a dropkick. – Bailey, 18*

*Don't hold grudges on young people because it doesn't treat them any better, it makes me hate cops and retaliate. – Summer, 18*

*They've been real judgmental and people who work in places like that should do training where they have to keep their own opinions and judgments to themselves. There will be people in there trying to get help and work their way out of what they're in. – Grace, 20*

Being transparent and providing information was also important to Aboriginal children, young people and their families. One young person talked about the importance of police building trust and relationships with young people.

*We should have police officers going into the schools and telling them what's wrong and what's not and building that trust and relationship with young people, because otherwise it's going to be very hard, trust issues are a big thing. Some of the police officers will have yarns with kids and that's what they should do more, like have a day at the oval or something. If they did more of that I don't think there would be any issues. – Indiah, 20*

## 11. Entering the youth justice system

*When people talk to us and explain things, I feel safe. And they don't come with 2 or 3 people, they come with heaps of people and dogs. They gotta learn that we're not all bad, just talk to us and we'll comply. – Caleb, 18*

### Age at first contact with the youth justice system and likelihood of reoffending

The common pattern for children and young people is that offending behaviour escalates during early adolescence, peaks in late adolescence and declines in early adulthood.<sup>1435</sup> Only a small number continue with offending behaviour later into adulthood, and they account for a disproportionate number of offences committed by children and young people.<sup>1436</sup> A 2016 study undertaken by the Crimes Statistics Agency, based on Victoria Police data, identified several offending trajectory profiles among children and young people aged 10 to 17 years in Victoria.<sup>1437</sup> The study found that 88.7% of the cohort engaged in alleged offending behaviour at very low rates across all ages (the 'low' group).<sup>1438</sup> In contrast, the 'high' group, whose alleged offending increased rapidly from around the age of 12 years, accounted for 1.6% of the study group, but 24% of alleged offences.<sup>1439</sup> Children and young people in all but the 'low' group were statistically more likely to identify as Aboriginal.<sup>1440</sup>

Research by the Sentencing Advisory Council in 2016 indicates that the younger a child or young person is when they come into contact with the youth justice system, the more likely they are to return, and to enter

the adult system.<sup>1441</sup> The Sentencing Advisory Council found that approximately 75% of children aged 10 to 12 years at the time of their first sentence went on to offend as adults. This dropped to 55% for children and young people aged 15 at the time of their first sentence, and 42% for children and young people aged 18 at the time of their first sentence.<sup>1442</sup>

This research is of particular significance for Aboriginal children and young people, who become involved in the youth justice system at an earlier age than non-Aboriginal children and young people.<sup>1443</sup> In 2018, 43% of Aboriginal children and young people in Victoria who were processed by police for alleged offending were aged 10 to 14 years, compared to only 28% of non-Aboriginal children and young people in the same age group.<sup>1444</sup> Similarly, the Taskforce case file review found that 41% of children and young people were aged 14 years and under when they first experienced contact with the youth justice system.

Data on reoffending by Aboriginal children and young people in Victoria is limited. Victoria Police records alleged offending and reoffending. However, this data does not indicate youth justice system outcomes – for example, whether the child or young person was ultimately found guilty of committing a further offence.

Crimes Statistics Agency data shows that Victoria Police records Aboriginal children and young people for incidents within 12 months of a previous recorded incident at considerably higher rates than non-Aboriginal children and young people (Table 11.1).<sup>1445</sup> This comparison is particularly stark among children aged 10 to 13 years. In 2019, 57% of Aboriginal children in this age group recorded for an incident had been recorded for a previous incident, compared with 36% of non-Aboriginal children in this age group.<sup>1446</sup>

<sup>1435</sup> K Richards, *Measuring juvenile recidivism*, Technical and background paper number 44, Australian Institute of Criminology, Canberra, 2011, p 10. See also B Watt, K Howells and P Delfabbro, 'Juvenile recidivism: criminal propensity, social control and social learning theories', *Psychiatry, Psychology and Law*, 2004, 11(1):141–153.

<sup>1436</sup> T Skardhamar, 'Reconsidering the theory of adolescent-limited and life-course persistent anti-social behaviour', *British Journal of Criminology*, 2009, 49(6):863–878.

<sup>1437</sup> P Sutherland and M Millsteed, 'Patterns of recorded offending behaviour amongst young Victorian offenders', *Crime Statistics Agency in brief*, number 6, Crime Statistics Agency, 2016.

<sup>1438</sup> Sutherland and Millsteed, 'Patterns of recorded offending behaviour amongst young Victorian offenders'.

<sup>1439</sup> Sutherland and Millsteed, 'Patterns of recorded offending behaviour amongst young Victorian offenders', p 10.

<sup>1440</sup> Sutherland and Millsteed, 'Patterns of recorded offending behaviour amongst young Victorian offenders', p 10.

<sup>1441</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*; Shirley, 'The cautious approach: police cautions and the impact on youth reoffending', p 20.

<sup>1442</sup> Sentencing Advisory Council, *Reoffending by children and young people in Victoria*, p 30.

<sup>1443</sup> Victorian Aboriginal Justice Agreement, *Aboriginal cohorts under justice supervision*, Victorian Aboriginal Justice Agreement website, 2019, accessed 4 December 2019.

<sup>1444</sup> Victorian Aboriginal Justice Agreement, *Justice and safety*, Victorian Aboriginal Justice Agreement website, 2020, accessed 25 February 2021.

<sup>1445</sup> Victoria Police defines an 'incident' as an event where there is an allegation of one or more offences being committed.

<sup>1446</sup> Crime Statistics Agency data extracted from LEAP on 18 April 2020 and provided to the Commission on 24 July 2020. In 2019, 386 out of 664 Aboriginal children and young people aged 10 to 17 years recorded for an incident had been recorded for a previous incident.

**Table 11.1** Percentage of children and young people aged 10–17 with a previous incident recorded on LEAP within 12 months by Aboriginal status and age, 2017–2019

Age	2017		2018		2019	
	Aboriginal (%)	Non-Aboriginal (%)	Aboriginal (%)	Non-Aboriginal (%)	Aboriginal (%)	Non-Aboriginal (%)
10–13 years	52	36	52	32	57	36
14–17 years	57	40	60	43	59	41
<b>10–17 years</b>	<b>56</b>	<b>40</b>	<b>58</b>	<b>41</b>	<b>58</b>	<b>41</b>

Source: CSA data extracted from LEAP on 18 April 2020 and provided to the Commission on 24 July 2020. This table does not include children and young people whose Aboriginal status was unknown, which accounts for 5% of the total number of children and young people recorded. For the purposes of this data, an ‘incident’ is defined as an event where there is an allegation of one or more offences being committed.

This highlights the importance of early intervention and alternative responses that keep vulnerable children and young people out of the youth justice system, and of supporting young people and their families to address the underlying causes of offending through community based-interventions and supports (see Chapter 5 ‘A just & age-appropriate system’)

## Caution

Cautioning is a low-level response to offending behaviour, which is proportionate and appropriate for many low-level offences, and where the child or young person is at low risk of further offending. More intensive interventions can be unwarranted and particularly harmful. Police cautioning is the first police-led diversionary option available for children and young people prior to being charged with an offence.<sup>1447</sup>

A child or young person is eligible for a formal caution if they admit responsibility for the offence and consent to being cautioned.<sup>1448</sup> Victoria does not currently have a legislative basis for police cautioning, although it is part of police instructions.<sup>1449</sup> Cautions can be informal, involving a decision by police not to prosecute an offence or providing a verbal warning on-the-spot, or

formally recorded at a police station in the presence of a parent or guardian.

## Young people’s experiences

Fifty-nine children and young people told the Commission that they had received a caution or diversion (they were often unsure which – see also Chapter 12.1 ‘Diversion’). Eleven young people said that they were denied a caution or other diversionary response and were proceeded against by police by way of arrest and formal charge.

*They didn’t caution, no reprimand, no nothing, just, ‘You’re under arrest, you’re going to the station with us.’ It was so scary. I felt like, ‘Fuck, I’m going to jail.’... I just got a straight sentence. – Watjpa, 21*

*I’ve never been cautioned. It’s always been charges. – Vincent, 17*

Most children and young people indicated that they were young at the time and/or received a caution for a minor offence (see also ‘First contact with the youth justice system’ above), with some children and young people indicating that they did not receive further chances. This suggests that an early caution can effectively exclude children and young people from being considered for another caution or diversionary response.

<sup>1447</sup> The Australian Centre for Social Innovation, *Developing an Aboriginal Youth Cautioning Project: a collaboration between Victoria Police, Aboriginal Victorian communities and legal partners*, Report prepared by The Australian Centre for Social Innovation for Victoria Police, unpublished, 2018.

<sup>1448</sup> An exception is if they are in an area where the Aboriginal Youth Cautioning pilot (described below) is operating.

<sup>1449</sup> C Cunneen, A Porter and L Behrendt, *Aboriginal youth cautioning: discussion paper*, Jumbunna Institute for Indigenous Education and Research, University of Technology Sydney, 2018, p 25.

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*I was getting cautions because I was so young. I was getting cautions up to 12 and 13.*  
– Karrwin, 20

*I've been cautioned when I was younger – 10 or 11 – but now it's been straight sentencing and targeting. They pull up and say, 'You boys been drinking, you got yarndi [marijuana] on you.'*  
– Drew, 19

*I got one caution for cannabis when I was 18 because that was the first time I was ever done for drugs. I got pulled over and there was chuff chopped up with tobacco and they said that if I admitted it was mine, they'd let me go. So I did, and I didn't get charged.* – Karl, 21

Ten children and young people referred to positive police interventions that had the effect of reinforcing protective factors in their lives.

*I think I got a caution for pop's car because I didn't have to go to court. Probably because that copper was looking out for me and was fair and kinda knew my family and was respectful.*  
– Jasper, 17

*When I was young I had heaps of cautions. I was a good footy player... I lived in a small town. Everyone knew everyone, even the police. The police would give me cautions and they kept telling me to stick to my footy and giving me chances and chances.* – Pakap, 16

### Trends in police cautioning of Aboriginal children and young people

Recent data shows that Aboriginal children and young people in Victoria are approximately twice as likely to be charged by police than cautioned, and that Aboriginal children and young people who are charged with an offence are considerably more likely to allegedly reoffend than other young people apprehended by police.<sup>1450</sup>

The cautioning rate for Aboriginal children and young people in Victoria declined from 14.6% of outcomes in 2008 to 3.9% of outcomes in 2015, while the proportion of arrests increased over the same period.<sup>1451</sup> Data provided by the Crimes Statistics Agency shows that between January 2018 and December 2019, Aboriginal young people were cautioned in 13% of incidents compared to 21% of incidents involving non-Aboriginal young people. This is important given that most children and young people who are effectively cautioned will not have further contact with the criminal justice system.<sup>1452</sup>

Victoria Police data shows that there is a particular disparity between Aboriginal and non-Aboriginal boys and young men who receive a police caution for their first recorded offence.<sup>1453</sup> In 2018, only 54% of Aboriginal boys and young men aged 10 to 17 years received a caution, compared to 61% of non-Aboriginal boys and young men.

Aboriginal girls and young women are generally more likely to be cautioned than Aboriginal boys and young men. In 2018, 70% of Aboriginal girls and young women received a police caution for their first recorded offence, compared to 67% of non-Aboriginal girls and young women. However, in 2017, only 55% of Aboriginal girls and young women received a caution, compared to 69% of non-Aboriginal girls and young women. This variability may be partially explained by the comparatively smaller number of Aboriginal girls and young women who are recorded for offences.

<sup>1450</sup> Shirley, 'The cautious approach: police cautions and the impact on youth reoffending', p 13.

<sup>1451</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 43.

<sup>1452</sup> Cunneen et al., *Juvenile justice*, p 154; L Jordan and J Farrell, 'Juvenile justice diversion in Victoria: a blank canvas?' *Current Issues in Criminal Justice*, 2013, 24(3):419–437, p 422.

<sup>1453</sup> The period is 1 January 2014 to 31 December 2018: Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*.

There is a range of potential explanations for why Aboriginal children and young people are less likely to be cautioned. Police are less likely to give cautions to children and young people with a history of offending.<sup>1454</sup> Since Aboriginal children and young people tend to come into contact with police at a younger age, police may form the view that the child or young person has exhausted their chances to be cautioned.

Stakeholders have identified police bias and uninformed application of criteria for issuing cautions to Aboriginal children and young people as reasons for the disparity.<sup>1455</sup> Aboriginal people's mistrust of police and the criminal justice system may also mean that a child or young person is less willing to admit responsibility for an offence, and that their parents or guardians may be unwilling to engage with the police or provide their consent to a caution.<sup>1456</sup> In addition, there is currently limited availability of culturally appropriate and relevant supports and referrals that could support cautioning of Aboriginal children and young people.<sup>1457</sup>

## Aboriginal Youth Cautioning Program

Victoria Police is implementing a 5-year Aboriginal Youth Cautioning Program, which aims to increase and improve the use of cautioning and diversion options for Aboriginal children and people.<sup>1458</sup> It is intended to operate prior to a young person being charged, in order to avoid court involvement. The program is running in Bendigo, Echuca and Dandenong. It is community-led and was co-designed with the Aboriginal Justice Caucus.<sup>1459</sup> It includes resources to enhance cultural awareness and capability of local police, and will be evaluated to inform future strategies. The program does not require a young person to admit an offence. This means that a young person is eligible for a caution if they make a 'no comment' interview, but

<sup>1454</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, pp 3–4; Office of the Auditor General Western Australia, *Diverting young people away from court*, Report 18, Office of the Auditor General Western Australia, 2017, p 14.

<sup>1455</sup> The Australian Centre for Social Innovation, *Developing an Aboriginal Youth Cautioning Project*, p 16.

<sup>1456</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 20.

<sup>1457</sup> The Australian Centre for Social Innovation, *Developing an Aboriginal Youth Cautioning Project*, p 14.

<sup>1458</sup> Victorian Aboriginal Justice Agreement, *Justice and safety*. The Aboriginal Youth Cautioning Program is also referred to as the Koori Youth Cautioning Program.

<sup>1459</sup> The Australian Centre for Social Innovation, *Developing an Aboriginal Youth Cautioning Project*.

not if they deny the offence. Under *Burra Lotjpa Dunguludja*, Victoria is considering rolling out the program in more locations across the state.<sup>1460</sup>

## Police custody

The damaging effects of police custody on Aboriginal people have been well documented since the Royal Commission into Aboriginal Deaths in Custody, which found that the majority of deaths had occurred in police custody (63 of the 99 deaths examined).<sup>1461</sup> Aboriginal children and young people continue to be over-represented in police arrests, and are more likely to be held in police custody than non-Aboriginal children and young people.

Section 22 of the Victorian Charter of Human Rights and Responsibilities provides that all people have the right to be treated with humanity if they are accused of breaking the law and are detained. Article 37 of the United Nations Convention on the Rights of the Child states that no child shall be deprived of their liberty unlawfully or arbitrarily, and that those who are deprived of liberty shall be treated with respect for the inherent dignity of the human person.

The Beijing Rules and Havana Rules stipulate that detention and imprisonment of young people should only be used as a last resort and in exceptional circumstances.<sup>1462</sup> The Havana Rules contain a number of minimum standards, including that a young person should be separated from adults<sup>1463</sup> and examined by a medical officer,<sup>1464</sup> and that detention should only take place under conditions that take full account of their particular social and health needs to ensure their protection from harm.<sup>1465</sup> The Convention on the Rights of the Child provides that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>1466</sup>

These standards are reflected in section 347A of the CYFA, which provides that a child may be temporarily held or detained in a police gaol for no more than 2

<sup>1460</sup> Victorian Aboriginal Justice Agreement, *Aboriginal Youth Cautioning Program*, Victorian Aboriginal Justice Agreement website, 2020, accessed 24 February 2021.

<sup>1461</sup> Royal Commission into Aboriginal Deaths in Custody, National Reports, Volume 1, 2.5.1.

<sup>1462</sup> Beijing Rules, rule 13.1; Havana Rules, rules 1, 2, 17.

<sup>1463</sup> Havana Rules, rule 29.

<sup>1464</sup> Havana Rules, rule 50.

<sup>1465</sup> Havana Rules, rule 28.

<sup>1466</sup> Convention on the Rights of the Child, article 37(a).

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working days and stipulates various requirements in relation to the detention of children in police custody. These include keeping the child separate from adults<sup>1467</sup> and making reasonable efforts to meet the child's medical and cultural needs.<sup>1468</sup> In the case of an Aboriginal child, this includes the child's needs as a member of the Aboriginal community.<sup>1469</sup>

### Young people's experiences

Seventy-one children and young people spoke to the Commission about their experiences in police custody, including police interviews and detention in police cells. Many children and young people experienced police custody at a very young age. Most children and young people who talked about their time in police custody (n = 43) mentioned negative emotions, which included feeling scared, angry, stressed, depressed and bored. Children and young people spoke about poor conditions and treatment while in police custody, such as being cold and not being provided with blankets or clothing, which negatively affected their health and wellbeing.

*I was about 10 the first time. It was weird, not like weird, but almost scary. – Dean, 15*

*You're in this cell and there's nothing. You go crazy – you can't even tell if it's night or day. – Mason, 16*

*The cells were just shit. It's like they treat you like you're an animal. – Bodhi, 23*

*I was cold and freezing and shivering and I asked 4 officers to get me a blanket, but they wouldn't give me a blanket until I did my interview. I asked them politely to go get me a blanket and they would have seen on the cameras how I was cold and curled up on the floor trying to get warm. – Rhea, 16*

*I got strip searched at the cop shop. They took my clothes, left me in the cell for 5 hours. – Harley, 19*

Twenty-one children and young people talked about overt racism, mistreatment or abuse in police custody. This included not having access to essential medical care or requisite legal assistance, and being physically and verbally abused.

*I was in the cells overnight and the judge gave it to them... cos I had all the broken bones and was in a wheelchair. She said, 'What are you doing putting this boy in here? He doesn't need to be here.' – Otis, 14*

*They put me in the cells, took my sling off because they thought I was going to self-harm. They threw me in the cell for 8 hours. They didn't give me painkillers or anything, not even a fucking drink of water. They didn't even notify my mum, nothing. I got out at 3 am after my independent person came. – Summer, 18*

*I waited for the independent person. Before they come, the cop was talking to me like shit. I was put in the cells for 6 to 7 hours. Got pepper sprayed because they called me a black cunt and said, 'You think just because you're Aboriginal you can do anything you want'... I asked for water and they said no. – Cadell, 17*

*I remember when I was 14 I spent like 3 weeks or so in the cells with a swollen ankle, and they didn't do anything to help me. They snipped my clothes off and put me in this jumpsuit as thin as a see-through curtain. They let me shower once a week. – Karrwin, 20*

<sup>1467</sup> CYFA, s 347A(2)(a).

<sup>1468</sup> CYFA, s 347A(2)(d).

<sup>1469</sup> CYFA, s 347A(2)(d).

*I had bad experiences with police in the interview room. There was 7 police and me by myself and one cop threw me on my back and said, 'Take your shorts off', and I said, 'I'm not taking my fucking shorts off', and he said, 'Do it or I'll do it for you', and then he threw me down and ripped my shorts off to look for drugs. And then I had another cop come up and bang on my back. – Taj, 16*

Twenty-eight children and young people spoke about being left in cells for an extended period of time with little information, and spending multiple days or weeks detained in regional police stations. When given an opportunity to comment on a draft of this chapter, Victoria Police indicated that its custody records do not support these assertions and that safeguards are in place to ensure compliance with proper custody practices. In addition, Victoria Police indicated that such practices would be in breach of section 347A of the CYFA.

*A lot of manipulation [by the police]... They could make it hard for you. Make you sit in the cells longer than you were supposed to. – Kirrae, 22*

*You have to wait for ages, like 2 or 3 hours. The longest I've been in lock-up is 3 days. – Haydn, 13*

*I was in a cell for 3 weeks only for my court date, they didn't want to move me to Melbourne just for my court date to be video linked. I was 16. – Mitch, 17*

*I got arrested and was in the cells for 4 or 5 hours and they didn't check on my medical health. In [a regional station] I was in the cells for 28 days. I think that's over the legal limit. – Karrwin, 20*

Eight children and young people said that they were denied a lawyer or a support person.

*I took some pictures and stuff and I stayed in there for ages and they wouldn't let mum in for ages. They interviewed me with mum, but I sat in the interview room by myself for ages while the copper was waiting out the front. – Dion, 15*

*First they tried to ask me questions by myself, but I said I wasn't talking without someone, but they knew I didn't do anything wrong so they let me out. – Jasper, 17*

*They said they're not calling VALS. – Cadell, 17*

Ten children and young people mentioned feeling pressured to give information, including 'dobbing in' friends, with police becoming angry or threatening if they chose to exercise their right to silence.

*When you don't tell them something, they get really shitty and I can tell when they're getting shitty and they put me in a holding cell for like 4 hours, for ages and ages. They say the more information I give them, the better it is for me, but it never is better for me. – Dion, 15*

*After my interview where I did a no comment interview, they don't like that. I asked to speak to my lawyer before I made a statement. He said yeah I can do it, but he didn't want to. He chucked me the phone and slammed the door. – Leroy, 14*

*They made me sell out all my mates and then I got charged anyway. – Watjpa, 21*

Only 9 children and young people talked about being treated well in police custody, either generally or by particular police officers; however, half of these could best be described as mixed. Fair, transparent and professional practice by police can foster better relationships and increased respect between police and children and young people.

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*It was warm enough. They gave me enough food. They asked me if I was Aboriginal and let me talk to VALS. – Brad, 18*

*Sometimes I got treated good, with respect, but then other times I've been treated like absolute shit. – Karl, 21*

*They treated me well. But I didn't like how they put my little sister in that cell when she was only 12... There was this one copper at the station trying to get on to ACCO, wanting the police to work with them so that Aboriginal kids don't get locked up and don't get criminal records because he thinks we should get jobs and not get locked up. – Tanaya, 14*

A number of children and young people offered the opinion that children and young people should be held apart from adults, for a minimal time, or not be held in police custody at all.

*They should have a different area altogether for young people. Being locked up shouldn't exist for young people. – Chelsea, 16*

*Kids shouldn't be in the cells, because it's a place for fucking hobos and criminals. I've been in a cell since I was 14. – Mason, 16*

*They should hold you for less than 4 hours. There were a few times they did that and it pissed me off. If we're gonna get bail anyway, they shouldn't hold us for that long. – Macy, 23*

### Trends in police arrests of Aboriginal children and young people

Section 345 of the CYFA creates a presumption in favour of commencing a criminal proceeding against a child or young person by summons.<sup>1470</sup> However, police

largely do not apply this presumption in practice. Data provided by the Crimes Statistics Agency shows that between January 2018 and December 2019 police were substantially more likely to arrest Aboriginal children and young people aged 10 to 17 years than proceed in any other way (Table 11.2).

Aboriginal children and young people were substantially over-represented in arrests, with 47% of incidents resulting in arrest, compared to 35% of incidents involving non-Aboriginal young people. While the proportion of Aboriginal and non-Aboriginal children and young people who received a summons from police was similar (25% and 24% respectively), there was a great disparity in the rate of cautioning (see also above).

**Table 11.2** Young alleged offender incidents (10–17 years) by Aboriginal status and outcome, 2018–2019

Outcomes	Aboriginal young people		Non-Aboriginal young people	
	No.	%	No.	%
Arrest	2,251	47%	11,371	35%
Summons	1,194	25%	7,742	24%
Caution	608	13%	6,742	21%
Other	48	1%	466	1%
Intent to summons	715	15%	5,927	18%
<b>Total</b>	<b>4,816</b>	<b>100%</b>	<b>32,248</b>	<b>100%*</b>

\* Percentages may not add up to 100 due to rounding.

Source: CSA data extracted from LEAP on 18 April 2020 and provided to the Commission on 24 July 2020. These figures exclude 412 incidents where the Aboriginality of the child or young person was unknown out of a total of 18,304 incidents in 2018, and 425 incidents where the Aboriginality of the child or young person was unknown out of a total of 19,597 incidents in 2019.

<sup>1470</sup> Article 37(b) of the Convention on the Rights of the Child states that 'No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or

imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.'



## Police procedures

VALS must be notified by police whenever an Aboriginal person, including a child or young person, goes into police custody.<sup>1471</sup> This allows VALS to provide independent legal advice and a welfare check. Previously, this was a procedure in the Victoria Police Manual, but it is now required under the *Crimes Act 1958 (Vic)*.<sup>1472</sup>

Police are also required to contact a local Aboriginal Community Justice Panel if there is one nearby. Aboriginal Community Justice Panels are supported by volunteers who provide cultural and practical assistance to Aboriginal people who are being held in police custody. Police are able to release a person into the panel member's care. They operate in 13 locations, although this is currently being expanded to 5 additional locations by 2021–2022 under *Burra Lotjpa Dunguludja*.<sup>1473</sup>

In 2008, the Office for Police Integrity (replaced by the Independent Broad-based Anti-corruption Commission (IBAC) in 2013) published *Standards for Police Cells* in response to a joint investigation by the Office of Police Integrity and the Ombudsman, which found conditions in police custody to be unsatisfactory in some areas.<sup>1474</sup> The standards provide a framework for assessing conditions in police cells. They cover admission and assessment, accommodation, health and hygiene, food, psychological wellbeing, discipline and restraint, as well as specific requirements for children and young people, and Aboriginal detainees. They note that children and young people should be detained only as a last resort and for the shortest possible time, and with particular care to provide for their safety, health and wellbeing. In terms of Aboriginal detainees, the standards reiterate the need to contact VALS and the local Aboriginal Community Justice Panel, and take into account information provided by a legal or community representative in providing the best possible treatment and care.

<sup>1471</sup> *Crimes Act 1958 (Vic)*, ss 464AAB, 464FA.

<sup>1472</sup> *Crimes Act*, s 464FA, which commenced operation on 1 October 2019.

<sup>1473</sup> Victorian Aboriginal Justice Agreement, *Enhance support for Aboriginal Community Justice Panels*, Victorian Aboriginal Justice Agreement website, 2021, accessed 24 February 2021.

<sup>1474</sup> Office of Police Integrity Victoria, *Policing and human rights: standards for police cells* [PDF], Office of Police Integrity Victoria, 2008. The standards were created in 2008 with reference to international standards at the time, meaning that some standards may require updating.

## Racism, mistreatment and violence by police

There is a large amount of research, particularly since the findings of the Royal Commission into Aboriginal Deaths in Custody, on the ways in which institutional racism contributes to the over-representation of Aboriginal people in the criminal justice system. A 2005 study, which included qualitative analysis of interviews with Aboriginal adults and young people about their experiences of racial discrimination and institutional racism in the Victorian criminal justice system, found that police relationships were of key concern to the community, including experiences of harassment, racism and violence by police.<sup>1475</sup> The study noted that racism was particularly pronounced in the treatment of young people,<sup>1476</sup> and was 'frequently experienced at critical junctures and in extreme crisis situations, where sensitive, timely support was required to prevent re-engagement with the criminal justice system'.<sup>1477</sup>

A 2013 review of Victoria Police field contact policy and processes affirmed that Aboriginal communities have an ongoing strong perception that they are 'singled out' by police.<sup>1478</sup> While there may have been improvements since these studies occurred, their findings still resonate, as reflected in the experiences of children and young people we spoke to.

The International Convention on the Elimination of All Forms of Racial Discrimination protects the dignity and equality of all human beings and requires states to promote and respect the observance of human rights without distinction as to race, colour or national origin, and eliminate all forms of racial discrimination. The convention requires states to refrain from any practice of racial discrimination and ensure that all public authorities comply with this obligation.<sup>1479</sup> Under article 5, this includes the right to equal treatment before the

<sup>1475</sup> Blagg et al., *Systemic racism as a factor in the over-representation of Aboriginal people in the Victorian criminal justice system*, p 112.

<sup>1476</sup> Blagg et al., *Systemic racism as a factor in the over-representation of Aboriginal people in the Victorian criminal justice system*, p 111.

<sup>1477</sup> Blagg et al., *Systemic racism as a factor in the over-representation of Aboriginal people in the Victorian criminal justice system*, p 107.

<sup>1478</sup> Cultural & Indigenous Research Centre Australia (CIRCA), *Victoria Police review of field contact policy and processes: final report*, CIRCA, Sydney, 2013.

<sup>1479</sup> International Convention on the Elimination of All Forms of Racial Discrimination, article 2(1)(a).

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law,<sup>1480</sup> and the right to security of person and protection by the state against violence or bodily harm.<sup>1481</sup>

These rights are strengthened in relation to children under the Convention on the Rights of the Child, which further provides that the best interests of the child is the primary consideration in relation to all actions concerning children.<sup>1482</sup> Article 19 provides that states shall take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation. As noted above, the Convention on the Rights of the Child states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>1483</sup>

### Young people's experiences

*I would tell them that they can't bash kids. You can't do that. I understand that they had enough, but you can't bash a kid cos they can't do nothing. They can't expect to bash someone, then expect them to be nice to them. Every time I see them in the street, I panic. – Jamie, 18*

Over 70% of the children and young people the Commission consulted (n = 66) spoke about racism, mistreatment or violence by police. These allegations raise significant human rights issues. Fifty-eight children and young people talked about physical and emotional mistreatment by police, including violence and sexually abusive behaviour. This included tightening of handcuffs, unnecessary use of capsicum spray, verbal threats, yelling and swearing, and unsafe conditions in police vans. Allegations also included extremely serious allegations of racial, physical and sexual abuse. Examples included multiple officers tackling a child or young person to the ground, sexual threats, striking

with batons, kicking and stomping, assaults following dangerous police pursuits and racial abuse.

*I had a cop ask me if I was gay and if I wanted to suck his dick, but nothing gets done about it. That's a big thing. – Karl, 21*

*I've had 2 bad experiences – one at the courthouse with me and my brother getting dragged down the stairs. Ended up with the cops and police all over us and dislocated my shoulder and got cuts and bruises.<sup>1484</sup> – Blair, 17*

*The cops hit the car because I wouldn't stop, and then I got out and the copper slapped me because he knew me and my brothers and he said, 'What the fuck are you doing with your pop's car, you little cunt?' – Jasper, 17*

*When they caught me they pulled me through 4 fences. They were looking for a weapon I was using. They tortured me, bashed me, punching, kicking. Unmarked police. Like 50 police chased me. Nearly run me over. – Cole, 16*

*The worst thing was probably this one police officer who jumped up and picked me up and like he slammed me – it happened so quick – he put his knee into my back. I was like 14. He was just crunching it and crunching it and he was full standing on my head with one foot, putting all his weight on it, and it was all in public. – Karrwin, 20*

*After that, he strangled me in the interview room because I was going off. He just grabbed me by the throat and slammed me down because I was being a smart ass. The other officer was telling him to calm down. He picked me up after he put the handcuffs on me and smacked my head against the elevator door. – Kevin, 16*

<sup>1480</sup> International Convention on the Elimination of All Forms of Racial Discrimination, article 5(a).

<sup>1481</sup> International Convention on the Elimination of All Forms of Racial Discrimination, article 5(b).

<sup>1482</sup> Convention on the Rights of the Child, article 3(1).

<sup>1483</sup> Convention on the Rights of the Child, article 37(a).

<sup>1484</sup> It is not clear whether Blair's reference to being 'dragged down the stairs' involved police or court security.

Five children and young people reported sustaining broken bones and serious injuries as a consequence of assaults by police. In addition, one young person referred to being bitten by a police dog.

*He yelled at me, dragged me out and slammed me on the ground, stung me and threw me in a cell for 3 days without talking to me. I got a broken jaw and the police said that they didn't know my jaw was broken for 3 days.*

– Karrwin, 20

*When I was 16 they bashed me and put me in hospital. They put me in a neck brace. They lied to the judge, saying they didn't do anything.*

– Jamie, 18

*[A police] dog bit me. I got 22 stitches in the leg, split my face open. I was in hospital for 2 days. I didn't get interviewed or nothing. They dropped all the charges.*

– Drew, 19

Twenty-five children and young people mentioned racism and racial abuse in the context of police interactions. Several children and young people pointed out that as a consequence of personal and collective experiences, Aboriginal children and young people experience fear when they interact with police.

*Some of them, recently when they were chasing me, they were saying, 'I'll catch you one day, you little black dog.' They said to my brother, 'Fuck this little cunt, this little black dog.'*

– Otis, 14

*All 4 cops tackled me, put my head in the mud. I had mud all over my face. They said they had the right to arrest me for giving a false name. They handcuffed me to the fence, got in my face, asked my nasho [nationality]. They said, 'How would you like it if I called you "Abo"?'*

– Corei, 17

*Last year, New Year's Day, me and my cousin and my uncle were driving and we got into a police chase, and we stopped the car and I got out and put my hands up and they battered me with a baton, calling us black dogs.*

– Jasper, 17

*Some Koori kids maybe been assaulted by police so as soon as they see their uniform they might start running. It's just their instincts now.*

– Dustin, 15

Several children and young people reported concealing behaviour by police, including turning off body cameras and video recorders, taking off badges and taking young people outside of the view of cameras.

*When they take their badge off you know they are going to do something bad.*

– Pearl, 19

*I went into an interview room and said I couldn't remember what had happened. I said, 'No comment' and they paused the video, took a phone book and smashed me across the head. Then they pressed play, and asked me again, and I said, 'No comment.' So they pressed pause again, hit me again... Police need to stop bashing young people.*

– Malkar, 19

Only 2 young people referred to making a complaint about police conduct. One young person stated that when he told his lawyer about physical abuse, she advised him that 'there was no footage and no evidence'. Another young person stated that when he tried to complain about being assaulted, the court said police had used 'reasonable force', leading the young person to conclude that 'nothing gets done when you complain against them'.

Several Aboriginal young people had plain advice in relation to racism, mistreatment and violence by police.

*They're just doing their job, but they shouldn't swear at kids and bash 'em.*

– Otis, 14

## 11. Entering the youth justice system

### Complaints processes

Complaints submitted to Victoria Police are handled internally by the Professional Standards Command. In 2018, IBAC undertook an audit of complaints investigated by Professional Standards Command, citing a number of problems with internal complaints handling mechanisms.<sup>1485</sup>

IBAC receives complaints about and investigates corruption and serious police misconduct. Under IBAC's legislation, complaints to IBAC must be made in writing. IBAC can only investigate complaints where there is reasonable evidence of 'corrupt conduct' (involving an indictable offence)<sup>1486</sup> or serious police misconduct.<sup>1487</sup> Due to this threshold, only a small number of complaints are investigated. A large proportion of complaints are referred back to Professional Standards Command for internal review. In 2018–19, IBAC investigated 16 out of 3,607 allegations (0.4%) into police misconduct and prosecuted only one allegation of excessive use of force.<sup>1488</sup>

In 2018, the Independent Broad-based Anti-corruption Commission Committee of the Parliament of Victoria conducted an inquiry into the external oversight of police corruption and misconduct in Victoria.<sup>1489</sup> The inquiry did not find sufficient need for the creation of a new independent body to investigate complaints against police, but did identify that the complaints and oversight system requires significant improvement. The committee noted that IBAC investigates approximately 2% of allegations, referring the majority to Victoria Police, including a range of serious misconduct matters. As noted above, the percentage of allegations investigated in 2018–19 was 0.4%.

To address this, the committee recommended the establishment of an adequately resourced Police Corruption and Misconduct Division within IBAC. Other than in exceptional circumstances, IBAC would be responsible for investigating serious police misconduct. The committee emphasised the need for accurate assessment of complaints to ensure that serious police misconduct is not 'wrongly classified as a customer service issue or similar lower-level concern'.<sup>1490</sup> The committee recommended that both IBAC and Victoria Police take measures to ensure proper account of the diverse needs of Victorians, including Aboriginal people and young people, such as explaining the complaints system and ensuring complainants are supported throughout the process.<sup>1491</sup>

In 2020, the Royal Commission into the management of police informants recommended that the Victorian Government:

*undertake a review of institutional and legislative structures for the oversight of Victoria Police's exercise of powers, to ensure that Victoria's police oversight system is consistent and coherent and contributes to improved police accountability, including through outcome-focused monitoring of police decisions and actions.*<sup>1492</sup>

The Royal Commission suggested that the government undertake this review 'in tandem' with its policy response to the 2018 IBAC committee inquiry.<sup>1493</sup>

IBAC is currently undertaking an audit into Victoria Police's handling of complaints made by Aboriginal people, and is due to release its findings in 2021. Local advocacy groups have strongly campaigned for an independent body to oversee Victoria Police complaints.<sup>1494</sup>

<sup>1485</sup> Independent Broad-based Anti-corruption Commission (IBAC), *Audit of complaints investigated by Professional Standards Command*, Victoria Police, IBAC, 2018.

<sup>1486</sup> *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), ss 4 and 60.

<sup>1487</sup> Referred to in the Act as 'police personnel misconduct': Independent Broad-based Anti-corruption Commission Act, ss 5 and 64. Further, IBAC may take no further action if too much time has passed since the conduct occurred, the complaint has already been dealt with, or there is no new evidence to consider.

<sup>1488</sup> Independent Broad-based Anti-corruption Commission (IBAC), *Annual report 2018/19*, IBAC, 2019, p 59.

<sup>1489</sup> Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, 2018, accessed 24 February 2021.

<sup>1490</sup> Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p xvi.

<sup>1491</sup> Recommendation 16: Parliament of Victoria, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p 179.

<sup>1492</sup> State of Victoria, *Royal Commission into the management of police informants: final report*, 2020, Volume III, p 234.

<sup>1493</sup> Recommendation 61: *Royal Commission into the management of police informants*, Volume III, p 234.

<sup>1494</sup> Police Accountability Project, *Independent investigation of complaints against the police: policy briefing paper*, Police Accountability Project, 2017, accessed 25 February 2021.

## Data on police complaints by young people

Victoria Police provides some information through the Aboriginal Justice Forum in relation to complaints made by Aboriginal children and young people. Between 1 October 2015 and 31 December 2017, Victoria Police processed 52,898 non-Aboriginal young people and 1,455 Aboriginal young people between the ages of 15 and 24.<sup>1495</sup> Only a small proportion of all young people processed made a complaint to Professional Standards Command, although Aboriginal young people were more than twice as likely to make a complaint. Non-Aboriginal young people made 241 complaints (0.46% of the number of non-Aboriginal young people processed) and Aboriginal young people made 14 complaints (0.96% of the number of Aboriginal young people processed). Earlier data indicates that only around 4% of all complaints made by young people were found to have been 'substantiated'.<sup>1496</sup> The majority of complaints made by Aboriginal young people related to minor assaults, including pushing, pulling and striking.

The Commission monitors allegations of police assaults or misconduct that are reported by children and young people at admission to youth justice custody. The Commission's role is to ensure that Youth Justice has followed correct processes for submitting complaints to Victoria Police. The Commission's monitoring function does not include information about the outcomes of complaint investigations. Between December 2017 and June 2020, the Commission monitored 118 allegations of assault and mistreatment by police. Ninety-six per cent of these allegations involved physical assault or excessive use of force. The remaining 4% of allegations involved physical incidents and quality of care concerns, such as handcuffs being too tight, delay in receiving medical attention, and not being provided with toilet paper. Aboriginal children and young people made allegations of police assaults at a higher rate than non-Aboriginal children and young people, accounting for 19% of allegations, but only 14% of the Youth Justice population during that period.

<sup>1495</sup> Victoria Police, *Information paper: complaints by Aboriginal young people compared to non-Aboriginal young people*, AJF 50 Information paper, Aboriginal Justice Forum, 2018, unpublished.

<sup>1496</sup> Victoria Police, *Joint Victoria Police and Commission for Children and Young People: Koori Youth Police Complaints Project*, Report for AJF 48, Aboriginal Justice Forum 2017, unpublished.

## Recent research into police practices

A Human Rights Law Centre report into police use of force highlighted the excessive use of force against Aboriginal people.<sup>1497</sup> Use of force by police puts Aboriginal people at risk of physical and psychological harm, and increased rates of contact with police make children and young people vulnerable to mistreatment.

The report recommended that the Crimes Act be amended to regulate the circumstances in which Victoria Police can lawfully use force in accordance with the Victorian Charter of Human Rights and Responsibilities and human rights law, including limiting use of force to when strictly necessary. It also recommended that the Victoria Police Manual incorporate the obligation of police to exercise restraint, minimise injury, ensure the availability of medical assistance, and notify friends or family of the injured person as soon as possible. Further, the report recommended that Victoria Police promote non-violent conflict resolution, including through training. The Human Rights Law Centre noted that policies and training should take into account the experiences of vulnerable communities, and specifically address the unique history of Aboriginal peoples' experiences with police.

The Australian Law Reform Commission's 2018 inquiry into the incarceration of Aboriginal people described the negative dynamics that underpin relationships between police and Aboriginal people.<sup>1498</sup> This includes the perception that police act with bias against Aboriginal people in exercising discretion, such as when making arrests, cautions and referrals to diversion, and the perception that when Aboriginal people make complaints about police they are not taken seriously.<sup>1499</sup> The Australian Law Reform Commission noted that some of these perceptions, including lower cautioning rates for Aboriginal young people, are backed up by data.<sup>1500</sup>

It also noted that police charging practices can result in an Aboriginal person being 'over charged', meaning that they are charged with multiple offences in relation to one incident or are charged too high for an

<sup>1497</sup> Human Rights Law Centre (HRLC), *Upholding our rights: towards best practice in police use of force*, Final report, HRLC, 2011.

<sup>1498</sup> ALRC, *Pathways to justice*.

<sup>1499</sup> ALRC, *Pathways to justice*, p 447.

<sup>1500</sup> ALRC, *Pathways to justice*, p 447.

## 11. Entering the youth justice system

offence.<sup>1501</sup> The Australian Law Reform Commission made a number of recommendations in relation to police accountability, which included reviewing police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.

### Urgent need for reform

This chapter highlights significant issues of concern based on evidence provided by Aboriginal children and young people and limited data analysis.

These issues should be the subject of further review by an independent and properly mandated body with specialist knowledge and expertise in relation to children and young people. The Commission currently does not have the jurisdiction to undertake such a review; however, it would be well-placed to do so if it were properly mandated.

### Finding 28

Limits to the Commission's mandate meant we could not inquire into the role of police in contributing to the over-representation of Aboriginal children and young people in the youth justice system. However, the experiences children and young people shared with us, and our research, raise significant concerns about police systems, practice and culture. These concerns include:

- a) unacceptable discrepancy in the use of cautions between Aboriginal and non-Aboriginal children and young people
- b) mistreatment by police during arrest and other contact
- c) excessive detention and mistreatment during detention in police cells
- d) a lack of faith in the police complaints process.

### Recommendation 54

That the Victorian Government commission an independent and properly mandated body with specialist knowledge and expertise in relation to children and young people to undertake an urgent review of the experiences of Aboriginal children and young people with Victoria Police. This review should:

- a) include an examination of police powers and the exercise of discretion in the investigation and processing of Aboriginal children and young people suspected of offending, including cautioning, diversion, arrest, summons, custody and complaints processes
- b) be empowered to make recommendations for improved police practice and policy in relation to Aboriginal children and young people.

<sup>1501</sup> ALRC, *Pathways to justice*, p 457.

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*The gathering circle shows the many people that are needed to support young people on their journey. In the centre is the young person, as a reminder to keep our needs central when trying to support us. The eagle flying above is Bunjil, the protector, who is looking over everyone. Bunjil's law is about taking care of the children and doing no harm. – Young people of Geelong, Wathaurong Country*



## Our way

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*Rather than keeping them in the system, we must be thinking at every point, how do we get them out? – Elder*

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*As soon as a child is embedded in the system there should be a plan for how they exit it. Right now, lots of things are open-ended. A young person is left with a kind of ‘sting in the tail’, an implied threat that they could cycle through the system over and over if they don’t do something different. There’s not a lot of therapeutic consideration of what brought us to that point. We must consider how we can reimagine life for the young person, to provide them with the inherent dignity and respect that all people deserve.*

*– RAJAC Chair*

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The *Our way* vision is that Aboriginal children and young people have every opportunity to live a healthy and happy life outside of the youth justice system, with the support and encouragement of justice agencies and the broader community. Children come into contact with the system at various points, whether it be the police response, court proceedings or during supervision or detention. At each point of contact, they deserve access to meaningful services and supports to help them address factors contributing to their offending behaviour and leave the system. Their first contact should be the last.

This chapter contrasts the *Our way* vision with the current reality. In too many cases, Aboriginal children and young people are denied the support they need to address the factors that contribute to their offending behaviour. Too often, their interactions with the youth justice system result in adverse outcomes and entrenchment in the system.

Aboriginal children and young people told us about their desire to live free of crime, and shared their hopes and aspirations for the future, including goals relating to family, culture, health and employment. They talked about what could make a difference to their ability to exit the youth justice system, although sadly not all were able to see a way out for themselves.

## Watjpa's story

Watjpa's<sup>1502</sup> first interaction with police was at a young age, and left a deep impression.

*Somewhere between 10 and 12, they arrested me for damaging property, handcuffed me, threw me in a paddy wagon and I was in an interview room waiting for hours. I believe that's what started this all. I don't really remember anything except that it fucking hurt.*

Not long afterwards, Watjpa started using drugs and his offending behaviour became more serious. His experience of police custody was marked by fear, confusion and a deep sense of injustice.

*A couple of years after, I got arrested for breaking and entering and they did the same thing and threw me in the cells. Being in the cells at like 12 or 13 was real scary. They let us out but said if you don't tell us what happened we're going to lock you up for a couple months, keep you away from your families. I was thinking, 'Fuck I've seen movies and stuff. I don't want to go to jail,' so I told them everything and got charged anyway... It's all racism with us Kooris. They don't explain much to you when you get arrested – they don't explain your rights and stuff and I didn't know why I'd need a lawyer or anything.*

Rather than being cautioned or referred to diversion, Watjpa's matters were dealt with through formal proceedings, resulting in court orders that escalated quickly to detention.

*They didn't caution, no reprimand, no nothing, just, 'You're under arrest, you're going to the station with us.' It was so scary. I felt like, 'Fuck, I'm going to jail.' We get labelled and once we got that number on us it's hard to not come back to jail. As soon as you got a record, it's fucked.*

Through his treatment and experiences of the system, Watjpa felt that those who administered it were more focused on punishment than on his rehabilitation. He also found it hard to comply with supervision and reporting obligations, which made it difficult to maintain connections to his family and culture.


*I want a Koori judge who knows what I'm going through, who wants to help me, not some white judge that wants to punish me. I just got a straight sentence. I got a 12-month probation order – for a 13 year old that's a really long time. I've had one community order and I was back in jail in the next 2 months. I live on a mission, I got no petrol, so how am I supposed to get to appointments? Another time, I breached [my conditions] so that I could go to [a close relative's] funeral.*

Watjpa has had mixed experiences with Youth Justice staff responsible for his supervision, while acknowledging that he needs assistance, including the right services, to help him leave the system.

*I had a case manager that seen me grow up, she knew me since I was a young fella. She cares about me... she even helped me get a house when I was living on the streets. But there's no supports and nothing for us when we get out of jail. It's hard enough getting a job. Some workers don't even care about us, they set us up to fail.*

*[It would be good] if we had a Koori worker that could come pick us up and stuff if we can't make an appointment, not just breach us. I've been asking to be put on the methadone program – using drugs has been tearing me away from my kids and my family. I need support to stay off drugs.*

<sup>1502</sup> Watjpa is a pseudonym meaning 'light' or 'daylight' in Kirrae Wurrung.



A decade later, Watjpa is now 21 and in adult prison. He wants to get out of the system and back to what matters most – his family.

*I'm only 21 but I've experienced a lot in my life. I've been getting in trouble a lot since I was very young. I want to go back to my kids and I want to be a good role model for them. My family is everything to me.*

## Chapter at a glance

- Most Aboriginal children and young people will have no contact with the youth justice system, and of those who do, most will grow out of offending behaviour. However, Aboriginal children and young people have a higher likelihood of ongoing contact with the youth justice system than non-Aboriginal children and young people.
- Diversion can be an effective response to offending behaviour, but Aboriginal children and young people have insufficient access to culturally appropriate diversion programs across Victoria.
- Aspects of the bail system create barriers to Aboriginal children and young people being granted bail. Aboriginal children and young people experience remand at unacceptably high rates. This places them at risk of harm and entrenchment in the youth justice system.
- Aboriginal children and young people in the youth justice system have mixed experiences with legal assistance and the court system. The Children's Koori Court has strong potential to improve engagement and outcomes, but is not consistently accessible across Victoria.
- Supervised community orders provide alternatives to custody, but if conditions are too onerous, they can set Aboriginal children and young people up to fail and further entrench them in the youth justice system.

### Key data

- Despite overall reductions in offending rates, on an average day in 2019–20 in Victoria, Aboriginal children and young people aged 10 to 17 years were 10 times more likely to be on a supervised community order, and 9 times more likely to be in custody, than their non-Aboriginal peers.
- The number of remand orders made in relation to Aboriginal children and young people doubled between 2010 and 2019 and increased by 185% for Aboriginal girls and young women. In 2018–19, 40% of Aboriginal children and young people on remand did not ultimately receive a custodial order.
- 67% of children and young people who spoke to the Commission about bail said they had a difficult time on bail, mainly in complying with conditions.
- 49% of children and young people who spoke to the Commission about the court process told us that they had a negative experience of court.

## Current context

Most Aboriginal children and young people will have no contact with the youth justice system, and of those of who do, most will grow out of offending behaviour.<sup>1503</sup> Unfortunately, Aboriginal children and young people are at greater risk of contact with the youth justice system, and have a higher likelihood of ongoing contact than non-Aboriginal children and young people. A key factor that can influence the likelihood of ongoing contact and further offending is the nature of their interactions and experiences with the youth justice system itself. The more contact a child or young person has, and the more 'restrictive and/or intensive' that contact is, the more likely it is that they will go on to offend again.<sup>1504</sup>

As outlined in Chapter 3 'Overview of the Victorian youth justice system', Aboriginal children and young people are significantly over-represented in the Victorian youth justice system. They are more likely to be arrested than summonsed, and less likely than non-Aboriginal children and young people to be cautioned.<sup>1505</sup> The level of over-representation is lowest at the least intensive or restrictive end of the system (including cautions and diversions), and highest at the most intensive or punitive, including police custody and custodial sentences.<sup>1506</sup>

These discrepancies cannot be explained by offending rates or data on compliance rates. In the period 2014 to 2018, there were many positive reductions in offending rates for Aboriginal children and young people, including:

- a 33% reduction in Aboriginal children and young people aged 10 to 17 years recorded for at least one offence

- a 32% reduction in Aboriginal children and young people aged 10 to 17 years recorded for a violent crime
- a 75% reduction in Aboriginal children and young people aged 10 to 17 years recorded for a breach of bail.<sup>1507</sup>

Despite overall reductions in offending rates, on an average day in 2019–20 in Victoria, Aboriginal children and young people aged 10 to 17 years were 10 times more likely to be on a supervised community order, and 9 times more likely to be in custody, than non-Aboriginal children and young people.<sup>1508</sup>

Communities and researchers have pointed out that the over-representation of Aboriginal children and young people in the youth justice system should not be seen as an 'Aboriginal issue', which is the fault of Aboriginal children, young people and their communities, but as a product of colonialism.<sup>1509</sup> Cunneen refers to the criminalisation of Aboriginal children and young people as a pattern of hyper-incarceration, where:

*a complex web of law, policy and practice, combined with the social, economic and political marginalisation of Indigenous people, creates a criminal justice system that selectively targets Indigenous young people and adults.*<sup>1510</sup>

Almost all children and young people (n = 87) interviewed by the Commission had direct contact with the youth justice system, and their experiences form the foundation of this chapter. A key insight of this chapter is that the treatment of Aboriginal young people in the youth justice system and the operation of legal institutions are in part responsible for perpetuating the cycle of crime.<sup>1511</sup> In this context, it is important to

<sup>1503</sup> Richards, *Measuring juvenile recidivism in Australia*; K McFarlane, 'From care to custody: young women in out-of-home care in the criminal justice system', *Current Issues in Criminal Justice*, 2010, 22(2):345–353, p 345.

<sup>1504</sup> Richards, 'What makes juvenile offenders different from adult offenders?', p 7; NSW Department of Communities and Justice, *Risk and protective factors*, NSW Department of Communities and Justice website, 2014, accessed 16 February 2021.

<sup>1505</sup> See Table 11.2 in Chapter 11 'Entering the youth justice system': CSA data extracted from LEAP on 18 April 2020 and provided to the Commission on 24 July 2020.

<sup>1506</sup> Cunneen et al., *Juvenile justice*, p 148.

<sup>1507</sup> Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*.

<sup>1508</sup> Productivity Commission, *Report on Government Services 2021*, data tables 17A.5, 17A.6.

<sup>1509</sup> S Gillfeather-Spetere, 'From pursuit to progress: critical reflections on concepts of young people and crime in Australia', *Current Issues in Criminal Justice*, 2019, 31(2):111–121, p 115.

<sup>1510</sup> Cunneen et al., *Juvenile justice*, p 140.

<sup>1511</sup> Gillfeather-Spetere, 'From pursuit to progress: critical reflections on concepts of young people and crime in Australia', p 115.

## Current context

consider the lived experiences and views of Aboriginal children and young people in order to transform the youth justice system and tailor effective services and responses.

In Chapter 11 ‘Entering the youth justice system’ we describe the experiences of Aboriginal children and young people in encountering police and being drawn into the youth justice system. As noted in that chapter, police are typically the primary point of entry for children and young people into the youth justice system. Police practice is thus inseparable from a consideration of the factors that contribute to the over-representation of Aboriginal children and young people. However, given the scope of the Commission’s statutory inquiry powers, we are unable to make recommendations directed to Victoria Police. Accordingly, in Chapter 11 we describe what young people told us about their experiences with police, and recommend further work to address the serious concerns highlighted by those experiences.

This chapter considers issues arising from the experiences of Aboriginal children and young people in the youth justice system following police contact. It is divided into 5 parts:

- 12.1 ‘Diversion’ considers the experiences of Aboriginal children and young people with diversion programs, in particular, Children’s Court diversion.
- 12.2 ‘Bail and remand’ examines the impact of Victoria’s bail and remand system on Aboriginal children and young people.
- 12.3 ‘Court’ discusses the experiences of Aboriginal children and young people in the Criminal Division of the Children’s Court and the Children’s Koori Court.
- 12.4 ‘Legal assistance’ considers the legal assistance services provided to Aboriginal children and young people in the youth justice system.
- 12.5 ‘Community orders supervised by Youth Justice’ examines the experiences of Aboriginal children and young people sentenced to community-based orders supervised by Youth Justice.

While the Commission’s statutory inquiry powers also do not allow it to make recommendations directed to the Children’s Court, the Commission does have the power to make recommendations to the Victorian Government regarding matters affecting the court, such as legislative reform concerning the youth justice

system, or the funding of particular programs or initiatives. Accordingly, our recommendations in this chapter are directed to the government and are aimed at improving and expanding pathways for Aboriginal children and young people out of the youth justice system, and supporting them to thrive outside of that system.

The experiences of Aboriginal children and young people in youth justice custody and transitioning from custody are described in Chapter 13 ‘Safe custody’.

# 12.1 Diversion

## Finding 29

**Diversion can be an effective response to offending behaviour, which in turn can limit the ongoing involvement of children and young people in the youth justice system. However, Aboriginal children and young people have insufficient access to culturally appropriate diversion programs across Victoria.**

Youth diversion initiatives are widely accepted as an appropriate response to offending behaviour that can achieve the primary objectives of an effective youth justice system. Diversionary mechanisms create opportunities to identify and respond to causal factors contributing to offending behaviour. They also allow children and young people to avoid the stigmatisation associated with more formal involvement in the youth justice system.<sup>1512</sup>

Diversion of children and young people from the youth justice system is required by human rights law.<sup>1513</sup>

Article 40 of the United Nations Convention on the Rights of the Child states that, wherever possible, states should put into place measures for dealing with children without resorting to legal proceedings. This is

<sup>1512</sup> The Victorian Parliament recently enacted spent convictions legislation. The *Spent Convictions Act 2021* received Royal Assent on 30 March 2021. Under this legislation, convictions for certain offences recorded against children (and young people sentenced under the dual track system) become spent automatically after 5 years.

<sup>1513</sup> The General Comment on the Convention on the Rights of the Child notes that diversion provides 'good results for children and is in the interests of public safety, and has proven to be more cost-effective... [and] should be the preferred manner of dealing with child offenders in the majority of cases'. Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, p 5.

reiterated in the Riyadh Guidelines and the Beijing Rules. International human rights instruments also require states to provide community-based options in responding to and supporting children and young people in conflict with the criminal law.<sup>1514</sup>

The Youth Justice Review found that, although Victoria had a strong diversionary approach, there were very low levels of investment in community-based early intervention and support, and overall approaches to diversion were limited, ad hoc and provided little focus on addressing criminogenic needs.<sup>1515</sup> In addition, it found little evidence that the Victorian youth justice system provided culturally appropriate programs, noting Victoria's poor record for the diversion of Aboriginal young people.<sup>1516</sup> The Youth Justice Review specifically recommended establishing a Young Offenders Strategy within the Aboriginal Justice Agreement that would include an evidence-based diversion framework and consistent statewide diversion programs.<sup>1517</sup> DJCS is currently developing an Aboriginal Youth Justice Strategy in partnership with the Aboriginal Justice Caucus under *Burra Lotjpa Dunguludja*.

In its broad sense, 'diversion' refers to alternative responses to alleged offending by children and young people that avoid resorting to judicial proceedings, including referrals by police and other agencies to early intervention programs and services. These alternative responses should be available and prioritised at all stages of the criminal legal process (see Recommendation 11). Chapter 5.1 'Early intervention'

<sup>1514</sup> Rule 11.4 of the Beijing Rules states that efforts should be made to provide community programs such as temporary supervision and guidance, restitution and compensation of victims.

<sup>1515</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, pp 72–77.

<sup>1516</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, pp 123–124.

<sup>1517</sup> Recommendation 6.26: Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 34.

## 12.1 Diversion

deals with early intervention and prevention at a broader systemic level, including justice reinvestment and whole-of-government approaches to address the needs of children engaging in anti-social behaviour and the underlying causes of that behaviour. This chapter focuses primarily on the Children's Court Youth Diversion Service (also referred to in this chapter as 'Children's Court diversion').

### Young people's experiences of diversion

Fifty-nine children and young people told the Commission they had received a caution or diversion, although they were often unsure which one (see also Chapter 11 'Entering the youth justice system').<sup>1518</sup> Eleven young people said that they had never received a caution or been referred for diversion. Other young people said that they only received one or 2 chances before they were charged or incarcerated.

*I've gone to court and they looked for caution or diversion but the cops weren't happy about that. The cop who arrested me was known for being a hard arse. – Bailey, 18*

*Got one diversion, finished that, then got sent away again. – Logan, 16*

Most children and young people indicated that they were young at the time they received a caution or diversion, and/or received it for a minor offence.

*No caution, but I did have diversion in court. I had to work in an op shop. – Grace, 20*

*I got a diversion. So he said I'm on a diversion. He said that I'm not allowed to get in trouble in an 8-week period. So for the 8 weeks I wasn't allowed fighting in the streets, stealing, theft in cars, and like, taking credit cards and using bad languages against other people and that. – Miles, 15*

Ten young people talked about a positive experience or outcome, with almost all young people indicating that they felt supported. Other than one young person who said she had been wrongly accused of an offence, young people did not refer to negative experiences.

*I went to court. It got adjourned and then I did a diversion and wrote a letter to the woman that they took the credit card from, and she said she forgave me, and I've been staying out of trouble so I can go to boarding school. – Tanaya, 14*

*I got a diversion at 15. It was good, I smashed it. Heaps of counselling and activities. – Miles, 15*

*Got linked with [a local Aboriginal organisation] through diversion... They helped me out, referred me, gave me support letters. – Jack, 19*

*I've had a diversion like 2 years ago for going through cars. It was alright. I just had to obey what it said, so I did, but I can't remember what it said. A lot of it was around being down at the [local Aboriginal organisation] and continuing to go to school. It's good down there, with lots of support. – Derryl, 16*

*I got a diversion for 12 weeks to get back into school and to go see my workers and write a letter to the court, and I wrote the letter and got back into school and the judge was happy with it so I got it cleared and got back to school. The diversion worker was real nice. She rang me up a couple times to see how I was doing and if I needed help with my letter. – Rhea, 16*

Several young people talked about receiving multiple opportunities for diversion, which were not effective in breaking the cycle of offending. It is possible that for these young people, the availability of a more culturally appropriate and individualised diversion program would have made a difference in reducing their offending behaviour.

<sup>1518</sup> Because children and young people did not clearly distinguish between cautions and diversions, they have been counted together.



*As I grew up, I stole a few cars and I've gotten heaps of chances. I didn't get locked up and then I just went around stealing things and getting in fights. – Pakap, 16*

*[Diversion] doesn't help. Nothing really helps for me. People try and say this will help, but I just don't care, I just do crimes. – Jacinta, 17*

## Access to diversion programs

### Children's Court Youth Diversion Service

The Children Court's Youth Diversion Service commenced in 2017. It was supported by amendments to the CYFA.<sup>1519</sup> It aims to provide children and young people with the opportunity to accept responsibility for their behaviour, understand the harm caused by their actions and undertake activities 'intended to reduce the likelihood of further offending'.<sup>1520</sup>

The legislation provides for the Children's Court to adjourn a criminal matter by up to 4 months to allow a child or young person to participate in a diversion program.<sup>1521</sup> The court can only do this if the child or young person accepts responsibility for their behaviour and agrees to participate, and the prosecutor also agrees.<sup>1522</sup> The prosecutor has a wide discretion in determining whether to consent to diversion.<sup>1523</sup> In deciding whether to grant an adjournment to enable diversion, the court must consider the seriousness of the offending, any previous offending, the impact on the victim and the interests of justice.

Under the legislation, diversion is available for any offence, other than those punishable by a fixed sentence or penalty, such as licence cancellation, suspension or disqualification for certain road safety

offences.<sup>1524</sup> Despite this breadth, the Children's Court website indicates that diversion 'will target children and young people charged with low-level offences with little or no criminal history'.<sup>1525</sup>

If referred for diversion, a child or young person will complete a diversion plan, which can include activities such as writing an apology to the victim, counselling, drug and alcohol treatment, education programs or community work. The court must consider a range of factors relevant to the needs of the child or young person when determining the plan. The diversion plan should not be more punitive than a potential sentence through the court, and must be culturally appropriate. Children and young people who successfully complete the diversion plan will avoid a criminal record.

Thirty-six per cent of the Aboriginal children and young people in the Taskforce case file review had participated in Children's Court diversion (including the Ropes program discussed below), and 12% were currently participating.

The Commission obtained data from Youth Justice on the number of Aboriginal children and young people who received diversion under the CYFA. This data indicates that from 2017 to 2019, Aboriginal children and young people received approximately 13% of the total diversions for children and young people (Table 12.1).<sup>1526</sup> This is slightly less than would be expected, given that the proportion of Aboriginal children and young people in the Youth Justice population was 16% over that period.<sup>1527</sup> The number has also dropped slightly year on year. Aboriginal children and young people are recorded as successfully completing diversion at a very high rate, although slightly lower than non-Aboriginal children and young people.

<sup>1519</sup> CYFA, Part 5.2, division 3A.

<sup>1520</sup> Department of Justice and Community Safety (DJCS), *Children's Court Youth Diversion Service*, DJCS website, 2020, accessed 16 February 2021.

<sup>1521</sup> CYFA, s 356D(1).

<sup>1522</sup> CYFA, s 356D(3).

<sup>1523</sup> Section 356F of the CYFA requires the prosecutor to consider the availability of suitable diversion programs, the impact on the victim (if any), the child's failure to complete previous diversion programs (if any), the alleged level of involvement of the child in the offending, and any other matter that the prosecutor considers relevant: CYFA, s 356F.

<sup>1524</sup> CYFA, s 356B.

<sup>1525</sup> Children's Court of Victoria, *Youth diversion*, Children's Court of Victoria website, 2021, accessed 16 February 2021.

<sup>1526</sup> In April 2021, DJCS advised the Commission that in 2019–20, 13% of Children's Court diversions were for Aboriginal children and young people.

<sup>1527</sup> Compiled from DJCS data regularly provided to the Commission.

## 12.1 Diversion

**Table 12.1** Percentage of unique young people aged 10–17 placed on diversion by Aboriginal status, 2017–2019

Young person placed on diversion	2017 (%)	2018 (%)	2019 (%)
Aboriginal	14	12	11
Non-Aboriginal	86	88	89

Source: DJCS data provided to the Commission on 19 February 2020.

The Youth Justice data also indicates that Aboriginal children aged 10 to 14 years are considerably more likely to receive a diversion than Aboriginal young people aged 15 to 17 years (23% compared with 10% of total diversions in those age groups).<sup>1528</sup>

The Commission sought data regarding the rate at which Aboriginal children and young people are refused diversion. However, data held by the Children’s Court’s does not accurately record the Aboriginal status of children and young people. The Commission also sought data regarding the exercise of the prosecutor’s veto in relation to Children’s Court diversion. No agency systematically collects this data (see also ‘Barriers to accessing Children’s Court diversion’ below). Victoria Legal Aid (VLA) provided us with data based on its case files; however, this did not allow us to accurately determine whether the prosecutor’s veto was used disproportionately to deny Aboriginal children and young people access to diversion. In Chapter 4.2 ‘Data on Aboriginal children and young people in the youth justice system’, we make recommendations directed at improving data collection in relation to Aboriginal children and young people in the youth justice system.

### Barriers to accessing Children’s Court diversion

The Taskforce regional forums indicated that there are some marked disparities across regions in relation to access and referrals to diversion. While in some regions stakeholders identified diversion as a strength, stakeholders in other regions reported that there was very poor access to culturally safe diversionary programs or insufficient use of diversion.

An evaluation of the Children’s Court diversion pilot program in 2016 reported that Aboriginal children and young people were often excluded from the diversion

program due to more serious or prolific offending.<sup>1529</sup> The evaluation also raised concerns about the lack of culturally safe programs (see also the discussion below regarding the Ropes program).<sup>1530</sup>

Advocacy groups and legal assistance services similarly report that Aboriginal young people are more likely to be excluded from diversion programs due to prior offending, and a bias on the part of decision-makers that they have exhausted opportunities for diversion.<sup>1531</sup> VALS raised concerns with this inquiry about inconsistencies in the types of offending considered appropriate for diversion, and the problematic power of the prosecutor to withhold consent to diversion.<sup>1532</sup> Similarly, in its submission to this inquiry, VLA expressed concerns about police decision-making resulting in uneven and inconsistent access to diversion across the state.<sup>1533</sup>

Victoria Police and VLA are represented on the Children’s Court Youth Diversion Steering Committee, which is chaired by the President of the Children’s Court. As a standing agenda item, Victoria Police is required to record and report on all diversions vetoed by police.<sup>1534</sup> This information includes the rationale for objecting to a diversion. Victoria Police advised the Commission that only a very small proportion of diversions are vetoed by police.<sup>1535</sup> However, VLA told the Commission that Victoria Police data on the frequency of the exercise of the veto does not align with VLA practice experience, and that it holds concerns about the accuracy of this data, which may not be recorded consistently.<sup>1536</sup>

Six submissions to this inquiry strongly supported increased access to early intervention options through

<sup>1528</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1529</sup> S Thomas, M Liddell and D Johns, *Evaluation of the youth diversion pilot program (YDPP: Stage 3)*, RMIT University, Melbourne, 2016, p 6.

<sup>1530</sup> Thomas et al., *Evaluation of the youth diversion pilot program (YDPP: Stage 3)*, pp 6–7.

<sup>1531</sup> See for example, Liberty Victoria Rights Advocacy Project, *Justice diverted? Prosecutorial discretion and the use of diversion schemes in Victoria*, Liberty Victoria, 2017; Victorian Aboriginal Legal Service (VALS), *Submission to the Review of the Diversion Program in the Magistrates’ Court*, VALS, 2016.

<sup>1532</sup> VALS, Submission to *Our youth, our way* inquiry, pp 2–3.

<sup>1533</sup> Victoria Legal Aid (VLA), Submission to *Our youth, our way* inquiry, 2019, pp 11–12.

<sup>1534</sup> Information provided to the Commission by Victoria Police on 12 April 2021.

<sup>1535</sup> Information provided to the Commission by Victoria Police on 12 April 2021.

<sup>1536</sup> Information provided to the Commission by VLA on 21 April 2021.

diversion.<sup>1537</sup> VALS, VLA and HRLC proposed the introduction of legislated presumptions in favour of diversion, and removal of the requirement for prosecutorial consent to diversion.<sup>1538</sup> VALS also submitted that the Children’s Court Youth Diversion Service should enhance cultural safety by employing Koori Diversion Coordinators.<sup>1539</sup>

## Ropes

Ropes is a diversion program delivered by Victoria Police, which is accessible through the Children’s Court. It involves a child or young person being paired with the police officer who charged them to undertake a one-day high ropes activity course, followed by discussion about the offending behaviour. Police can recommend to the court that a charge be struck out after a child or young person completes the program.

VALS has pointed out that the Ropes program may not provide a culturally appropriate response for Aboriginal children and young people, and can cause delays due to the police officer’s availability.<sup>1540</sup> Further limitations are that the program has minimal follow-up after completion and is only suitable for physically able children. A 2010 evaluation found that the program was effective in reducing youth offending;<sup>1541</sup> however, ‘for those young people most likely to reoffend (an estimated 25 per cent of participants) the program is less likely to be contributing to sustained change’.<sup>1542</sup>

## Culturally based diversion programs

Submissions to the inquiry highlighted the need for community-based and culturally appropriate diversion programs. Aboriginal-led or community-controlled programs are likely to deliver improved outcomes, including that they:

- encourage greater buy-in from local communities
- are better able to create culturally safe spaces

<sup>1537</sup> Aboriginal Justice Caucus, Victorian Aboriginal Children and Young People’s Alliance, VACCA, VALS, VLA, HRLC.

<sup>1538</sup> VALS, Submission to *Our youth, our way* inquiry, p 3; VLA, Submission to *Our youth, our way* inquiry, p 2; HRLC, Submission to *Our youth, our way* inquiry, p 4.

<sup>1539</sup> VALS, Submission to *Our youth, our way* inquiry, p 3.

<sup>1540</sup> VALS, Submission to *Our youth, our way* inquiry, p 3.

<sup>1541</sup> Jordan and Farrell, ‘Juvenile Justice Diversion in Victoria’, p 422.

<sup>1542</sup> KPMG, *Evaluation of the Ropes program: final report*, KPMG, 2010, p 10, cited in Sentencing Advisory Council, *Sentencing children and young people in Victoria*, Sentencing Advisory Council, Melbourne, 2012, accessed 7 November 2020, p 33.

- use networks to informally engage people and services who might otherwise be reluctant to participate
- bring cultural and community expertise to program development and delivery.<sup>1543</sup>

*Burra Lotjpa Dunguludja* includes a focus on culturally based diversion programs for Aboriginal children and young people involved, or at risk of involvement, in the youth justice system (see Chapter 4.1 ‘Advancing self-determination’). For example, Dardi Munwurro’s *Bramung Jaarn* program and the Aboriginal Wellness Foundation’s cultural mentoring program deliver localised intensive diversion programs for Aboriginal children and young people, who can be referred via the Children’s Court Youth Diversion Service.<sup>1544</sup> A process for identifying a further 2 community-based intensive diversion programs was scheduled to commence in 2020.<sup>1545</sup> It is important to note that programs are regionally based, and therefore not available statewide.

In addition, the Victorian Government previously funded the Koori Youth Crime Prevention Grants, which concluded in June 2019. Under this program, DJCS allocated \$1.5 million to 25 Koori crime prevention projects in 2016–17 for a range of early intervention, prevention and diversion programs.<sup>1546</sup>

## Examples from other jurisdictions

### Youth on Track (NSW)

The NSW Youth on Track program is an early intervention scheme for 10 to 17 year old children and young people. The Department of Education or police can refer consenting children and young people to support services without the need for court involvement. Youth on Track service providers undertake individual case management and provide access to interventions including family and behavioural supports, engagement with education and referral to other programs.<sup>1547</sup>

<sup>1543</sup> Cunneen et al., *Aboriginal youth cautioning*, p 21.

<sup>1544</sup> Victorian Aboriginal Justice Agreement, *Community-based diversion programs*.

<sup>1545</sup> Victorian Aboriginal Justice Agreement, *Community-based diversion programs*.

<sup>1546</sup> Department of Justice and Community Safety (DJCS), *Koori Youth Crime Prevention Grants*, DJCS website, 2017, accessed 17 February 2021.

<sup>1547</sup> Department of Communities and Justice, *The Youth on Track model*.

## 12.1 Diversion

A 2018 parliamentary review into diversionary programs in New South Wales found that Youth on Track is highly effective, but is not available statewide.<sup>1548</sup> The review recommended the expansion of the scheme to facilitate better access. Youth on Track is discussed in more detail in Chapter 10.1 ‘Engagement in education’.

### **Oranga Tamariki Act 1989 (NZ)**

The Oranga Tamariki Act incorporates a series of presumptions designed to keep young people out of the courts and detention. As a general principle, young people must be dealt with by measures other than criminal proceedings, unless the public interest requires otherwise. Where possible, young people should be kept in the community. The principles are put into practice through specific direction to police officers.

When the police wish to take action against a young person, they must warn them, unless it is ‘clearly inappropriate’ to do so, and any cases involving young people must be referred to the Police Youth Aid team, which consists of sworn police officers with specialist training in adolescent behaviour and psychology who are responsible for handling offences alleged to have been committed by young people. Young people can only be arrested in limited circumstances, and a family group conference must be held before a prosecution can be initiated. Family group conferences in New Zealand are discussed in more detail in Chapter 7.2 ‘Youth Justice practices and family involvement’.

### **Improving access to diversion for Aboriginal children and young people**

Diversion can provide an effective pathway out of the youth justice system for Aboriginal children and young people. However, many Aboriginal children and young people told the Commission that they had no, or limited, access to diversion. This may be due to a lack of culturally appropriate programs, inconsistent decision-making, a perception that diversion is only for children and young people with little or no criminal history who are charged with ‘low-level’ offences, or a combination of these factors.

Diversionary programs should be available at all stages of the youth justice system, from apprehension to final disposition. The Victorian Government needs to invest in a range of programs, particularly Aboriginal-led

programs, that meet the needs of Aboriginal children and young people across the state, consistent with the recommendations of the Youth Justice Review.

In addition, opportunities for Aboriginal children and young people to access Children’s Court diversion should be as broad as possible. A legislated presumption in favour of diversion would go some way to ensuring equitable access for all children and young people.

Access to Children’s Court diversion should not be restricted by prior offending or by particular categories of offences, or dependent on an admission of guilt, where the child or young person is otherwise suitable for diversion. Access to Children’s Court diversion should also not be conditional on the prosecutor’s consent. This requirement is not compatible with human rights standards, which require opportunities for diversion to be maximised. An assessment about a child or young person’s suitability to participate is best made by the Children’s Court considering all available advice.

## **Recommendation 55**

That the Victorian Government prioritise investment in Aboriginal-led diversionary programs across Victoria that meet the needs of Aboriginal children and young people, drawing on relevant interstate and New Zealand examples.

## **Recommendation 56**

That the Victorian statutory Children’s Court diversion scheme be amended to maximise opportunities for children and young people to obtain diversion. This should include introducing a presumption in favour of diversion, removing the requirement for prosecutorial consent to diversion, and reviewing current exclusions under section 356B of the *Children, Youth and Families Act 2005* for certain road safety offences.

<sup>1548</sup> Parliament of New South Wales, *The adequacy of youth diversionary programs in New South Wales*.

## 12.2 Bail and remand

This chapter examines the experiences of Aboriginal children and young people in Victoria's bail and remand system.

### Bail

#### Finding 30

Aspects of the bail system create barriers to Aboriginal children and young people being granted bail and complying with bail conditions, exposing them to damaging custodial remand environments.

Where a child or young person has been arrested and police make a decision not to proceed by summons, the child or young person must be either granted bail (temporarily released) or remanded in custody (involving a deprivation of liberty) until the charge can be heard and determined in court. Bail is an important mechanism for giving effect to the presumption of innocence, a right that is fundamental to the operation of the criminal justice system. According to human rights standards, the detention of a child pending trial should be a measure of last resort, and should operate for the shortest possible period of time.<sup>1549</sup> In Victoria, the bail and remand system is governed by the Bail Act.

Depending on the circumstances, bail decisions can be made by police, bail justices or the Children's Court. In making determinations in relation to children and young people under the age of 18 years, bail decision-makers are required to consider all other options before remanding the child or young person in custody.<sup>1550</sup> In addition, a bail decision-maker must take into account any issues that arise due to the person's Aboriginality,

including the person's cultural background, ties to extended family or place, and any other relevant cultural issue or obligation.<sup>1551</sup>

A child or young person may be granted bail with or without conditions. Any bail conditions must be reasonable and no more onerous than necessary.<sup>1552</sup> Conditions may include reporting to a police station, residing at a particular address or complying with a curfew.<sup>1553</sup> Participation in Youth Justice's supervised bail or intensive bail programs can also be imposed as a bail condition.<sup>1554</sup> These programs are for children and young people who are assessed as being unsuitable for bail without appropriate support. Intensive bail is available for young people who have had frequent, severe or chronic contact with the youth justice system and who would not otherwise be granted supervised bail.<sup>1555</sup> It involves more stringent monitoring and supervision of the child or young person than supervised bail.<sup>1556</sup>

The alternative to bail is remand. The number of children and young people held on remand rather than bailed in Victoria has increased dramatically in recent years (see Figure 12.1). Australian Institute of Health and Welfare (AIHW) data indicates that, on an average day in 2014–15, 8 Aboriginal children and young

<sup>1551</sup> Bail Act, s 3A.

<sup>1552</sup> Bail Act, s 3B(1)(g).

<sup>1553</sup> Bail Act, s 5AAA(4).

<sup>1554</sup> Bail Act, s 5AAA(4)(g).

<sup>1555</sup> The Intensive Bail Scheme provides an enhanced level of case plan development, coordination and oversight of supports, services, monitoring and compliance by Youth Justice, delivers a more focused offending-specific intervention package of supports and services and provides a more rigorous and intensively monitored regime that will reassure and provide confidence to the courts and community of the program's credibility and efficacy (for example, increased minimum contact hours with Youth Justice over 7 days per week): Department of Health and Human Services (DHHS), *Intensive bail – advice*, Child Protection Manual, DHHS website, 2018, accessed 24 February 2021.

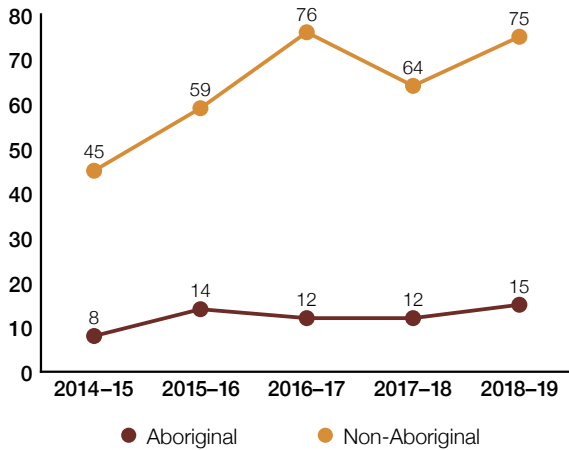
<sup>1556</sup> Sentencing Advisory Council, *Children held on remand in Victoria*.

<sup>1549</sup> Beijing Rules, rule 13; Havana Rules, rule 17.

<sup>1550</sup> Bail Act, s 3B(1)(a).

## 12.2 Bail and remand

people were on remand in Victoria. In 2018–19, this had increased to 15 Aboriginal children and young people. The increase for non-Aboriginal children and young people is similarly dramatic, from 45 on an average day in 2014–15 to 75 in 2018–19.

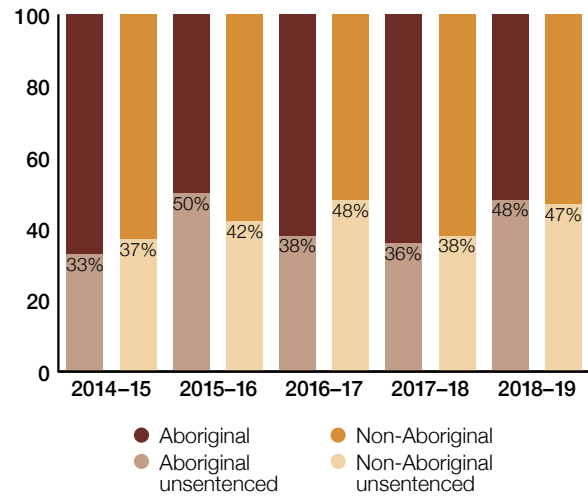


**Figure 12.1** Unsented children and young people in detention on an average day by Aboriginal status, 2014–15 to 2018–19

Source: AIHW, *Youth justice in Australia 2018–19*, data table S113.

DJCS provided the Commission with data for 2019–20 indicating that there were 14 Aboriginal children and young people on remand in Victoria on an average day during this period. This would appear to show a steadying of the average daily number of Aboriginal children on remand in Victoria over the past 5 years.

AIHW data also indicates that the Youth Justice remand population has increased as a proportion of the overall Youth Justice custodial population since 2014–15, for both Aboriginal and non-Aboriginal children and young people (see Figure 12.2). In 2014–15, Aboriginal children and young people on remand accounted for 33% of all Aboriginal children and young people in youth justice custody on an average day, while in 2018–19 they accounted for 48% of all Aboriginal children and young people in youth justice custody.



**Figure 12.2** Children and young people in detention on an average day by legal status and Aboriginal status, 2014–15 to 2018–19

Source: AIHW, *Youth justice in Australia 2018–19*, data table S113.

These trends point to the need for urgent reform of the Victorian bail and remand system as it applies to children and young people.

The first part of this chapter describes the experiences of Aboriginal children and young people with bail, considers the impact of recent changes to bail laws, and examines recent trends in bail data. It then describes current bail services and programs for Aboriginal children and young people in Victoria, and the features of effective bail support programs, before making recommendations aimed at increasing access to bail and improving bail support for Aboriginal children and young people. Remand is examined in the second part of this chapter.

### Experiences of bail

Fifty-one children and young people talked to the Commission about their experiences of bail. Notably, only 2 children and young people mentioned positive experiences on bail – one was bailed to a residential rehabilitation program, and the other was granted bail because of his participation in a social support program.

Thirty-five children and young people talked about having a difficult time on bail, mainly in relation to complying with bail conditions, such as curfews, not being allowed to associate with friends or family members, and having to report to police or workers.

The overwhelming feedback from children and young people was that bail conditions set them up to fail, and made it very difficult to conduct a normal life, including going to school and spending time with family.

*I've been on bail heaps of times. I had a curfew that was 6 pm and, no word of a lie, that was so hard. I was really young too. I was 13, and I wasn't allowed into any shops or restaurants where alcohol was, and I had to sign in to the police 2 to 3 times a week, and I had to see YJ too. And I had to go to school at the time too.*  
– Gabrielle, 15

*I wasn't allowed to hang out with my own cousin. How does that work? They set you up to fail. They could support us to be better people together, not tell us, 'You can't hang out with your own cousin.'* – Chelsea, 16

*Bail was hard – keeping up with appointments, not allowed to hang out in certain areas, bail conditions about hanging out with people like family.* – Jasper, 17

One young person talked about the pressures of being on intensive bail. This involved being under supervision from 10:30 am to 3:30 pm, with a curfew from 7:30 pm each day, signing in 4 days a week, and seeing workers every day. This young person described intensive bail as:

*Too hectic. I told them I don't want my orders to be that hectic because I don't want to set myself up to fail. Every time there was a new order, they added more and more conditions.* – Pearl, 19

Several children and young people talked about police trying to catch them out for breaching conditions.

*When I was on bail, I had a 9 pm to 6 am curfew and had to sign in once a week – like I was in custody. And I wanted to go out, so it was really hard, and they could come at 1:30 am and knock on the door and charge you with a breach if you didn't answer the door. That's unreasonable. My mum doesn't want to answer the door at 1:30 am. I live in Dandenong – someone could be trying to rob her.* – Karl, 21

*Curfew was at 8 pm and if you're not there on the dot, police come and breach you, put you straight back into custody... It was tough. Even when I was going to my family's house, I still got breached. Once I was at Nan and Pop's house having dinner and I was put back in custody.*  
– Watanom, 19

Fifteen children and young people talked about unstable living arrangements and accommodation issues affecting their ability to comply with bail, many of which related to family breakdown and the involvement of Child Protection.

*I got bailed to my mother's house, and then my mum got put away. Everything started crashing down. After that they said they had to bail me back to my grandmother's house... Life started moving fast and I started moving slow. I wasn't keeping up with life.* – James, 18

*I moved to [another city] while I was still on bail and I was having problems with Child Protection, being removed from my family.* – Cameron, 17

*I'll be staying at a mate's house, but they don't want [the police] coming to their door at 3 am to wake everyone up. Then I can't stay there anymore and breach bail.* – Alexis, 18

## 12.2 Bail and remand

*If I lived with my mum I wouldn't have come back here [into custody]. It would have been easier. I breached bail to go see her. And if I lived with her, she wouldn't let me reoffend or go out at night. – Aiden, 17*

Several children and young people explicitly stated that bail conditions did little to address issues in their lives or bring about change in their behaviour.

*I've been on bail lots. They give me a curfew. I don't listen to any of the orders. I never listened. – Jacinta, 17*

*I don't care about breaking bail. I just like doing crime. – Djiran, 19*

Children and young people said that they should be provided with help to meet the conditions of bail, which should be proportionate and reasonable.

*Accommodation – somewhere to stay. A worker might have helped. – Felix, 21*

*You have to be home from 6 pm to 9 am – that's a long time. You have to sign in 4 times a week at the police station. It should be just twice... And if you get caught on the streets you should be given another chance, another chance to show you can do good. – Malkar, 19*

*It would have helped if I had someone helping out, like I did when I was younger. I had a Youth Justice worker, but I guess I was getting older. – Kirrae, 22*

Eight children and young people spoke about being denied bail, including 3 young people who said they had never been on bail. One young person said that their Youth Justice worker would not support bail because the young person was using substances. Another young person on remand said that due to Child Protection involvement, he had no suitable housing. Several young people referred to reforms to

bail laws (discussed below), which prevented them from accessing bail.

*I haven't got bail for a very, very, very long time. I've always done straight sentences. I'm trying to go for bail now but they're holding me for 15 months because they want to identify me for a crime. – Watjpa, 21*

*I went to court yesterday to get bail. I thought I would get it until DHHS said mum's not suitable [to live with]... They expect me to stay in here till March, but with the charges I'm in here for, I could possibly get bail. – Logan, 16*

Young people's experiences of remand are described under Finding 31.

### Recent changes to bail laws

Researchers have identified a long-term shift in bail policy from 'traditional concerns around persons failing to attend their court hearing, to current concerns, which centre upon community protection'.<sup>1557</sup> This shift has had particularly negative consequences for children and young people. While remand rates in Victoria have been increasing for many years, commentators have attributed recent increases in the number of children and young people on remand to changes in bail laws introduced in 2017 and 2018.<sup>1558</sup>

The *Bail Amendment (Stage One) Act 2017* (Vic) and the *Bail Amendment (Stage Two) Act 2018* (Vic) introduced staged changes to the Victorian bail system, the most significant of which was the introduction of a new 2-step process for people charged with a range of offences. This process applies to children and young people.

<sup>1557</sup> McMahon, *No bail, more jail?*, p 3; L Bartels, K Gelb, C Spiranovic and R Sarre, 'Bail, risk and law reform: a review of bail legislation across Australia', *Criminal Law Journal*, 2018, 42(1):91–107.

<sup>1558</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020; McMahon, *No bail, more jail?*, p 1; K Derkley, *Lawyers warn of bail crisis*, Law Institute Journal website, 2018, accessed 17 February 2021. The amendments were a response to concerns about community safety, following the tragic events on Bourke Street in 2017 in which Dimitrios Gargasoulas killed 6 people and injured dozens of others while on bail.



The first step involves a ‘reverse onus test’, which requires the person to satisfy the bail decision-maker that there are ‘exceptional circumstances’ or a ‘compelling reason’ (depending on the alleged offence) for granting bail. If the first step of the test is not satisfied, bail must be refused. However, if the first step is satisfied, the court must then consider whether the person presents an ‘unacceptable risk’ of endangering the safety or welfare of any person, committing an offence while on bail, interfering with a witness, obstructing the course of justice or not attending court. The unacceptable risk test applies to all offences, and the burden of proof is with the prosecution. The decision-maker may only grant bail where satisfied that the person does not pose an unacceptable risk.

Although a reverse onus bail test existed previously for certain offences, the 2017 and 2018 amendments significantly increased the number of offences to which such a test applies, and made it more difficult for a person charged with those offences to be granted bail. The relevant offences are listed in Schedules 1 and 2 to the Bail Act. Schedule 1 includes offences such as aggravated carjacking and aggravated home invasion. Schedule 2 is extremely broad. It includes frequently charged offences such as armed robbery, aggravated burglary, intentionally causing serious injury and trafficking in a drug of dependence. It also includes any indictable offence alleged to have been committed while the person was on bail or subject to a summons for an indictable offence.

This means, for example, that a child or young person who is charged with committing a theft while on bail in relation to another alleged theft must be remanded unless they can convince the bail decision-maker that there is a compelling reason why they should be granted bail.

Earlier reforms contained in the *Bail Amendment Act 2016* (Vic) introduced special considerations in relation to children, designed to mitigate the impact of tightening bail laws. They included the requirement (referred to above) for a decision-maker to consider all other options before remanding a child in custody, as well as factors such as the need to strengthen and preserve the child’s relationship with their family, potential disruption to a child’s living arrangements, continuity of education or employment, the need to minimise stigma, and the need to ensure that

conditions of bail are no more onerous than necessary.<sup>1559</sup>

The 2016 amendments also excluded children from the offence of contravening a bail condition.<sup>1560</sup> However, children and young people remained subject to the offences of failing to answer bail,<sup>1561</sup> and committing an indictable offence while on bail,<sup>1562</sup> which can result in their further criminalisation.

The 2016 amendments appear to have had a positive impact on the number of children and young people recorded for bail breach offences (see discussion below). Despite this, the number of children and young people on remand has continued to grow (also discussed below). It would therefore appear that the major bail changes since 2017 have minimised the overall impact of the mitigating considerations introduced in 2016.

Restrictive bail practices have a range of impacts. Bail laws are built on the presumption of innocence and the right to liberty. However, a proportion of children and young people who are refused bail and remanded will ultimately be found not guilty, receive a non-custodial sentence, or receive a custodial sentence that is shorter than the time they have already served in remand.<sup>1563</sup> In its 2020 report on sentencing outcomes for children held on remand in Victoria, the Sentencing Advisory Council found that two-thirds of remanded children did not ultimately receive a custodial sentence.<sup>1564</sup> This is discussed further below.

Children and young people who are refused bail are exposed to a custodial environment, which places them at further risk of stigmatisation and increased likelihood of experiencing physical and psychological harm.<sup>1565</sup> They experience disruptions to their family life, social and emotional development, education and employment. These factors are exacerbated for Aboriginal children and young people (see below for an examination of remand and Chapter 13 ‘Safe custody’

<sup>1559</sup> Bail Act, s 3B.

<sup>1560</sup> Bail Act, s 30A.

<sup>1561</sup> Bail Act, s 30.

<sup>1562</sup> Bail Act, s 30B.

<sup>1563</sup> J Galouzis and S Corben, *Judicial outcomes of remand inmates in New South Wales*, Research bulletin number 34, Corrections Research, Evaluation and Statistics, Corrective Services NSW, 2016, p 13.

<sup>1564</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 42.

<sup>1565</sup> M Ericson and T Vinson, *Young people on remand in Victoria: balancing individual and community interests*, Jesuit Social Services, Richmond, 2010, pp 18–20.

## 12.2 Bail and remand

for a detailed discussion of Aboriginal children and young people's experience of youth justice custody).

### Bail trends in relation to Aboriginal children and young people

The Taskforce case file review found that:

- 72% of the cohort had been previously granted bail, including supervised bail (35%) and Koori supervised bail (4%)
- 25% had never been granted bail
- bail had been revoked on at least one occasion for 34% of those who had been on bail
- 31% had been refused bail by the court on at least one occasion (15% had only been refused once, but concerningly, one young person had been refused bail 29 times)
- 63% had been subject to a curfew while on bail.

Although the case file review involved a relatively small cohort, the numbers suggest that most Aboriginal children and young people have been granted bail at least once, but decision-makers also regularly refuse or revoke bail. These issues are discussed in more detail in the following sections.

#### Bail orders

The Commission was only able to obtain bail data from Youth Justice for the period 2010 to 2019 in relation to supervised bail orders made by the Children's Court where the young person was subject to Youth Justice supervision. This only represents a proportion of all bail orders. The Commission was not able to obtain bail data from other agencies in relation to other bail orders. Although the Commission has also drawn on publicly available data, the information provides a limited overall understanding of bail trends in relation to Aboriginal children and young people.

As noted above, supervised bail (which includes intensive bail) requires children and young people to attend a range of appointments and services and comply with various other conditions.

The number of supervised bail orders made in relation to Aboriginal children and young people increased by 532% from 2010 to 2019. The increase in the number of supervised bail orders granted from 2010 to 2019 to non-Aboriginal children and young people was comparatively smaller at 228%.

**Table 12.2** Bail orders made by courts for Youth Justice supervision of children and young people by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal		Not known	
	No.	%	No.	%	No.	%
2010	31	8%	351	92%	0	0%
2011	43	11%	359	89%	0	0%
2012	90	19%	386	81%	0	0%
2013	74	16%	380	84%	1	0%
2014	67	14%	414	86%	0	0%
2015	108	20%	439	79%	6	1%
2016	157	21%	592	79%	0	0%
2017	164	21%	602	79%	0	0%
2018	144	22%	519	78%	0	0%
2019	196	15%	1,150	85%	1	0%
<b>Average</b>	<b>107</b>	<b>17%</b>	<b>519</b>	<b>83%</b>	<b>1</b>	<b>0%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

As noted in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people', Aboriginal children aged 10 to 13 years were significantly over-represented in supervised bail orders. In 2019, 44% of supervised bail orders (n = 29) in relation to children aged 10 to 13 years related to Aboriginal children.

The relationship between the increases in supervised bail orders and remand numbers is not straightforward. As discussed under 'Remand' below, the number of remand orders made in respect of Aboriginal children and young people has doubled since 2010. This would appear to indicate that a larger number of Aboriginal children and young people on supervised bail has not resulted in fewer children and young people being remanded. However, given that the Commission has not had access to bail data more broadly, the relationship between bail and remand populations remains unclear.

## Bail refusal

As outlined above, recent amendments to bail laws have made it more difficult for bail to be granted across the board, including to Aboriginal children and young people. The Taskforce case file review indicated that 31% of the cohort had been refused bail by a court on at least one occasion. The Commission was unable to obtain data on the overall number of bail applications granted and refused for Aboriginal and non-Aboriginal children and young people in Victoria, in order to determine whether Aboriginal children and young people are less likely to be granted bail. Nonetheless, the Australian Law Reform Commission's *Pathways to justice* inquiry found that Aboriginal people are less likely to be granted bail than non-Aboriginal people.<sup>1566</sup>

Recent research by the Sentencing Advisory Council sheds some light on bail refusals for children and young people generally. In 2018–19, when the Children's Court made the initial decision to bail or remand a child, 63% of children did not apply for bail, 30% applied for and were granted bail, and 7% applied for and were refused bail. This data would appear to indicate that, where a child or young person applies for bail, the Children's Court grants bail in 81% of cases and refuses bail in 19% of cases.<sup>1567</sup>

Bail justices, who make after-hours bail decisions, are more likely than courts to refuse bail. In 2016, bail justices refused bail in 74% of decisions relating to children and young people.<sup>1568</sup> This may reflect the fact that children and young people are almost never legally represented in hearings before a bail justice, or that services that might have enabled a child to be bailed are not consistently available outside business hours.<sup>1569</sup>

<sup>1566</sup> ALRC, *Pathways to justice*, p 154. See also Parliament of the Commonwealth of Australia, *Doing time - time for doing: Indigenous youth in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of the Commonwealth of Australia, Canberra, 2011, pp 219–224; L Snowball, L Roth and D Weatherburn, *Bail presumptions and risk of bail refusal: an analysis of the NSW Bail Act*, Crime and Justice Statistics Bureau Brief, issue paper 49, NSW Bureau of Crime Statistics and Research, 2010, p 5; D Chen, *International perspectives on using bail to improve Indigenous criminal justice outcomes*, Indigenous Justice Clearinghouse Brief 29, Indigenous Justice Clearinghouse, 2020.

<sup>1567</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 29.

<sup>1568</sup> P Coghlan, *Bail review: first advice to the Victorian Government*, Victorian Government, 2017, p 80.

<sup>1569</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 28.

The Commission's consultations with the Children's Court revealed that judicial officers are aware of the consequences of remanding children and young people, and look for opportunities to provide supports that will facilitate bail arrangements, but often feel limited in what they can do.<sup>1570</sup> The Children's Court indicated that other risk factors affect bail decisions. A key factor noted in the literature and by the Children's Court is a young person's history of involvement with the youth justice system.<sup>1571</sup>

A history of offending, including low-level offending, is a strong risk factor for being remanded because it is seen as an indicator of the likelihood of future offending.<sup>1572</sup> Aboriginal children and young people tend to enter the youth justice system at a younger age than their non-Aboriginal counterparts, which increases this risk (see Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people' and Chapter 11 'Entering the youth justice system'). As with diversion, bail decision-makers may perceive Aboriginal children and young people to have exhausted their chances to be granted bail at an early point in their childhoods and offending histories. As a result, they may receive fewer opportunities as offending continues.

Another significant risk factor is insecure housing and homelessness (see also Chapter 8.3 'Housing and homelessness'). A 2011 Commonwealth parliamentary inquiry into the over-representation of Aboriginal young people in the criminal justice system found a lack of accommodation to be the single biggest factor in the refusal of bail and corresponding high rates of remand.<sup>1573</sup> This finding was echoed by the 2018 *Pathways to justice* report.<sup>1574</sup> Although Victoria's bail laws stipulate that bail must not be refused for a child solely due to a lack of adequate accommodation,<sup>1575</sup> the Youth Justice Review observed that children and

<sup>1570</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020.

<sup>1571</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020.

<sup>1572</sup> McMahon, *No bail, more jail?*

<sup>1573</sup> Parliament of the Commonwealth of Australia, *Doing time - time for doing*, p 110.

<sup>1574</sup> ALRC, *Pathways to justice*, p 177. The Royal Commission into Aboriginal Deaths in Custody found that the lack of a fixed residential address and stable employment contributed to disadvantage in the bail process: National Reports, Volume 3, 21.4.15.

<sup>1575</sup> Bail Act, s 3B(3).

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young people without appropriate housing are likely to be remanded.<sup>1576</sup>

As noted above, the Children’s Court acknowledged that other risk factors affect bail decisions.<sup>1577</sup> Aboriginal children and young people frequently present before bail decision-makers with a complex array of needs, which can also play a role in the refusal of bail. For example, mental ill-health or substance misuse, combined with a lack of stable accommodation and the small number of beds in residential treatment facilities for children and young people, can lead to the refusal of bail.<sup>1578</sup> Some literature suggests that young people without secure housing may be refused bail in the hope that remand will facilitate the delivery of support services,<sup>1579</sup> although young people on remand generally have less access to services than those who have been sentenced (see ‘Remand’ below).

### Breach of bail

From 2014 to 2018, Victoria saw an overall reduction of 75% in the number of Aboriginal children and young people aged 10 to 17 years who were recorded for breaching bail, from 148 in 2014 to 37 in 2018.<sup>1580</sup> Similarly, there was a significant reduction in the number of recorded bail breach offences by Aboriginal children and young people aged 10 to 17 years over the same period, from 363 offences in 2014 to 51 in 2018. The sharp decrease between 2015 (350 offences) and 2017 (66 offences) would appear to be largely attributable to the 2016 amendment to the Bail Act excluding children from the offence of contravening a condition of bail.

Due to the limited availability of data, it is not possible to determine how breach rates compared across different types of bail orders. However, Youth Justice data shows that Aboriginal children and young people are recorded as breaching supervised bail orders at a consistently low rate, with an average of only 3% of

orders breached between 2010 and 2019 – approximately equivalent to the average for non-Aboriginal children and young people. Of these breaches, most (19 out of 28) involved revocation or cancellation of bail for reoffending.<sup>1581</sup>

Aboriginal children aged 14 years and under were substantially over-represented in supervised bail breaches from 2010 to 2019, accounting for 85% of breached supervised bail orders for children aged 10 and 11 years, and 34% of breached supervised bail orders for children aged 12 to 14 years.

Despite these reductions in supervised bail breaches and low overall breach rates, Aboriginal children and young people told the Commission that they face significant difficulties in complying with bail conditions, both on supervised and unsupervised bail, including reoffending while on bail. In 2018, Aboriginal people (including adults) were 15.5 times more likely to be recorded for breach of bail conditions than non-Aboriginal people.<sup>1582</sup> The 2018 *Pathways to justice* report cited evidence that police are more proactive in policing bail conditions of Aboriginal people, particularly ‘technical breaches’ rather than reoffending.<sup>1583</sup>

### Bail services and programs for Aboriginal children and young people

A number of programs and services currently exist to assist Aboriginal children and young people to access bail, and to support them while on bail.

### Youth Justice Court Advice Service

The Youth Justice Court Advice Service can be accessed by all children and young people appearing before the Children’s Court and Children’s Koori Court for advice and support in relation to bail applications.<sup>1584</sup> This can include referrals to community support and culturally specific services. The Youth Justice Court Advice Service also provides advice to the court about a child or young person’s suitability for bail. The service operates during business hours.

<sup>1576</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 163.

<sup>1577</sup> Interview with former President of the Children’s Court Judge Chambers and Magistrate Bowles on 19 May 2020.

<sup>1578</sup> Sentencing Advisory Council, *Sentencing children and young people in Victoria*, p 74.

<sup>1579</sup> K Richards and L Renshaw, *Bail and remand for young people in Australia: a national research project*, Research and public policy series number 125, Australian Institute of Criminology, Canberra, 2013; E Colvin, ‘Bail justices in Victoria: perceptions and experiences’, *Current Issues in Criminal Justice*, 2017, 29(2):123–136, p 123.

<sup>1580</sup> Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*.

<sup>1581</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1582</sup> Victorian Aboriginal Justice Agreement, *Aboriginal justice indicators*.

<sup>1583</sup> ALRC, *Pathways to justice*, p 455.

<sup>1584</sup> Department of Justice and Community Safety (DJCS), *Youth Justice Court Advice Service (YJCAS)*, DJCS website, 2020, accessed 18 February 2021.

## Central After Hours Assessment and Bail Placement Service

The Central After Hours Assessment and Bail Placement Service (CAHABPS) is a point of contact for Victoria Police for matters where police and/or a bail justice are considering remanding a child or young person aged 10 to 18 years outside business hours.<sup>1585</sup> During normal business hours, police are required to contact the area Youth Justice unit. The Youth Justice Review noted that in 2015–16, 80% of the 932 admissions of children and young people to remand occurred after hours.<sup>1586</sup>

A CAHABPS worker provides advice about a child or young person's suitability for bail, and to ensure that the child or young person is 'dealt with in a manner that is consistent with the key principles of diversion and minimum intervention that underpin the *Children, Youth and Families Act 2005*'.<sup>1587</sup> The worker assesses whether the child or young person is suitable for a bail placement and provides advice about the child or young person's rights and responsibilities if a bail placement in the community is assessed as suitable. The worker may also assist the child or young person with bail accommodation and refer the young person to support services.

CAHABPS is currently offered Monday to Friday from 4 pm to 3 am, and on weekends and public holidays from 9:30 am to 3 am. VLA's submission to the inquiry proposed extending the service to cover the full non-business hours period from 5 pm to 9 am.<sup>1588</sup>

## Koori Intensive Support Program

The Koori Intensive Support Program (KISP), also known as the Aboriginal Intensive Support Program, is part of the Victorian Government's Koori Youth Justice Program. It aims to reduce the number of Aboriginal children and young people who are detained prior to sentencing. The program provides intensive outreach support to assist Aboriginal children and young people to comply with bail conditions and community-based

orders, and help them reintegrate into their communities.

KISP employs 5 staff based across the DJCS area Youth Justice teams (Dandenong, Geelong, Shepparton, Morwell and Preston). The Youth Justice Review recommended the expansion of KISP; however, the number of staff remains at 5 across the state, and the program is not available statewide. The Commission recommends that the number of KISP roles be increased to enable access to the program statewide.

## Koori Court Integrated Services Program

The Koori Court Integrated Services Program (KCISP), although not specifically targeted at young people, aims to reduce the likelihood of reoffending by assisting with access to support services, including Aboriginal-specific services. A person facing court can be assigned a KCISP case manager who meets regularly to help them through the program, reviews their progress and provides updates to the magistrate or judge. The program can begin any time between a person being charged and sentenced.

There are 5 funded KCSIP case manager positions; however, the courts have faced barriers in recruiting and retaining Aboriginal staff. At the time of writing, only one of these positions was filled, in the Shepparton Magistrates' Court. As part of an initiative under *Burra Lotjpa Dunguludja*, Court Services Victoria has commenced consultation to develop a strategy for the recruitment and retention of Aboriginal case management roles, encompassing cultural support programs for Aboriginal staff.<sup>1589</sup>

<sup>1585</sup> Department of Justice and Community Safety (DJCS), [Central After Hours Assessment and Bail Placement Service \(CAHABPS\)](#), DJCS website, 2020, accessed 18 February 2021.

<sup>1586</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, pp 64–65.

<sup>1587</sup> DJCS, *Central After Hours Assessment and Bail Placement Service*.

<sup>1588</sup> VLA, Submission to *Our youth, our way* inquiry, pp 12–13.

<sup>1589</sup> Victorian Aboriginal Justice Agreement, [Goal 2.3: Fewer Aboriginal people progress through the criminal justice system](#), Victorian Aboriginal Justice Agreement website, 2021, accessed 10 February 2021.

### Residential healing centres

As outlined in Chapter 9.2 ‘Substance use’, Baroona Youth Healing Place is a healing centre near Echuca for Aboriginal young men aged 14 to 22 years. Baroona accepts young men on court orders, including bail. An initiative under *Burra Lotjpa Dungaludja* is the development of a residential bail support and therapeutic program for Aboriginal children and young people that builds on the Baroona model. Work is underway for redevelopment of the site, and the Commission’s consultation with Baroona indicates that it intends to offer separate sites for Aboriginal children and young people aged under 18 years, and young people aged 18 and over.

Bunjilwarra Koori Youth Alcohol and Drug Healing Service is a 12-bed residential healing centre in Hastings for Aboriginal young people (male and female) aged 16 to 25 years, which also accepts young people on bail. It is discussed in detail in Chapter 9.2 ‘Substance use’.

### Features of effective bail support programs and accommodation

According to the Northern Territory Royal Commission:

*Bail for a child or young person works best when they have the support of an adult who can help them comply with any bail conditions, and keep out of trouble. Many children and young people do not have such a person to help them and bail support programs are designed to provide some of that support.*<sup>1590</sup>

The Royal Commission found that an effective bail support program should:

- be available to support young people from the moment they are granted bail
- operate as a 24-hour service
- be available to young people irrespective of whether they have entered a plea of guilty and are awaiting sentence or not
- have the capacity to deal with young people who may have complex needs
- be designed to include wraparound services, such as education, housing, employment and health

- operate with clear and effective lines of communication to the courts, police, families and other interested parties
- operate in a culturally competent manner
- collect high-quality data about its operations and make that data available for formal evaluation of its effectiveness
- have a specialist youth worker who works with young people and their families to support them in arranging services and provide practical life skills support such as attendance at Centrelink, obtaining a driver’s licence and purchasing clothing
- develop bail support plans for young people.<sup>1591</sup>

Supported bail accommodation is necessary for children and young people who risk being remanded due to a lack of stable accommodation. Such services should ‘strive to approximate a home environment’.<sup>1592</sup> An example of effective supported bail accommodation is the program operated by Saltbush Social Enterprises in Darwin and Alice Springs in the Northern Territory, which is described below.

<sup>1590</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 299.

<sup>1591</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 300.

<sup>1592</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 301.

### **Saltbush Social Enterprises – supported bail accommodation**

Saltbush Social Enterprises provides supported accommodation in 12-bed facilities in Darwin and Alice Springs as an alternative to remanding young people in custody. Its residences ‘promote an environment where a young person can feel welcome, respected, cared for and supported akin to a stable and supportive family-like environment’.<sup>1593</sup> The facilities commenced operation in January 2018.

The service is predominantly for boys, but girls can also be accommodated. Young people attend a flexible learning school 5 days a week, either in community or within the residences.<sup>1594</sup> Young people can visit family, and family can come for meals and to spend time at the home.<sup>1595</sup> Onsite Senior Bail Support Practitioners provide clinical oversight, guide case management and provide trauma-informed, therapeutic interventions for young people.<sup>1596</sup>

Sixty per cent of staff are Aboriginal.<sup>1597</sup> Staff teach young people life skills, such as cooking and cleaning. Staff and young people also eat meals together and play on a community sports team.

Approximately 75% of young people who utilise youth justice accommodation services in the Northern Territory, including those provided by Saltbush, successfully complete their bail order.<sup>1598</sup>

<sup>1593</sup> Saltbush Social Enterprises, *Youth bail support*, Saltbush Social Enterprises website, 2019, accessed 18 February 2021.

<sup>1594</sup> Communication with Territory Families, Northern Territory Government, 14 September 2020; Communication with Saltbush Social Enterprises, 9 October 2020.

<sup>1595</sup> Communication with Territory Families, Northern Territory Government, 14 September 2020; Communication with Saltbush Social Enterprises, 9 October 2020.

<sup>1596</sup> Saltbush Social Enterprises, *Youth bail support*.

<sup>1597</sup> Communication with Territory Families, Northern Territory Government, 14 September 2020; Communication with Saltbush Social Enterprises, 9 October 2020.

<sup>1598</sup> Northern Territory Government, *Youth Justice accommodation: bail support*, Northern Territory Youth Justice website, 2020, accessed 18 February 2021.

### **Improving bail access and support for Aboriginal children and young people**

Significant increases in recent years in the number of supervised bail orders among Aboriginal children and young people, and in the number of Aboriginal children and young people on remand (discussed in the following section), are deeply concerning and require immediate attention. These increases indicate that Aboriginal children and young people who come into contact with the youth justice system are being subjected to a higher degree of intervention than they were 10 years ago. Aboriginal children aged 10 to 13 years have been among the most impacted.

In Chapter 5.2 ‘Age-appropriate responses to Aboriginal children and young people’, we recommend increasing the minimum age of criminal responsibility in Victoria from 10 to 14 years (Recommendation 8). This would mean that children aged under 14 years would no longer be subject to the bail and remand system (among other youth justice system responses). Instead, Aboriginal children in this age group would receive a specialised, non-criminal justice system response characterised by early intervention and prevention, community design and leadership, justice reinvestment, culturally based youth and family services (including therapeutic healing centres), and restorative justice.

In addition, in Chapter 5.2 we recommend legislative change to prohibit the incarceration of children and young people under the age of 16 years (Recommendation 10). One effect of this recommendation would be that children and young people aged 14 and 15 years could no longer be remanded in custody, but would instead be required to be supported in the community until the determination of their charge. Young people aged 16 and 17 years would remain subject to the bail and remand system.

The recommendations that follow are addressed at improving the Victorian bail system’s responses to Aboriginal children and young people aged 14 to 17 years.

#### **Access to bail**

The 2017 and 2018 amendments to bail laws have made it significantly more difficult to be granted bail, which has had unintended and punitive consequences for Aboriginal children and young people. Although the Bail Act includes a range of safeguards for Aboriginal children and young people, these have become more

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difficult for bail decision-makers to apply due to the breadth of the prescriptive 2-step process introduced by the amendments. *Burra Lotjpa Dunguludja* includes an initiative to research the impact of the 2017–18 bail reforms on Aboriginal people.<sup>1599</sup>

Reversing the 2017 and 2018 amendments to the Bail Act for children and young people, as recommended by VALS and HRLC in their submissions to this inquiry, would allow bail decision-makers to adopt a child-centred approach and give due regard to principles such as using custody as a last resort and acting in the best interests of the child.<sup>1600</sup> It would significantly increase the opportunity for Aboriginal children and young people to be granted bail and remain with their families and in their communities.

In its 2020 report on children held on remand, the Sentencing Advisory Council suggested several strategies to improve access to bail for children and young people, reduce the costs associated with remanding children, help children avoid the criminogenic effects of custody, and improve community safety in the longer term.<sup>1601</sup> One strategy is to resource the expansion of the fully specialised Children’s Court to regional areas, starting with headquarter court locations, which we recommend later in this chapter (see Recommendation 62 in Chapter 12.3 ‘Court’).<sup>1602</sup>

Specialisation for all magistrates undertaking Children’s Court work should include youth justice-specific training and education on child and adolescent development, the impacts of trauma and adverse life experiences, communication issues and adaptations to court processes to enable effective communication and engagement with children and young people, and cultural safety for Aboriginal children and young people. Specialised magistrates who are trained and experienced in working with Aboriginal children and young people should be equipped with the skills needed to acknowledge, assess and respond to the needs of Aboriginal children and young people in making bail decisions.

In addition, in making determinations under the Bail Act, decision-makers should be required to consider the impact of trauma, disadvantage, systemic racism and related factors on a child or young person’s behaviour and ability to comply with bail conditions. This is consistent with Recommendation 36 in Chapter 8.1 ‘Child Protection involvement’ in relation to sentencing.

In its 2020 report, the Sentencing Advisory Council also proposed:

*fully resourcing a 24-hour bail system specifically for children across Victoria to best facilitate children being bailed where possible rather than being remanded, including decision-makers and support services for both the child and their family (where relevant). Support services could incorporate accommodation, including out-of-home care, day programs, bail assessment report writers and independent support persons during children’s time in police custody.*<sup>1603</sup>

The Commission supports this proposal. This might involve a Children’s Court bail and remand service similar to the Magistrates’ Court Bail and Remand Court.<sup>1604</sup> Alternatively, it could involve access to specialised and trained decision-makers who have expertise in working with children and young people, and specifically Aboriginal children and young people. The impact of this reform would be undermined if after-hours bail decision-makers lacked the appropriate expertise. It is also critical that corresponding fully resourced support services be made available after hours.

### Bail conditions

Aboriginal children and young people told the Commission that bail conditions are unrealistic and difficult to comply with, leaving them at risk of breaching bail and being remanded in custody. Difficulty in complying with conditions can be attributed to various factors. Children and young people have less control and agency over their lives than adults, and many are reliant on parents or guardians for accommodation, transport and assistance in meeting court or legal obligations. A lack of impulse control can also make it difficult to comply with bail conditions.

<sup>1599</sup> Victorian Aboriginal Justice Agreement, *Impact of bail reforms*, Victorian Aboriginal Justice Agreement website, 2021, accessed 10 February 2021.

<sup>1600</sup> VALS, Submission to *Our youth, our way* inquiry, p 4; HRLC, Submission to *Our youth, our way* inquiry, p 4.

<sup>1601</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p xii.

<sup>1602</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p xii.

<sup>1603</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p xii.

<sup>1604</sup> This court operates from 10 am to 9 pm, 7 days a week.



The primary purpose of bail is to ensure that a person who is charged with an offence attends court. Bail is not a mechanism for changing or ‘fixing’ a young person’s behaviours. The imposition of onerous, disproportionate and unreasonable bail conditions can set Aboriginal children and young people up to fail.

Bail conditions should be reasonable and proportionate, and only restrict children and young people to the extent necessary to keep them safe, reduce their risk of reoffending and ensure that they attend court. Conditions should also support children to remain with their families and in their communities. Children and young people should generally be able to maintain their normal lives while they are on bail. This is consistent with the requirements of the Bail Act and human rights standards.

Bail decision-makers need appropriate specialisation and expertise, and timely and appropriate advice, to set bail conditions that support children and young people to address offending behaviour and avoid breaching bail and being remanded in custody. In its submission to this inquiry, VALS argued that bail decision-makers should be appropriately trained, including in relation to trauma-informed approaches and cultural appropriateness, so that they understand how bail laws apply to children and young people, and do not impose onerous and culturally inappropriate conditions.<sup>1605</sup>

The training recommended in Chapter 12.3 ‘Court’ (Recommendation 62), and referred to above, for all magistrates undertaking Children’s Court work would minimise the imposition of unrealistic and inappropriate bail conditions. Similar training should be undertaken by bail justices working with children and young people. In this respect, the Commission notes the initiative under *Burra Lotjpa Dungaludja* to deliver Aboriginal cultural awareness training to all bail justices across 10 regional and 5 metropolitan locations.<sup>1606</sup>

### **Bail support and accommodation**

Aboriginal children and young people with higher level needs require community-based support services to remain at liberty while they are awaiting court hearings. This may include case management, housing, residential bail support services and therapeutic

programs. Supports need to be culturally safe and to address the individual needs of Aboriginal children and young people. VALS’s submission to this inquiry proposed investment in residential bail support and therapeutic programs for Aboriginal children and young people.<sup>1607</sup> Similarly, the Youth Justice Review recommended that consideration be given to the development of a youth-specific bail diversion program for Aboriginal young people, equivalent to Wulgunggo Ngalu Learning Place.<sup>1608</sup>

The fully resourced 24-hour bail system for children and young people proposed by the Sentencing Advisory Council and supported by the Commission would enable access to a range of support services, including accommodation. Such a system would be complemented by other recommendations made throughout this report.

In Chapter 6.1 ‘Collaboration’ we recommend the establishment of an integrated case management pilot for Aboriginal children and young people involved in the youth justice system, based on the NSW initiative *A place to go* (Recommendation 12). This program would provide coordinated, holistic supports to meet young people’s needs. This could include supporting Aboriginal young people while they are on bail.

In Chapter 9.2 ‘Substance use’ we recommend the establishment of at least 2 healing centres to provide residential support to Aboriginal children and young people facing alcohol or drug and/or mental health challenges (Recommendation 47). The healing centres would be available to support Aboriginal children and young people while they are on bail.

However, further supported bail accommodation options are required. The establishment of home-like supported bail accommodation residences across Victoria, similar to those provided by Saltbush Social Enterprises in the Northern Territory, would provide Aboriginal children and young people with additional, improved pathways out of the youth justice system.

<sup>1605</sup> VALS, Submission to *Our youth, our way* inquiry, p 17.

<sup>1606</sup> Victorian Aboriginal Justice Agreement, *Cultural awareness training for bail justices*, Victorian Aboriginal Justice Agreement website, 2021, accessed 18 February 2021.

<sup>1607</sup> VALS, Submission to *Our youth, our way* inquiry, pp 17–18.

<sup>1608</sup> Recommendation 6.26: Armitage and Ogloff, *Youth justice review and strategy*, Executive summary, p 34. Wulgunggo Ngalu Learning Place is a residential support facility developed in partnership with the Aboriginal community for Aboriginal men undertaking community correction orders. It focuses on cultural connection: Armitage and Ogloff, *Youth justice review and strategy*, Part 2, p 207.

## Recommendation 57

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That the *Bail Act 1977* be amended to exclude children and young people from the operation of the 2017 and 2018 amendments, including the requirement to show exceptional circumstances or compelling reasons.

## Recommendation 58

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That the *Bail Act 1977* be amended to expand sections 3A and 3B to require decision-makers, in making determinations under the Act, to take into account:

- a) the systemic racism, increased disadvantage and postcolonial and intergenerational trauma experienced by Aboriginal children and young people, including any culturally inappropriate responses that may have worsened the effects of trauma
- b) any experience of trauma, including the effect of that trauma on the child or young person's development and capacity to avoid problematic behaviour, and the relationship between trauma and any mental illness, neurological difficulties or developmental issues
- c) removal from family, home, community or school, or other disruption to the child or young person's living situation or education
- d) any experience of out-of-home care, particularly foster care and residential care, including the number of placements and carers, and the need for the child or young person to have safe, stable and secure living arrangements
- e) the child or young person's age, including developmental age, at the time of the alleged offence.

## Recommendation 59

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That the Victorian Government fully resource a 24-hour bail system for children and young people across Victoria, whether this is a Children's Court bail and remand service, or otherwise involves access to specialised and trained decision-makers who have expertise in working with children and young people, and Aboriginal children and young people. The 24-hour bail system should also include access to corresponding support services.

## Recommendation 60

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To reduce the likelihood of remand and increase compliance with bail orders, that the Victorian Government:

- a) increase the number of roles in the Koori Intensive Support Program to enable statewide access
- b) resource and, in partnership with Aboriginal organisations, establish therapeutic, home-like supported bail accommodation options across Victoria.

# Remand

## Finding 31

**Aboriginal children and young people are experiencing remand at unacceptably high rates, putting them at risk of harm and entrenchment in the youth justice system.**

High rates of remand of Aboriginal children and young people significantly contribute to their over-representation in custody, and rates of remand have doubled in recent years.<sup>1609</sup> This is deeply concerning given that exposing children and young people to a custodial environment places them at further risk of stigmatisation and increased likelihood of experiencing physical and psychological harm.<sup>1610</sup> The impact of youth justice custody on the wellbeing of Aboriginal children and young people is examined in Chapter 9.1 'Mental health' and Chapter 13 'Safe custody'. The impact of trauma and cumulative harm experienced by Aboriginal children and young people who come into contact with the youth justice system means that remand is a particularly damaging environment.<sup>1611</sup>

The Youth Justice Review observed that young people on remand 'tend to be less settled and more volatile than their sentenced counterparts and can affect the stability of [youth justice] centre operation'.<sup>1612</sup> The Youth Justice Review found that Youth Justice was not meeting the needs of young people on remand in Victoria, including prioritising 'timely advice, assessment, resolution of sentence or delivery of rehabilitation programs'.<sup>1613</sup> This harms young people's connections to family, school and community.

<sup>1609</sup> Jesuit Social Services (JSS), *An escalating problem: responding to the increased remand of children in Victoria*, JSS, Richmond, 2015, p 5; State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, see '*Justice and safety*'.

<sup>1610</sup> Atkinson, *Report on youth justice*, p 24.

<sup>1611</sup> Law Institute of Victoria, *Submission: review of Victoria's bail system*, Law Institute of Victoria, Melbourne, 2017, p 26.

<sup>1612</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 27.

<sup>1613</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 15.

Rule 13 of the Beijing Rules states that whenever possible, remand should be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

This following discussion describes Aboriginal children and young people's experiences of remand, remand trends and the approach to remand facilities in New Zealand.

## Experiences of remand

Thirty-one Aboriginal children and young people spoke to the Commission about remand and its immediate and ongoing consequences (see also Chapter 11 'Entering the youth justice system', which describes children and young people's experiences in police custody).

Young people talked about being remanded for both short and extended periods, and entering and exiting remand. A common issue was being moved around without information. Some young people said that the process should be quicker.

*I got taken to [the police station], then got court. They didn't even tell me they were taking me to [the youth justice centre], in the middle of the night in lost property clothes. The pants were too big, I had nothing to keep them up. I was cuffed and had to hold them up in court.*  
– Clarise, 17

*I would like the process to be a bit quicker than it usually is. I was [in the police cells] for one night and then the next day I was in [the youth justice centre]. I reckon they should just take us straight there instead of having us in the cells.*  
– Macy, 23

Two young people referred to remand experiences at a very young age.

*I was 12 the first time I went there. I've been there twice. First time was for a weekend. Three weeks were waiting for court.* – Ruan, 14

## 12.2 Bail and remand

Several children and young people talked about being remanded on little evidence.

*[The police would] do searches and... charge me for a burg where apparently my fingerprints were all over a vehicle, and they just lied. When I went to court they withdrew it, but they use those charges to remand me. – Karl, 21*

*They drag it on. Just keep remanding me and shit, till they charge me with something. – Alexis, 18*

No young people reported a positive experience of remand, and 15 young people described negative experiences. Two young people talked about the negative influence of others in remand.

*I was in Parkville for 2 months on remand when I was 14, going on 15. It wasn't good. It was really full of immature people with bad intentions. – Taj, 16*

*I bashed kids when I got angry. I was on remand and I was frustrated. No one was telling me anything. – Jasper, 17*

One family member told the Commission that there should be therapeutic alternatives to remand focused on rehabilitation.

*Court should remand her to rehab and not [youth justice custody] as it isn't rehabilitating her, it is making her worse. – Nan*

## Remand trends in relation to Aboriginal children and young people

The Taskforce case file review showed that almost two-thirds (64%) of Aboriginal children and young people who had been in custody had been held on remand at least once.

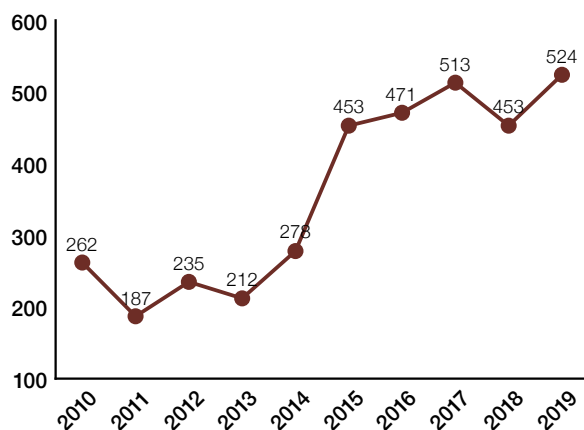
The remand population in Victoria has increased steadily in recent decades.<sup>1614</sup> According to the Sentencing Advisory Council's 2020 study into children held on remand in Victoria, the number of unsentenced children held in custody on an average day in Victoria more than doubled between 2010 and 2019, from 48 to 99.<sup>1615</sup> As noted above, on an average day in 2014–15, there were 8 Aboriginal children and young people on remand in Victoria, and in 2018–19, this had increased to 15 Aboriginal children and young people (see Figure 12.1).

## Remand orders

Youth Justice data indicates that the number of remand orders made in relation to Aboriginal children and young people doubled between 2010 and 2019 from 262 to 524 (see Figure 12.3 and Table 12.3). The rate of increase for non-Aboriginal children and young people was even higher at 131%, with 1,277 remand orders made in 2010 and 2,944 in 2019 (see Figure 12.4 and Table 12.3).

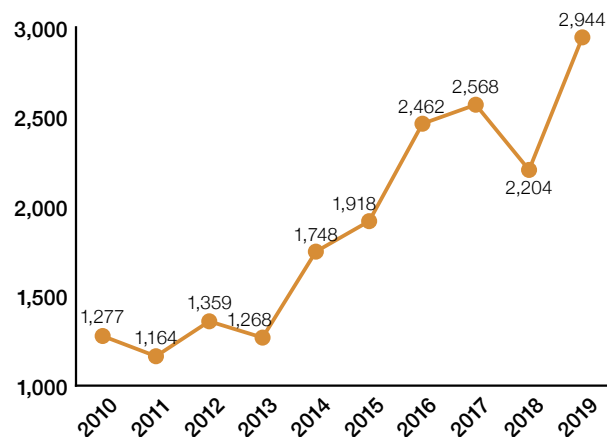
<sup>1614</sup> Sentencing Advisory Council, *Children held on remand in Victoria*.

<sup>1615</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p ix.



**Figure 12.3** Number of remand orders for Aboriginal children and young people, 2010–2019

Source: DJCS data provided to the Commission on 19 February 2020.



**Figure 12.4** Number of remand orders for non-Aboriginal children and young people, 2010–2019

Source: DJCS data provided to the Commission on 19 February 2020.

**Table 12.3** Remand orders for children and young people by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal		Not known	
	No.	%	No.	%	No.	%
2010	262	17%	1,277	83%	0	0%
2011	187	14%	1,164	86%	0	0%
2012	235	15%	1,359	85%	0	0%
2013	212	14%	1,268	86%	0	0%
2014	278	14%	1,748	86%	0	0%
2015	453	19%	1,918	81%	0	0%
2016	471	16%	2,462	84%	1	0%
2017	513	17%	2,568	83%	0	0%
2018	453	17%	2,204	83%	2	0%
2019	524	15%	2,944	85%	1	0%
<b>Average</b>	<b>359</b>	<b>16%</b>	<b>1,891</b>	<b>84%</b>	<b>0</b>	<b>0%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

A major driver of the increase was the number of remand orders made in relation to girls and young women. This increased by 185% for Aboriginal girls and young women, from 27 remand orders in 2010 to

77 in 2019, and by 204% for non-Aboriginal girls and young women, from 108 remand orders in 2010 to 329 in 2019.<sup>1616</sup>

As with bail, Aboriginal children aged 10 to 13 years were vastly over-represented, making up 35% of all remand orders in that age group in 2019, and an average of 29% across the 10-year period (see Table 5.3 in Chapter 5.2 ‘Age-appropriate responses to Aboriginal children and young people’). This represents an increase of 95% in the number of remand orders made in relation to Aboriginal children aged 10 to 13 years between 2010 and 2019, compared to a decrease of 18% for non-Aboriginal children in the same age group.

Across age groups, crimes against the person were prevalent as the most serious offence for which children and young people were remanded, although non-Aboriginal children and young people were slightly more likely to be remanded for a crime against the person and Aboriginal young people had comparatively higher rates of remand for property and deception offences. Table 12.4 demonstrates this trend for young people aged 15 to 17 years, who comprised the majority of remand orders.

<sup>1616</sup> DJCS data provided to the Commission on 19 February 2020.

## 12.2 Bail and remand

**Table 12.4** Percentage of remand orders for children and young people aged 15–17 by Aboriginal status and most serious offence, 2010–2019

Most serious offence	Aboriginal (%)	Non-Aboriginal (%)
Crimes against the person	52	55
Property and deception offences	33	29
Other offences	8	9
Unknown offence	6	6
Drug offences	1	2
<b>Total*</b>	<b>100</b>	<b>100</b>

\* Percentages may not add up to 100 due to rounding.

Source: DJCS data provided to the Commission on 19 February 2020.

### Time spent on remand

Youth Justice data from 2014–15 to 2018–19 indicates that remand periods for Aboriginal children and young people were relatively short, with 41% lasting less than one week and 88% less than one month.<sup>1617</sup> Overall, children and young people in the 10 to 14 year age group spent an average of 18 days on remand, while those in the 15 to 17 year age group spent an average of 31 days. Almost half of all Aboriginal children and young people (47%) experienced more than one period of remand.

The Sentencing Advisory Council's 2020 study of remand found that children and young people tended to spend short periods of time on remand, with almost half of the remand episodes in the study ending within 21 days and 15% ending after one to 3 days.<sup>1618</sup> Children remanded on the weekend were much more likely to experience a short remand episode of one to 3 days (36%) than children remanded on a weekday (10%).<sup>1619</sup>

Importantly, the Sentencing Advisory Council found that children in the index population spent longer on remand than those in earlier studies – more than half of

<sup>1617</sup> Victorian Government, *Responding to youth justice issues in the coming year*, Presentation to Aboriginal Justice Forum, 24 February 2020, unpublished.

<sup>1618</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 52.

<sup>1619</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p x.

all children remanded in 2017–18 spent longer than 3 weeks on remand, compared to one-third of children in the earlier studies in 2010 and 2015–16.<sup>1620</sup>

### Outcomes following remand

Youth Justice data suggests that from 2014–15 to 2018–19, the vast majority of Aboriginal children and young people (83%) were released on bail after being remanded.<sup>1621</sup> In 2018–19, 40% of Aboriginal and children and young people on remand did not ultimately receive a custodial order.<sup>1622</sup>

As noted above, the Sentencing Advisory Council found that two-thirds of remanded children did not ultimately receive a custodial sentence.<sup>1623</sup> The Sentencing Advisory Council observed that the Aboriginal status of the child or young person did not correlate with a likelihood that a child would receive a custodial outcome.<sup>1624</sup> The factors associated with a child or young person receiving a non-custodial sentence were 'spending less time on remand, having a case finalised in a suburban court, having less prior contact with the justice system and being charged with a property damage or threat offence as the most serious offence'.<sup>1625</sup>

The high rates of non-custodial outcomes following remand, and short periods of remand, particularly over weekends, indicate that Aboriginal children and young people are being remanded unnecessarily. Any unnecessary time on remand is problematic as it is criminogenic, familiarising children and young people with youth justice custody and exposing them to peers who may contribute to their offending behaviour, while failing to provide meaningful programs or supports.<sup>1626</sup> The Sentencing Advisory Council's 2020 report also highlighted the criminogenic nature of remand and youth justice system involvement – only 6% of remanded children did not have a prior remand

<sup>1620</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 53.

<sup>1621</sup> Victorian Government, *Responding to youth justice issues in the coming year*.

<sup>1622</sup> Victorian Government, *Responding to youth justice issues in the coming year*.

<sup>1623</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 42.

<sup>1624</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 43.

<sup>1625</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 69.

<sup>1626</sup> Chen, *International perspectives on using bail to improve Indigenous criminal justice outcomes*, p 3.

episode, prior sentence or other ongoing proceedings when they first entered remand.<sup>1627</sup>

An alternative approach is clearly required. New Zealand provides an instructive model, which is discussed in the following section.

## Oranga Tamariki remand homes

Under section 238 of the Oranga Tamariki Act, courts have a range of options for making orders in relation to the custody of a child pending a hearing. This includes placing the child in detention in the custody of the Chief Executive, an *iwi* social service or a cultural social service. A child can only be placed in detention if they are likely to abscond, commit further offences or interfere with evidence.

Oranga Tamariki recognises that ‘living environments in residences should be developmentally enriching, responsive, and therapeutic for children and young people in care’.<sup>1628</sup> For children and young people on remand, Oranga Tamariki has established 5 non-secure remand homes to provide more community-based placements as an alternative to secure youth justice centres, with a combined capacity of 24 beds.

The remand homes have rostered staff with therapeutic wraparound support, yet are no different to a regular home in a residential area. They are connected to the local community, and young people are encouraged to get involved with sporting clubs and other positive social activities. Young people are placed close to family where possible.

In February 2020, the Commissioner for Aboriginal Children and Young People and senior DJCS representatives visited one of the remand homes, Te Whare Awhi in Palmerston North, which has capacity to accommodate 5 young people. The Commissioner’s observations were that it was a safe, home-like environment with therapeutic wraparound support. It is a simple home in a residential area, and integrates well with the local community. Te Whare Awhi aims to implement routines, life skills and structure in young people’s lives, while keeping them connected to *whānau* (extended family) and friends. According to the Operations Manager of Youth Justice Residences, ‘Everything we do is wrapped around culture. Prior to

this, we would talk about culture but we didn’t invest in it.’<sup>1629</sup>

Mahuru is another remand facility developed by Ngāpuhi Iwi Social Services to provide culturally safe residential support services to Māori young people on remand. It was launched in October 2018 and has been funded to care for 3 to 5 young people at a time for up to 6 weeks. Members of the Ngāpuhi *iwi* (tribe) are incarcerated at higher rates than other Māori people, and each year around 40 young people with connections to Ngāpuhi are remanded to youth justice residences in Auckland while they await a Youth Court hearing. This was identified as disconnecting young people from their families and communities, and removing the supports provided by these relationships.

Ngāpuhi Iwi Social Services has received almost NZ\$1 million in funding from Oranga Tamariki to develop Mahuru, where local young people on remand are placed in the homes of Ngāpuhi caregivers within their community. Caregivers introduce young people to their Ngāpuhi history and culture, sharing knowledge about Māori culture within the context of the *hapū* (clan or descent group) and *whānau* of the young person, alongside general life, health and education skills.

## Providing an alternative to remand for Aboriginal children and young people

Despite an overall reduction over the last decade in the rate of Aboriginal children and young people under Youth Justice supervision in Victoria,<sup>1630</sup> the number of remand orders made in relation to Aboriginal children and young people has doubled. High rates of remand for Aboriginal children and young people substantially contribute to their over-representation in the youth justice system.

As noted above, in Chapter 5.2 ‘Age-appropriate responses to Aboriginal children and young people’, the Commission recommends increasing the minimum age at which a child or young person can be incarcerated in Victoria to 16 years. This would mean that children and young people under 16 years could no longer be remanded.

<sup>1627</sup> Sentencing Advisory Council, *Children held on remand in Victoria*, p 38.

<sup>1628</sup> Oranga Tamariki, Ministry for Children, *Therapeutic residential care*, Oranga Tamariki website, 2020, accessed 19 February 2021.

<sup>1629</sup> Office of the Guardian for Children and Young People (South Australia), *NZ remand homes emphasise culture and connection*, Office of the Guardian for Children and Young People website, 2019, accessed 19 February 2021.

<sup>1630</sup> AIHW, *Youth justice in Australia 2018–19*, p 38.

## 12.2 Bail and remand

Aboriginal young people aged 16 and 17 years would remain subject to the bail and remand system. The Commission's recommendations on bail in this chapter are designed to increase access to bail for Aboriginal children young people, and to provide improved support for them while they are on bail.

It is the *Our way* vision that no Aboriginal child or young person should be incarcerated. Until that goal is achieved, the Commission acknowledges there will be a small number of Aboriginal young people with very complex needs who will be assessed as posing a high risk of reoffending and will therefore be refused bail. For these young people, the Commission recommends establishing 2 small, home-like remand residences that provide therapeutic and culturally based care. This will avoid the harmful effects of custody for young people for whom there is no other option but remand.

These residences should be based on the model of Oranga Tamariki remand homes, and adopt the features of the small, home-like residences recommended in Chapter 13.2 'Conditions in youth justice custody' as an alternative to youth justice centres for Aboriginal children and young people. In particular, they should be designed in partnership with Aboriginal organisations, and there should be a strong emphasis on employing Aboriginal staff to provide care and support. The residences should be non-secure.

### Recommendation 61

That the Victorian Government work towards having no Aboriginal child or young person on remand. As a step towards this, the Victorian Government should provide community-based alternatives to custody for Aboriginal young people on remand. In particular, DJCS should invest in establishing a minimum of 2 small, home-like facilities that provide therapeutic and culturally appropriate care for Aboriginal children and young people on remand.



## 12.3 Court

### Finding 32

The court experiences of Aboriginal children and young people in the youth justice system are mixed. The Children's Koori Court has strong potential to improve engagement and outcomes for Aboriginal children and young people, but is not consistently accessible across Victoria.

Most children and young people who are under 18 years of age at the time that they are alleged to have committed an offence are dealt with in the Criminal Division of the Children's Court. While the Children's Court is a specialist jurisdiction, the Children's Court in Melbourne is the only court facility that operates as a fully specialised Children's Court with separate Family and Criminal Divisions.<sup>1631</sup>

Magistrates based in Melbourne, Broadmeadows and Moorabbin sit in the Criminal and Family Divisions of the Children's Court on a full-time basis. Magistrates in other metropolitan courts sit as Children's Court magistrates on nominated days to hear criminal and intervention order matters. In regional Children's Court locations, magistrates sit in Criminal and Family Divisions on nominated days and as required.<sup>1632</sup>

The Sentencing Advisory Council notes that because the Melbourne Children's Court is the only fully specialised court:

*in many Children's Court locations around Victoria, children are sentenced by magistrates who may*

*more commonly hear adult criminal matters and may less frequently hear matters relating to children, whether child protection or Criminal Division matters. In contrast, magistrates who sit exclusively in the Melbourne Children's Court may have a greater opportunity to develop specialist knowledge in, for example, child development and the availability of child, youth and family services.<sup>1633</sup>*

As noted by the Northern Territory Royal Commission, a specialist court has many benefits.<sup>1634</sup> It provides a clear separation between cases involving children and adults, and consistency of approach. It allows the court to develop procedures and services to meet the different objects and principles of youth justice. In addition, as many children and young people in the youth justice system are under child protection orders, a specialist court can allow a more comprehensive understanding of a child's circumstances.<sup>1635</sup> If managed early enough, with appropriate supports, this may also deflect children from offending or further offending.<sup>1636</sup>

Aboriginal children and young people can also access the Children's Koori Court, which operates in 12 locations throughout Victoria.<sup>1637</sup> The Children's Koori Court is a specialist sentencing court for Aboriginal children and young people, which is presided over by a magistrate and Koori Elders or respected persons, and aims to operate as informally as possible. A child or young person must plead guilty and be willing to

<sup>1631</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 44.

<sup>1632</sup> Children's Court of Victoria, *Children's Court of Victoria annual report 2018–2019*, Children's Court of Victoria, Melbourne, 2019, p 48.

<sup>1633</sup> Sentencing Advisory Council, *Crossover kids*, Report 3, p 44.

<sup>1634</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 302.

<sup>1635</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 302.

<sup>1636</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 302.

<sup>1637</sup> Bairnsdale, Dandenong, Geelong, Hamilton, Heidelberg, Latrobe Valley (Morwell), Melbourne, Mildura, Portland, Shepparton, Swan Hill and Warrnambool: Children's Court of Victoria, *Koori Court*, Children's Court of Victoria website, 2021, accessed 24 February 2021.

## 12.3 Court

participate in order to access the Children's Koori Court. The court has the power to regulate its own procedures and must make sure that proceedings are understandable to the child or young person, family members and any members of the Aboriginal community present.<sup>1638</sup>

Human rights standards provide guidance on the minimum expectations for court proceedings in relation to children and young people. Rule 14 of the Beijing Rules states that court proceedings should be conducive to the best interests of the young person, and conducted in an 'atmosphere of understanding', which allows the young person to participate and to express themselves freely.

This chapter considers the court experiences of Aboriginal children and young people in the youth justice system, barriers to accessing the Children's Koori Court and the operation of New Zealand's Rangatahi Courts.

### Young people's experiences of the court system

*Court is exhausting because it goes on and on, and gets adjourned and adjourned, and it takes like a year before things come up in court, and they add everything else in so that it sounds worse when they add everything together, and it makes it sound like I went on a rampage!*  
– Gabrielle, 15

### Children's Court

Of children and young people who talked to the Commission about the court process (n = 76), 49% (n = 37) reported having negative experiences of court.<sup>1639</sup> This included feeling scared, stressed, uncertain, anxious, self-conscious, confused, bored and frustrated.

*I've only been in the court once or twice for stealing a bike and for assault. It was just another scary time. It's like too quiet and the lads are all looking at you. – Dean, 15*

*Court was pretty nerve-racking, more nerve-racking than going into the police station. I was never nervous about getting interviewed, but just in court, the fact that I'm in front of everyone getting the charges laid out, it's way more nerve-racking. – Leroy, 14*

Children and young people commonly talked about the many adjournments and slow pace, as well as feeling disengaged or indifferent.

*I just try and zone out as much as I can. – Felix, 21*

*I don't really care unless they don't drop charges. I go to court and hope they drop charges. – Zaine, 19*

Children and young people struggled to understand the legal process and the language used in court (see also Chapter 12.4 'Legal assistance'). They told us that judicial officers need to speak to young people in a language they understand.

*The stuff that they used against me in court was so confusing. I just said, 'Yes, no, yes.' I didn't even really know what they were saying. After I waited that long I just wanted to get out of there as fast as I could, so I just said, 'Yes, no, yes.'*  
– Dion, 15

*Court is confusing. I don't understand what was said because of the big words they use. They need to help young people understand by not using big words. – Chelsea, 16*

<sup>1638</sup> CYFA, s 517.

<sup>1639</sup> In the course of consultations, some young people aged 18 years or older spoke both about their earlier experiences in the Children's Court and more recent experiences in adult courts. Most quotations relate to the Children's Court.

*When I first got bail, I didn't know what was going on – 'You're further remanded in custody.' We need more Elders to help explain it.*  
– Peyton, 16

Many children and young people talked about feeling threatened or disrespected by the judicial officer, and did not like being labelled as a repeat offender. A constant theme was the perception that the judicial officer lacked understanding of the child or young person's circumstances.

*The judge was threatening me and telling me stuff I didn't understand, and then he started telling me I could be good or I'll go nowhere in life and get no jobs.* – Tyronne, 15

*I could see it in the judge's eyes. We are all another number in the system. Repeat offenders. They don't understand our background and what we had to go through and what we experienced.*  
– Watanom, 19

*Judges should explain more. I think judges need to stop acting like they're so superior to everyone else. When kids are going in there and doing stuff, you're looking down on them from a pedestal... I'll show respect, but you get cocky ones in a bad mood and if you give them a slightest bit of what they don't like, they can just do whatever they like.* – Grace, 20

*I felt like the judges hated me – my very first sentence ever they gave me 12 months because apparently I was a problem for the community.*  
– Chris, 20

Eighteen children and young people talked about positive experiences at court, which generally related to the child or young person feeling respected, heard and understood by the judicial officer.

*My court experience was really good, so I can't say anything about that. I didn't get treated like shit in there, it was just good.* – Bodhi, 23

*The magistrate asked me to stand up, and he was pretty much saying that he wants to see better from me, and hopes that I succeed and achieve my goals, and he's not going to put something on my record to destroy my dancing career, and that he hopes to see me on TV in 5 years.* – Taylah, 20

*I went to court and it was the best judge I ever had in my life. She wanted me to come to her house for tea and see her after this.*  
– Karrwin, 20

Children and young people mentioned that having a good lawyer, worker or support person improved a young person's experience at court (see also Chapter 12.4 'Legal assistance' and Chapter 6.2 'Relationships with workers' regarding relationships with trusted workers).

*Mum was there with me. I had a support worker from [a local Aboriginal organisation], she was also at the youth group. My solicitor was awesome – he explained everything to me, spoke to me directly, gave me my options and helped.* – Grace, 20

## Children's Koori Court

Of children and young people who talked about the Koori Court (n = 21), 62% (n = 13) reported positive experiences, with only one young person reporting a negative experience with a non-Aboriginal judicial officer.<sup>1640</sup> One young person said they preferred the Children's Court, because the Elders at Koori Court have a connection or familial relationship with the children.

Most children and young people liked that they got to have a say, family could participate, they felt heard and supported by the magistrate and Elders, and the legal process was explained. A key feature of children and young people's experiences at the Koori Court was the positive role of Elders, and the supportive way that

<sup>1640</sup> Most young people referred to the 'Koori Court' and did not distinguish between the Children's Koori Court and adult Koori Courts.

## 12.3 Court

Elders admonished or 'shamed' children and young people to address their offending behaviour.

*Koori Court is good. Elders rip you up and that, tell you to be good. – Cole, 16*

*Koori Court is good – you get to have a say and the Elders talk to you. It's a great idea that we have that, I just reckon that we should have it more around Victoria. You get to have a say, family gets to have a say, you get to make eye contact, you know. – Caleb, 18*

*You get lots of support in Koori Court. If it wasn't for them, I'd probably still be in jail. – Drew, 19*

*It's good, when you get ripped and that. The old Uncles, they really let you have it. – Kirrae, 22*

*I like how Elders sit down and tell you off – you need that sometimes. I don't like getting told by white people because I don't know them. – Jasper, 17*

Children and young people mentioned the difference in approach and practices at the Koori Court which helped them to understand the process, take responsibility and be held accountable for their offending behaviour.

*I've been to Koori Court once. You sit on the table so like you got a voice, not like the prosecutors. In the normal court you're sitting in the dock. Koori Court, they are sitting right in front of your eyes. You feel sad for disappointing them in Koori Court though, the Elders know that you feel bad. – Dustin, 15*

*Going to Koori Court, it was like, you can go to normal court and sit in front of a different judge and say whatever, Koori court you're sitting in front of your Elders, so when you say something, you're actually going to do it. – Mitch, 17*

*Koori Court was different. I wasn't in the stand, I was sitting with my family. The Elders go off at you and stuff, but they actually explain stuff to you rather than reading off 'section blah blah blah of blah blah blah'. You're sitting down with a group of people that will look at you as more than just a criminal that fucked up. They look at you like a person. – Karrwin, 20*

*I've always gone through Koori Court. It's good – you get to explain your side of the story and sit around a table and talk about what's fair. It's 100% better than mainstream court. You sit around with Elders, the judge, whoever else is there. The Elders express their disappointment about you committing crime and it's a lot different to them being behind their stand. – Rory, 20*

Some young people said they would like to see an expanded role for Elders in the Koori Court.

*They should have separate courts. Even though there's Koori Court I still get sentenced by a white judge. They put us on show in front of everyone – all the Elders – and then all these gubbas are looking at us, a white prosecutor, a white judge. I want a Koori judge who knows what I'm going through, who wants to help me, not some white judge that wants to punish me. – Watjpa, 21*

Four children and young people said that they had never had an opportunity to go to Koori Court, and one young person referred to difficulties in accessing the Koori Court due to its availability and eligibility criteria.

*I've never had Koori Court – for the last 3 years for all my criminal matters I've had mainstream, they knocked it back. – Peyton, 16*

*I never did Koori Court. No one spoke to me about it. – Chris, 20*

*Koori Court was good – actually sitting down and discussing it properly and understanding it. Every time I've had court it hasn't been offered to me, and when I come into custody I try to get my matters dealt with right away, but you have to wait for Koori Court and you have to plead guilty and I don't always plead guilty. My mum knew the Elders, but I didn't know them. And they actually care. – Karl, 21*

## Access to the Children's Koori Court

The Children's Koori Court sits with varying frequency across the 12 locations at which it is available; however, generally not more than 2 to 3 days per month. At many locations it sits only once each month.

The Youth Justice Review identified a lack of access to the Children's Koori Court as a limitation of its potential to provide culturally appropriate responses to Aboriginal young people.<sup>1641</sup> The Commission's consultation with the Children's Court noted that, in comparison to the Children's Koori Court, 'mainstream' courts leave little scope for participation, which can lead Aboriginal children and young people to feel disconnected and intimidated by proceedings.<sup>1642</sup> The Children's Court also noted difficulties in identifying Aboriginal children and young people, which poses a major barrier to the court's ability to offer a culturally appropriate response. Cultural competence of the Children's Court was highlighted in the VALS and VLA submissions to the inquiry.<sup>1643</sup>

The Taskforce case file review found that, during the sentencing process, 72% of children and young people had only ever accessed the mainstream Children's Court. Twenty-two per cent had accessed both the Children's Koori Court and the Children's Court, and 5% had accessed only the Children's Koori Court.

The most common reasons that young people chose not to participate in the Children's Koori Court, or did not otherwise participate, were unavailability in their region and delay. Several young people in the Taskforce cohort had matters in other courts, including in the Children's Court or adult courts, or had already been

<sup>1641</sup> Armytage and Ogloff, *Youth justice review and strategy*, Executive summary, p 17.

<sup>1642</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020.

<sup>1643</sup> VALS, Submission to *Our youth, our way* inquiry, p 3; VLA, Submission to *Our youth, our way* inquiry, p 20.

before a magistrate in the Children's Court. Some young people did not plead guilty and were therefore not eligible for the Children's Koori Court. A small number of young people did not identify as Aboriginal or did not want to use an Aboriginal service, and others were not local and did not want to appear before local Elders. Five young people mentioned being worried about engaging with Elders, feeling embarrassed or causing shame to their families.

The Children's Koori Court was evaluated in 2010.<sup>1644</sup> The evaluation found that there was a low incidence of failure to appear (11%) and breaches of court orders (13%), suggesting a good level of engagement among children and young people who chose to use the Children's Koori Court.<sup>1645</sup> The Children's Koori Court processes incorporate benefits of 're-integrative shaming', which involves the young person understanding the consequences of their behaviour and being reintegrated into the community with the support of Elders and magistrates who have relationships of care and respect for the young person.<sup>1646</sup> This reflects children and young people's views in the Commission's consultations.

Although the Children's Koori Court did not have a significant impact in reducing recidivism rates, the evaluation noted that this is unrealistic in the absence of greater structural changes. Importantly, the evaluation found that the court empowers Aboriginal communities and transforms relationships with broader society, which, combined with additional interventions, could lead to a reduction in the over-representation of Aboriginal children and young people in the future.<sup>1647</sup>

The Victorian Supreme Court decision in *Cemino v Cannan and Others* [2018] VSC 535 held that a court needs to consider the cultural rights of Aboriginal people under the Victorian Charter of Human Rights and Responsibilities when determining an Aboriginal person's request to have their case heard in the Koori Court. In that case, the Supreme Court found that a

<sup>1644</sup> A Borowski, 'Indigenous participation in sentencing young offenders: findings from an evaluation of the Children's Koori Court of Victoria', *Australian & New Zealand Journal of Criminology*, 2010, 43(3):465–484.

<sup>1645</sup> Borowski, 'Indigenous participation in sentencing young offenders', pp 475–476.

<sup>1646</sup> A Borowski, 'In courtroom 7 – the Children's Koori Court at work: findings from an evaluation', *International Journal of Offender Therapy and Comparative Criminology*, 2010, 55(7):1110–1134, p 1114.

<sup>1647</sup> Borowski, 'Indigenous participation in sentencing young offenders', pp 481–482.

## 12.3 Court

magistrate in Echuca acted unlawfully by refusing a young Aboriginal man's request to be sentenced by the Koori Court in Shepparton. The Victorian Equal Opportunity and Human Rights Commission has noted that this decision is likely to significantly increase access to the Koori Court for Aboriginal people in Victoria.<sup>1648</sup>

In their submissions to the inquiry, VALS and VLA recommended expansion of the Children's Koori Court, through more locations, hearing dates and eligibility, including removing the requirement to plead guilty.<sup>1649</sup>

### Models in other jurisdictions

#### New Zealand's Rangatahi Court

Rangatahi Courts are Youth Courts held on *maraes* (communal or sacred community meeting places), which incorporate Māori language and protocols and are run by Youth Court judges in partnership with local community leaders. In developing the Rangatahi Court model, New Zealand policymakers were heavily influenced by the Victorian Koori Court model and looked at ways to improve on it.<sup>1650</sup> A major difference is that hearings are held on *maraes* rather than in a court setting.

In 2016, 41% of young people with a hearing appeared at a Rangatahi Court.<sup>1651</sup> A young person does not need to be Māori to have their matter heard at a Rangatahi Court, but must admit to the charges or have the charges proven.<sup>1652</sup> The Rangatahi Court can monitor court orders or plans developed in a family group conference. Through the Rangatahi Courts, elders help young people to realise the strength and identity of their Māori culture, which can help them address offending behaviour. Elders work with young people to recognise their *mana*, which broadly translates to 'inner strength' or 'human potential'. In basic terms, *mana* is inherited through generations,

and behaviour which harms other people can tarnish *mana* for the next generation.

The Rangatahi Court aims to be healing for young people, families and victims, and the concept of *mana* can give this objective tangible meaning and importance for Māori young people. Embedding interventions in the strength of Māori culture gives young people a way to engage with their obligations under group conferencing plans or court orders, putting cultural obligations to repair their *mana* and relationships into practical action.<sup>1653</sup>

Jesuit Social Services suggested that the Koori Courts could be enhanced by elements of the New Zealand model, by further embedding culture, language and community control over youth justice processes with a restorative framework (see Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people' for a discussion of restorative justice).<sup>1654</sup>

#### Queensland Youth Murri Court

Queensland's Murri Courts sentence Aboriginal people who plead guilty to an offence that falls within the jurisdiction of the Magistrates' Court or Children's Court. The first Youth Murri Court was established in 2004.<sup>1655</sup> Elders and respected persons sit alongside the magistrate in court and have the opportunity to address the young person during sentencing, provide advice to the magistrate and facilitate communication between the magistrate and young person, although it is the magistrate who sentences the young person (as in the Children's Koori Court).

Although the operation of the Youth Murri Court varies across different locations, one notable feature is the involvement of Elders in pre-sentence interviews.<sup>1656</sup> Prior to appearing in the Murri Court, the young person may be interviewed by Elders on the day of their scheduled court appearance. Pre-sentence interviews

<sup>1648</sup> Victorian Equal Opportunity and Human Rights Commission (VEOHRC), *Cemino v Cannan and Ors – Sep 2018*, VEOHRC website, 2020, accessed 22 February 2021.

<sup>1649</sup> VALS, Submission to *Our youth, our way* inquiry, p 5; VLA, Submission to *Our youth, our way* inquiry, p 18.

<sup>1650</sup> Meeting with New Zealand's Ministry of Justice on 12 February 2020.

<sup>1651</sup> Henwood et al., *Rangatahi Māori and Youth Justice*, p 41.

<sup>1652</sup> Youth Court of New Zealand, *About youth court – Rangatahi Courts and Pasifika Courts*, Youth Court of New Zealand website, 2020, accessed 22 February 2021.

<sup>1653</sup> Interview with Carl Crafar, Chief Operating Officer – Operations and Service Delivery, Ministry of Justice, New Zealand on 18 November 2019.

<sup>1654</sup> Jesuit Social Services, Submission to *Our youth, our way* inquiry, p 7.

<sup>1655</sup> A Morgan and E Louis, *Evaluation of the Queensland Murri Court: final report*, Technical and background paper number 39, Australian Institute of Criminology, Canberra, 2010.

<sup>1656</sup> A 2010 evaluation of the Murri Courts found that pre-sentence interviews with children were ad hoc and infrequent, and did not occur at one location (Brisbane): Morgan and Louis, *Evaluation of the Queensland Murri Court*, p 26.

engage the young person prior to the sentencing process, help build familiarity between the Elder and young person and, where it does not exist, provide the foundation for a ‘shared understanding’ of the young person’s circumstances, which can lead to more meaningful dialogue during court sittings. Pre-sentence interviews also provide the young person with the opportunity to raise issues that they might not wish to discuss during open court.<sup>1657</sup>

### Sentencing Advisory Council research on ‘crossover children’

Many Aboriginal children and young people who appear before the Criminal Division of the Children’s Court have also experienced Child Protection involvement. The Sentencing Advisory Council’s 3 recent reports on ‘crossover children’, discussed in detail in Chapter 8.1 ‘Child Protection involvement’, shed considerable light on these links.

The Sentencing Advisory Council’s second report found that children sentenced in regional areas of Victoria were more likely to be known to Child Protection (44%) than children in the metropolitan area (35%).<sup>1658</sup> In certain regional courts, one in 2 sentenced and diverted children were known to Child Protection.<sup>1659</sup> Aboriginal children were particularly over-represented in regional areas, making up 19% of sentenced and diverted children known to Child Protection, compared to 9% in metropolitan Melbourne.<sup>1660</sup> The court locations with the highest proportion of crossover children who were Aboriginal were Bairnsdale (52%), Mildura (34%) and Shepparton (31%).<sup>1661</sup>

The Sentencing Advisory Council’s third report outlined a number of measures to bridge the gap between youth justice and child protection responses in Victoria, in order to provide a tailored and trauma-informed approach.<sup>1662</sup> These measures are of broader relevance to Aboriginal children and young people involved in the youth justice system. In summary, they include:

- culturally responsive approaches to Aboriginal children, including increased access to the Koori Courts (see Recommendation 63 below)
- fully specialised Children’s Court facilities in regional areas, commencing with headquarter court locations and then extending to key metropolitan areas, where specialised Children’s Court locations could operate as regional hubs for services (see Recommendation 62 below)
- integrated youth justice family group conferencing, based on the New Zealand model, which integrates criminal justice and child protection responses (see Recommendation 22 in Chapter 7.2 ‘Youth Justice practices and family involvement’)
- a ‘crossover list’ in the Children’s Court, similar to those available in some New Zealand courts, which would require enhanced information-sharing between the Criminal and Family Divisions and enable coordinated responses (see Recommendation 35 in Chapter 8.1 ‘Child Protection involvement’).

### Improving the court experience for Aboriginal children and young people in the youth justice system

Courts can provide critical opportunities to support Aboriginal children and young people to address offending behaviour, but they need to be child-centred and culturally safe in order to achieve this. They also need to facilitate meaningful participation by children and young people, consistent with human rights standards. While some Aboriginal children and young people told the Commission that they felt respected in the Children’s Court, others found court confusing, stressful, disempowering and difficult to understand.

The Children’s Koori Court has the capacity to positively engage Aboriginal children and young people in the legal process, and to support them to address offending behaviour in a culturally and age-appropriate manner. It also has the potential to improve connections and referrals to culturally strengthening services. Aboriginal children and young people told the Commission they were able to participate freely and meaningfully in Children’s Koori Court proceedings, and valued the strong guidance of Elders. Limited availability of the Children’s Koori Court across the state is a barrier to access to justice.

<sup>1657</sup> Morgan and Louis, *Evaluation of the Queensland Murri Court*, p 128.

<sup>1658</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 63.

<sup>1659</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 63.

<sup>1660</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 67.

<sup>1661</sup> Sentencing Advisory Council, *Crossover kids*, Report 2, p 67.

<sup>1662</sup> Sentencing Advisory Council, *Crossover kids*, Report 3.

## 12.3 Court

The expansion of Koori Courts to additional locations across the County Court, Magistrates' Court and the Children's Court is a goal under *Burra Lotjpa Dunguludja*.<sup>1663</sup> Increasing the availability and frequency of sitting dates of the Children's Koori Court across Victoria would improve access to justice for Aboriginal children and young people.

Elders play a critical role in the Children's Koori Court process, and are the key to fostering a culturally safe and meaningful court experience. Their oversight and guidance has the potential to lead to better long-term outcomes for Aboriginal children and young people. More broadly, the Children's Koori Court empowers Aboriginal communities and provides vital opportunities for self-determination. Consideration should be given to strengthening the role of Elders in the Children's Koori Court, taking into account their role in New Zealand's Rangatahi Courts and Queensland's Youth Murri Courts.

Not all Aboriginal children and young people will have access to the Children's Koori Court. It is therefore important to ensure that the Children's Court can provide a child-centred and culturally appropriate response to Aboriginal children and young people appearing before it on criminal matters.

*Burra Lotjpa Dunguludja* contains a number of pending actions in relation to courts. These include building the presence of Aboriginal culture in courts with naming, language, increasing the role of Elders, and displaying flags and artefacts, with the aim of making the courts more culturally safe, responsive, inclusive and effective.<sup>1664</sup> A cultural awareness program is being implemented across Court Services Victoria and a portrait of Aboriginal Elder, Uncle Kevin Coombs, was recently unveiled in the Children's Court.<sup>1665</sup> In addition, Court Services Victoria is considering continuation of the Aboriginal Education and Research Officer position within the Judicial College of Victoria to improve the cultural competency of courts and tribunals.<sup>1666</sup>

<sup>1663</sup> Victorian Aboriginal Justice Agreement, *Goal 3.1: The needs of Aboriginal people are met through a more culturally informed and safe system*, Victorian Aboriginal Justice Agreement website, 2021, accessed 18 February 2021.

<sup>1664</sup> Victorian Aboriginal Justice Agreement, *Aboriginal culture in courts*, Victorian Aboriginal Justice Agreement website, 2021, accessed 25 February 2021.

<sup>1665</sup> Victorian Aboriginal Justice Agreement, *Aboriginal culture in courts*.

<sup>1666</sup> Victorian Aboriginal Justice Agreement, *The AJA in action*, Victorian Aboriginal Justice Agreement website, 2021,

Consideration is also being given to providing court programs in community settings, with potential similarities to New Zealand's Rangatahi Court.<sup>1667</sup>

Further action is required in the Children's Court. The Melbourne Children's Court is the only fully specialised Children's Court in Victoria. In most Children's Court locations, judicial officers do not have consistent specialisation in working with children and young people. Aboriginal children and young people have specific cultural and communication needs, which require further specialisation. Children's Courts must be fully equipped to work with Aboriginal children and young people, particularly in areas where access to the Children's Koori Court is limited.

The Commission therefore recommends expansion of the fully specialised Children's Court to rural and regional headquarter courts, as proposed by the Sentencing Advisory Council, and specialist training for all magistrates undertaking Children's Court work. This should include training on child and adolescent development, the impacts of trauma and adverse life experiences on children and young people, cognitive and communication issues and adaptations to court processes to enable effective communication and engagement with children and young people, and cultural safety for Aboriginal children and young people.

### Recommendation 62

That the Victorian Government resource the expansion of the fully specialised Children's Court, commencing with rural and regional headquarter courts, to support the court's work with Aboriginal children and young people. Specialisation for all magistrates undertaking Children's Court work should include training in child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural safety.

### Recommendation 63

That the Children's Koori Court be expanded to sit at more locations and with greater frequency at existing locations.

accessed 10 February 2021.

<sup>1667</sup> Victorian Aboriginal Justice Agreement, *Court programs in community settings*, Victorian Aboriginal Justice Agreement website, 2021, accessed 25 February 2021.



## Recommendation 64

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That the Victorian Government review the role of Elders in the Children's Koori Court process with a view to strengthening Elder participation and self-determination. This should include consideration of the role of Elders in New Zealand's Rangatahi Courts and Queensland's Youth Murri Courts, and the ability to conduct hearings in more culturally appropriate spaces.

## 12.4 Legal assistance

### Finding 33

**Aboriginal children and young people have mixed experiences with legal assistance services, and many do not have a good understanding of the criminal legal process.**

Children and young people who attend court are entitled to legal representation. Aboriginal children and young people can access free legal assistance services for criminal matters through the Victorian Aboriginal Legal Service (VALS), Victoria Legal Aid (VLA), and private solicitors with grants of VLA funding. Many young people access duty lawyer services at courts. Continuity of service and access to culturally and age-appropriate legal assistance services are ongoing issues.

International human rights standards provide safeguards for children and young people in legal proceedings. Article 12(2) of the Convention on the Rights of the Child states that a child must have the opportunity to be heard in court proceedings, either directly or through a representative. Rule 15.1 of the Beijing Rules provides that a young person has the right to be represented by a lawyer, and to apply for legal aid where this is available. Further, rule 24.1 of the Beijing Rules provides that at all stages of proceedings young people should be given assistance to facilitate rehabilitation, which may include accommodation, education, training or employment. This rule is particularly relevant to the design of wraparound legal assistance services that can address a child or young person's multiple and complex needs.

### Young people's experience of legal assistance services

Forty-one children and young people spoke to us about accessing a legal service. Three children and young people said that they had no access to legal services at a critical time. Of the children and young people who talked about accessing legal services, 39% (n = 16) talked about a positive experience. Children and young people who had a positive experience of legal services said that their lawyer was on their side, explained things well and was available.

*My lawyer was great – explained things to me and mum and didn't talk down to me. – Nataya, 17*

*I had a lawyer from VALS. She's good – she stood up and said things to fight for me. – Derryl, 16*

*I couldn't go to VALS because the boys took all them, so I had to go to the other one [VLA], but she was real good. – Rhea, 16*

Twelve children and young people described a negative experience. This included lawyers not listening to young people's needs or answering phone calls, and situations where young people perceived their lawyer to be on the judicial officer's side. Several young people pointed out that the process of dealing with lawyers was in itself stressful.

*My lawyer saw me as a repeat offender. He didn't explain to the judge what I went through in the community. I felt like he was on the judge's side. I have wanted to change for a long time, but it's always too much of a process because they don't know my background and I have to explain it all again. – Watanom, 19*

*My lawyer, from what I know, is good, but I don't really call them a lot because whenever I talk to them, I get stressed out. So I just want to know the important things like my court dates and what's going to happen at court. – Pakap, 16*

Over one-third of children and young people (n = 32) talked about having a poor understanding of the legal process. Children and young people repeatedly mentioned that they did not understand the language used by police, courts and lawyers. Some children and young people said they didn't understand why they would need a lawyer or a support service, and others believed they had been misled by the police, a lawyer or a judicial officer. Young people commonly mentioned that they were too bored or uninterested to understand what was going on.

*I feel like [the police] did stuff to try and mess me up, trick me. – Felix, 21*

*Had a lawyer. He explained things but I wasn't interested, it was boring court stuff. I just wanted to leave. – Zaine, 19*

*I went to court once, but I got my charges dropped. I don't know what happened. I was waiting outside, and my lawyer just came out and said all my charges had been dropped. – Will, 11*

*Nah, I wasn't listening – in one ear and out the other. I was a stubborn kid then. – Jamil, 16*

Nineteen children and young people believed that they had a good or sufficient understanding of the legal

process, either because of their lawyer, previous experience or the experience of family members.

*My solicitor was awesome... he explained everything to me. He spoke to me directly. He gave me my options and helped. – Grace, 20*

*It was easy. I've been to court twice. – Sequoia, 17*

*I understood some of it because of aunties and cousins. – Clarise, 17*

The vast majority of children and young people access legal assistance services through VLA and private solicitors. Table 12.5 below shows the distribution of Aboriginal youth clients across key legal assistance services between 1 July 2018 and 30 June 2019.

**Table 12.5** Number of Aboriginal youth clients of key legal assistance services, 2018–19

Legal service	Aboriginal youth clients
Victoria Legal Aid	288 <sup>a</sup>
Victorian Aboriginal Legal Service	87
Private solicitors (legal aid grant)	211

a This comprised services provided by VLA's central Youth Crime Team to 91 clients and by regional offices to 197 clients.

Source: Compiled from VLA data provided to the Commission on 16 April 2020 and VALS data provided to the Commission on 7 May 2020.

VLA has a dedicated youth criminal law service but it does not specifically cater for Aboriginal children and young people. Its regional offices provide general criminal law services for young people and adults. VALS is an Aboriginal-controlled legal service, which has a dedicated criminal law practice but no dedicated youth service, meaning that services for young people are provided through its general criminal law service.

### **Balit Ngulu Aboriginal children's legal service**

From 2017 to 2018, VALS ran a dedicated Aboriginal children's legal service, *Balit Ngulu*, to address the fact that Aboriginal children and young people 'move in and out of the child protection and youth justice systems with patchy or little legal representation'.<sup>1668</sup> *Balit Ngulu* was established as a distinct service within VALS to avoid the problem of conflict of interest, because in many cases VALS was already representing a parent, carer or family member, and could not represent the child or young person.

The *Balit Ngulu* service model combined specialist youth legal services with a youth support officer to provide culturally safe, trauma-informed, holistic support and case management. As well as providing legal help with criminal, family and civil law matters, the service helped young people to strengthen connections to culture and family, and access education, employment and leadership opportunities in accordance with their individual needs and aspirations. While in operation, *Balit Ngulu* provided assistance to 71 young people for over 100 legal matters (approximately half of which were criminal law matters) in metropolitan Melbourne, Bendigo and Shepparton. The service closed in 2018 due to an inability to secure external funding.<sup>1669</sup>

An evaluation conducted by Nous Group found that feedback on service quality and outcomes was overwhelmingly positive.<sup>1670</sup> Some of the strengths identified were that *Balit Ngulu* was community-led, well-connected to community, centred on the young person's needs, strengths-based and holistic, and that it prioritised youth participation.<sup>1671</sup> The evaluation found that there continues to be a strong demand for legal services for Aboriginal children and young people in Victoria, and that services need to be underpinned by Aboriginal leadership and financial sustainability. The Commission's consultation with the Children's Court indicated strong support for *Balit Ngulu*.<sup>1672</sup>

<sup>1668</sup> Victorian Aboriginal Legal Service (VALS), *Lack of funding forces Aboriginal children's legal service to close* [media release], VALS, 20 September 2018, accessed 22 February 2021.

<sup>1669</sup> Nous Group, *Evaluation of Balit Ngulu*, p 2.

<sup>1670</sup> Nous Group, *Evaluation of Balit Ngulu*, p 3.

<sup>1671</sup> Nous Group, *Evaluation of Balit Ngulu*, p 4.

<sup>1672</sup> Interview with former President of the Children's Court Judge Chambers and Magistrate Bowles on 19 May 2020.

VALS submitted that the Commonwealth and Victorian Governments should commit to funding the reestablishment of a specialist legal service for Aboriginal children and young people.<sup>1673</sup> In the Commission's consultation with VALS, it indicated that, as a specialist Aboriginal and Torres Strait Islander Legal Service, it is able to offer a greater degree of cultural competency than mainstream legal assistance services. The Commission notes that in addressing the needs of children and young people who are involved in both the child protection and youth justice systems, the *Balit Ngulu* service model is consistent with the proposals of the Sentencing Advisory Council in relation to 'crossover children' and with the Commission's recommendations (see discussion above and in Chapter 8 'A caring & stable home').

As noted in Chapter 4.1 'Advancing self-determination', in March 2021, the Victorian Government announced funding of \$3.4 million to support VALS to re-establish *Balit Ngulu*.<sup>1674</sup>

### **Improving access to legal assistance services**

Most Aboriginal children and young people access mainstream legal services, rather than specialist services that have been designed to be both culturally safe and child-centred. Aboriginal children and young people reported to the Commission that they have mixed experiences with legal assistance services, and a large proportion did not have a good understanding of the legal process they were involved in.

There is a high degree of demand for statewide specialist legal services for Aboriginal children and young people that can provide holistic support. Aboriginal-led services respond directly to local communities, and have the capacity to link Aboriginal children and young people with critical supports and cultural resources that address their individual needs and aspirations. The provision of wraparound services that strengthen connections to culture, education, employment and leadership is consistent with human rights standards. Aboriginal-led legal assistance services also strengthen self-determination. The Victorian Government's commitment to resource the re-establishment of *Balit Ngulu* is to be commended.

<sup>1673</sup> VALS, Submission to *Our youth, our way* inquiry, p 6.

<sup>1674</sup> Minister for Crime Prevention, Corrections, Youth Justice and Victim Support, *Supporting Aboriginal children and young people*.

The availability of a range of legal assistance services is important for a number of reasons. Wherever possible, Aboriginal children and young people are entitled to a degree of choice as to whether they access an Aboriginal-led or mainstream legal service. In regional locations, choice and availability are more limited. Aboriginal children and young people are not always able to access their preferred service due to conflicts of interest, for example where the service is already assisting a co-accused person, or representing a family member in a related child protection matter. For these reasons, it is important that Aboriginal children and young people can access both specialist services and mainstream services which are culturally and age-appropriate, and have the capacity to meet their individual needs.

In addition, legal practitioners providing legal services to children and young people must have the necessary training and skills. The Northern Territory Royal Commission recommended that all legal practitioners appearing in a youth court be accredited as specialist youth justice lawyers after training in youth justice, including child and adolescent development, trauma, adolescent mental health, cognitive and communication deficits, and Aboriginal cultural competence.<sup>1675</sup>

## Recommendation 65

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That the Victorian Government ensure that *Balit Ngulu* is resourced to provide specialist legal services statewide for Aboriginal children and young people on an ongoing basis.

## Recommendation 66

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That the Victorian Government develop and implement measures to increase the capacity of mainstream legal assistance providers to ensure culturally and age-appropriate services are delivered to Aboriginal children and young people.

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<sup>1675</sup> Recommendation 25.31: Northern Territory Royal Commission Final Report, Volume 2B, p 313.

# 12.5 Community orders supervised by Youth Justice

## Finding 34

**Supervised community orders provide alternatives to custody, but their conditions can set Aboriginal children and young people up to fail and further entrench them in the youth justice system.**

The Children's Court has a range of options for sentencing children and young people found guilty of an offence under the CYFA. This includes non-supervised orders (dismissal, undertakings and good behaviour bonds) without a conviction, and fines with or without a conviction. The court can also impose a range of supervised community orders, namely probation or a youth supervision order with or without a conviction, and a youth attendance order<sup>1676</sup> or a youth control order<sup>1677</sup> with a conviction. These sentencing options are intended to keep children and young people out of custody. The court is required to consider the least restrictive response that is appropriate in the circumstances.<sup>1678</sup>

The 2018 *Pathways to justice* report affirmed that community-based orders are an important mechanism for reducing the over-representation of Aboriginal people in custody by enabling offenders to serve their

<sup>1676</sup> The Children's Court can only impose a youth attendance order in respect of a child who is of or above the age of 15 years on the day of sentencing, and where the court convicts the child of one or more offences for which the court considers that the child would otherwise be sentenced to detention in a youth justice centre: CYFA, s 397.

<sup>1677</sup> Youth control orders were introduced into the CYFA in 2017 to provide a 'judicially supervised, intensive supervision regime' for children and young people (s 409A). Like the youth attendance order, a youth control order can only be imposed if the court considers that the child would otherwise be sentenced to detention in a youth justice centre (s 409B). However, unlike the youth attendance order, there is no age limit applicable to the youth control order.

<sup>1678</sup> CYFA, s 361.

sentence in the community.<sup>1679</sup> There is limited research on community-based orders and children and young people; however, NSW research in 2017 found an 11–31% reduction in the likelihood of reoffending for an adult who received an intensive correction order, compared to an offender who received a custodial sentence of up to 24 months.<sup>1680</sup>

Article 40(4) of the Convention on the Rights of the Child provides that states should have a variety of mechanisms to ensure that children involved in the criminal justice system are dealt with in a manner appropriate to their wellbeing and circumstances, and proportionate to the offence. This is echoed in rule 5 of the Beijing Rules. Rule 17.1 of the Beijing Rules further provides that restrictions on a young person's liberty should be kept to a minimum. These rights are particularly relevant to the conditions imposed with community orders supervised by Youth Justice, and the level of support that children and young people receive when they are under supervision.

This chapter focuses on community-based sentencing orders made under the CYFA that are supervised by Youth Justice, but is also of relevance to parole orders, given that they are case managed by Youth Justice following similar principles and procedures.

<sup>1679</sup> ALRC, *Pathways to justice*, p 233.

<sup>1680</sup> J Wang and S Poynton, *Intensive correction orders versus short prison sentence: a comparison of re-offending*, Crime and Justice Bulletin number 207, NSW Bureau of Crime Statistics and Research, 2017, p 1.

## Young people's experiences of supervised community orders

*Outreach instead of us going to them – they should come to us and experience our environment and have a yarn to us and come to our family's house. – Watanom, 19*

Twenty-six children and young people talked to the Commission about being on a supervised community order (including parole orders). As with bail, children and young people commonly talked about difficulties in complying with the conditions of supervised community orders, such as numerous reporting requirements, appointments and obligations. Obstacles that children and young people encountered in complying with orders included lack of transport, substance use issues and family obligations.

*On the youth supervision order you have to go to appointments. There was nothing stopping me except for the drugs. Drugs throw you out of whack. – Rory, 20*

*Last time I was out, I was on an order where I had to communicate with a worker and that. Didn't last long. Just stopped going cos I was doing drugs too hard. – Dilynne, 17*

*Getting to appointments is a big one. Like, you breach your parole when you can't get to appointments. – Carson, 19*

Young people identified the need for supports to address the underlying issues that led to offending behaviour and the inability to comply with the conditions of orders. Two young people said that they would prefer to complete the whole sentence in custody rather than completing part of a sentence on a supervised order, pointing to the difficulties in compliance. Several children and young people made it clear that the obligations that were intended to support them were not helpful.

*I don't listen to any of the orders. I never listened. Too much stuff on it... Parole is too much, 6 things to do per day is too much... Millions of activities, things I don't want. They think they will prevent me from doing crime, but it won't. – Jacinta, 17*

Aboriginal children and young people told us they wanted support and encouragement to comply with orders, and for conditions to be reasonable.

*Someone to motivate you would help, like a positive encouragement. It's probably better if they're Aboriginal, you relate to them more. I can talk to anyone but it's probably better. – Carson, 19*

*You don't have to be watching me every time. Just trust us. All we want is to go out with our family and go and have a feed. Like if you've just done 9 months... I don't want the workers sitting there. – Dustin, 15*

## Youth Justice supervision of community orders

The CYFA specifies different conditions which must or may be attached to each supervised order. For example, youth supervision orders require the child or young person to report to Youth Justice, abstain from offending, participate in community programs as directed, and obey the instructions of the Youth Justice worker.<sup>1681</sup> Youth control orders may be imposed with a range of restrictive conditions including requiring the child or young person to reside at a specified address, comply with a curfew, not contact specified persons, not visit specified places and not use specified social media.<sup>1682</sup> Probation orders involve a lower level of supervision, but similarly require young people to report to Youth Justice and obey instructions, not reoffend and comply with special conditions, which may include attendance at school, treatment or counselling.

The maximum period for a supervised order is 12 months, although probation and youth supervision orders can be imposed for up to 18 months if the

<sup>1681</sup> CYFA, s 389.

<sup>1682</sup> CYFA, s 409F(2).

## 12.5 Community orders supervised by Youth Justice

offence has a maximum penalty of imprisonment of more than 10 years, or the child or young person is found guilty of more than one offence.

A young person who is placed under community-based supervision is allocated a Youth Justice case manager who has primary responsibility for the management and coordination of the order. Under the Youth Justice *Allocation and intake* practice guideline, Aboriginal young people must be allocated to Aboriginal case managers wherever possible, or case managers who have established working relationships with local ACCOs and have strong cultural competency skills.<sup>1683</sup> Aboriginal young people must be offered the opportunity to link with a culturally appropriate community organisation or representative and offered the opportunity to develop a cultural support plan (see Chapter 7.4 'Connection with culture' for a discussion of cultural support plans).

The Youth Justice *Managing non-compliance* practice guideline contains guidance for 'effective rule and limit setting'.<sup>1684</sup> This includes ensuring that rules are clear, specific, fair, easy to understand and not too difficult to achieve.<sup>1685</sup> The guidelines also caution against case managers setting too many rules and recognise that the more rules there are, the more opportunities there are for non-compliance.

In addition, this practice guideline distinguishes between 'less serious' non-compliance and 'serious compliance problems' and sets out detailed instructions for responding to these different levels of non-compliance.<sup>1686</sup> Responses range from engaging with the young person's family or conducting assertive outreach to the young person's accommodation, to issuing a lawful direction or giving a formal warning. The commencement of formal breach proceedings is an option of last resort. For Aboriginal young people, the Youth Justice case manager must consult with Elders, Aboriginal support staff or community organisations in responding to a young person's non-compliance.<sup>1687</sup>

These guidelines encourage supportive responses. However, Youth Justice practice in managing young people's compliance with community-based orders is

constrained by the fact that such orders are typically subject to a range of conditions imposed by the Children's Court, whether as required by the CYFA, or through the exercise of judicial discretion.

If breach proceedings are brought, and the Children's Court finds that an order has been breached, the CYFA sets out different consequences depending on the order. For example, if a young person is found to have breached probation, a youth supervision order or a youth attendance order, the Children's Court can confirm the order and direct the young person to comply with it, vary the order or revoke the order and impose another sentence. Breach of a youth control order by further offending requires the court to impose a sentence of detention unless there are exceptional circumstances for not doing so.<sup>1688</sup>

### Trends in relation to Aboriginal children and young people on supervised community orders

As discussed in Chapter 3 'Overview of the Victorian youth justice system', Aboriginal children and young people are 10 times more likely to be under community-based supervision than non-Aboriginal children and young people.

Of the Aboriginal children and young people included in the Taskforce case file review, 49% were on their first supervised community order and 49% had previously been on an order. Only 68% of these young people had been able to meet the conditions of their current order.

The most common supervised community order made in the period from 2010 to 2019 was probation without conviction, followed by youth supervision orders without conviction (see Table 12.6). Aboriginal children and young people were equally represented across most order types, other than interstate community orders where they accounted for 28% of orders.<sup>1689</sup>

<sup>1683</sup> DJCS, *Allocation and intake*, p 5.

<sup>1684</sup> DJCS, *Managing non-compliance*, p 24.

<sup>1685</sup> DJCS, *Managing non-compliance*, pp 24–25.

<sup>1686</sup> DJCS, *Managing non-compliance*, p 11.

<sup>1687</sup> DJCS, *Managing non-compliance*, p 16.

<sup>1688</sup> CYFA, s 409R(1).

<sup>1689</sup> Orders transferred to Victoria from another jurisdiction for supervision by Youth Justice under the CYFA.



**Table 12.6** Number of supervised community sentencing orders by Aboriginal status and order type, 2010–2019

Court outcome	Aboriginal	Non-Aboriginal	Not known	Total
Probation without conviction	1,194	6,271	6	7,471
Youth supervision order without conviction	584	3,410	0	3,994
Youth attendance order	78	756	0	834
Youth supervision order with conviction	63	330	0	393
Probation with conviction	18	138	0	156
Interstate community order	34	88	1	123
Youth control order	1	23	0	24
Youth supervision order – fine conversion	2	12	0	14
Probation – fine conversion	2	8	0	10
<b>Total</b>	<b>1,976</b>	<b>11,036</b>	<b>7</b>	<b>13,019</b>

Source: DJCS data provided to the Commission on 19 February 2020.

The number of supervised community orders made in relation to Aboriginal children and young people fell by 56% from 2010 to 2019 (see Table 12.7).<sup>1690</sup> This is similar to the drop of 55% in the number of supervised community orders made in relation to non-Aboriginal children and young people. As with supervised community orders, the number of custodial orders made in relation to Aboriginal children and young people almost halved in the same period, with a 49% reduction, compared to a slightly higher rate of reduction for non-Aboriginal young people of 52%. However, these reductions have not driven down the number of Aboriginal children and young people under Youth Justice supervision in recent years.

**Table 12.7** Supervised community sentencing orders for children and young people by Aboriginal status, 2010–2019

Year	Aboriginal		Non-Aboriginal		Not known	
	No.	%	No.	%	No.	%
2010	243	13%	1,621	87%	0	0%
2011	225	13%	1,496	87%	0	0%
2012	239	17%	1,194	83%	4	0%
2013	216	16%	1,107	84%	0	0%
2014	185	14%	1,137	86%	2	0%
2015	240	19%	1,028	81%	0	0%
2016	201	17%	953	83%	0	0%
2017	154	14%	943	86%	0	0%
2018	166	17%	826	83%	0	0%
2019	107	13%	731	87%	1	0%
<b>Average</b>	<b>198</b>	<b>15%</b>	<b>1,104</b>	<b>85%</b>	<b>2</b>	<b>0%</b>

Source: DJCS data provided to the Commission on 19 February 2020.

Aboriginal children and young people are spending longer periods of time on supervised community orders compared to a decade ago. Over the period 2010 to 2019, the average length of a supervised community order for Aboriginal children and young people increased by 23%, from 236 days in 2010 to 290 days

<sup>1690</sup> The data in this section includes interstate community orders, probation orders (fine conversion, with and without conviction), youth attendance orders, youth control orders and youth supervision orders (fine conversion, with and without conviction).

## 12.5 Community orders supervised by Youth Justice

in 2019.<sup>1691</sup> The average community sentence length for non-Aboriginal children and young people increased by 3% during the same period, with an average sentence length of 270 days in 2019.<sup>1692</sup>

The proportion of supervised community orders made in relation to Aboriginal children and young people which were revoked in the period 2010 to 2019 ranged between 5 and 11% each year, with an average of 7% of orders revoked in that time period (excluding interstate supervised community orders).<sup>1693</sup> This was slightly lower than the average proportion of supervised community orders revoked in relation to non-Aboriginal children and young people of 9% in the period 2010 to 2019.<sup>1694</sup>

Crimes against the person were the prevalent most serious offence for which courts made supervised community orders in relation to Aboriginal and non-Aboriginal children and young people.<sup>1695</sup> However, Aboriginal children and young people were more likely than non-Aboriginal children and young people to receive a supervised community order for property and deception offences, whereas non-Aboriginal young people had higher rates of community orders for crimes against the person. For example, in the 15 to 17 years age group, which had the largest number of supervised community orders, 50% of non-Aboriginal children and young people received a supervised community order for a crime against the person, compared to 44% of Aboriginal children and young people (see Table 12.8). In contrast, 42% of Aboriginal children and young people in this age group received a community order for a property and deception offence, compared to 36% of non-Aboriginal children and young people.<sup>1696</sup>

**Table 12.8** Percentage of supervised community sentencing orders for young people aged 15–17 by Aboriginal status and most serious offence, 2010–2019

Most serious offence	Aboriginal (%)	Non-Aboriginal (%)
Crimes against the person	44	50
Property and deception offences	42	36
Other offences	11	10
Unknown offence	2	2
Drug offences	1	2
<b>Total</b>	<b>100</b>	<b>100</b>

Source: DJCS data provided to the Commission on 19 February 2020.

### The Koori Youth Justice Program

The Koori Youth Justice Program provides case management services for Aboriginal children and young people who are on a community order. The program offers a range of support and case management services, including the Community-Based Koori Youth Justice Program (CBKYJP), the Aboriginal Early School Leavers program and KISP.

The Youth Justice Review identified significant resourcing needs in relation to the supervision of Aboriginal children and young people on community orders. It recommended increased funding levels for ACCOs to expand the CBKYJP for early intervention, and to expand KISP to support the supervision of Aboriginal young people on community orders. It also recommended the establishment of a Youth Justice Community Support Service, similar to that run by Jesuit Social Services and other providers, to be delivered by ACCOs for intensive case management of Aboriginal young people assessed as high risk and support services for those on supervised community orders.<sup>1697</sup>

The CBKYJP is discussed in detail in Chapter 6.2 'Relationships with workers'. Participants in the Taskforce regional forums and other stakeholders

<sup>1691</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1692</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1693</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1694</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1695</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1696</sup> DJCS data provided to the Commission on 19 February 2020.

<sup>1697</sup> The Victorian Government has contracted 2 Aboriginal organisations (MDAS and Dardi Munwurro) to deliver the Aboriginal Youth Support Service, as recommended by the Youth Justice Review (see Chapter 10.1 'Engagement in education').

indicated that a key strength of this program is the lived experience of Aboriginal workers and their ability to identify with Aboriginal children and young people, which help them to build relationships of trust and support young people to address the factors that contribute to their offending behaviour. Aboriginal children and young people told the Commission that they valued the relationships they had formed with Koori Youth Justice workers.

As outlined in Chapter 6.2 'Relationships with workers', in March 2021, the Victorian Government announced funding of \$4.5 million to expand the CBKYJP and provide additional Koori Youth Justice workers to support Aboriginal children and young people in the youth justice system. In Chapter 6.2, we recommend that the government, in implementing this expansion, ensure that the CBKYJP has sufficient capacity to provide holistic support for Aboriginal children and young people in the youth justice system, including through increased brokerage funding (Recommendation 17).

KISP is discussed in Chapter 12.2 'Bail and remand'. As outlined in that chapter, KISP provides intensive outreach support to assist Aboriginal children and young people on supervised community orders and bail. This program employs 5 staff based across 5 of DJCS's area Youth Justice teams (Dandenong, Geelong, Shepparton, Morwell and Preston). In Chapter 12.2 we recommend the expansion of KISP, to enable statewide access for Aboriginal children and young people (Recommendation 60).

### **Improving outcomes for Aboriginal children and young people on supervised community orders**

Although the number of supervised community orders made in relation to Aboriginal children and young people more than halved from 2010 to 2019, Aboriginal children and young people remain 10 times more likely to be under Youth Justice community supervision than non-Aboriginal children and young people. Aboriginal children and young people are also spending longer periods of time on supervised community orders compared to a decade ago.

Aboriginal children and young people told us that they want support and encouragement to comply with orders, and that this was often missing from their experiences with Youth Justice case managers. Many also told us that they were able to form trusting, stable

and lasting relationships with Aboriginal workers, which made a positive difference in their lives. To this end, in Chapter 6.2 'Relationships with workers', we recommend that DJCS establish a framework to facilitate the involvement of an Aboriginal child or young person's trusted adult (often a Koori Youth Justice worker or a cultural mentor) in Youth Justice planning and decision-making (Recommendation 18).

In addition, in Chapter 6 we recommend that Youth Justice:

- ensure that its staff are adequately trained and resourced to comply with practice guidelines focused on forming trusting, stable and therapeutic relationships with Aboriginal children and young people (Recommendation 15)
- create mechanisms to ensure that Aboriginal children and young people have meaningful input into, and influence on, the decisions that affect them in the youth justice system (Recommendation 19).

These recommendations are intended to assist Youth Justice case managers to provide the support and encouragement that Aboriginal children and young people told us they need to comply with community-based orders.

Aboriginal children and young people reported to the Commission that they have difficulty complying with the conditions of supervised community orders. As with bail conditions, the conditions of supervised community orders must be proportionate and should not interfere with a child or young person's ability to lead a normal life. They should support a child or young person to address the underlying causes of their offending behaviour without creating barriers that are likely to lead them back into the youth justice system.

As with bail, decision-makers need specialist expertise in order to assess and respond to the needs of Aboriginal children and young people in setting the conditions of supervised community orders so that children and young people are supported to address offending behaviour and meet their personal goals and aspirations in the least restrictive way possible.

In Chapter 12.3 'Court', we recommend that the Victorian Government resource the expansion of the fully specialised Children's Court throughout the state (Recommendation 62). Magistrates who are trained and specialised in the sentencing of Aboriginal children and young people are best equipped to ensure that

## 12.5 Community orders supervised by Youth Justice

conditions attached to community orders are reasonable, and that the child or young person is realistically able to comply with them. However, the sentencing framework must also support this, and must not mandate the imposition of onerous, unreasonable, unfair or unrealistic conditions. Rather, it should be structured so as to minimise the use of restrictive conditions.

### Recommendation 67

That the *Children, Youth and Families Act 2005* be amended to include a presumption against the use of restrictive conditions in supervised community orders, except where necessary and achievable in the individual circumstances of the child or young person.

# 13 Safe custody

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*The shield is our protection from all things that are negative, while the gathering circle is us young people sitting with our community and Elders, staying connected. The path through the shield is a reminder of the journey we take. The kangaroo prints are a reminder to always move forward on our journey, while the 2 spears are for protection and guidance of our culture. – Young people of Bendigo, Dja Dja Wurrung Country*

## Our way

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*Granted, there are too many of our kids getting in trouble – we have to take that on board. We have to deal with it in a therapeutic way, a way that supports them on their journey, while helping them learn from their mistakes. We're not going to say everything is fine, because we have to deal with things behaviour-wise, however whatever we do has to be based in culture and done in a therapeutic way. We have to be consistent and it's not going to happen overnight. – Elder and RAJAC Chair*

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Aboriginal communities tell us that children and young people need to be with their families and communities and on Country. They do not belong behind razor wire, alone in a cell. They need to walk the land, breathe fresh air, feel the earth beneath their feet.

When young people are locked up, it causes immeasurable harm, not only to themselves but to their families and communities. Too many children and young people have already been hurt and subjected to disadvantage and adversity. Incarcerating them just does more harm. It also increases the likelihood of further offending, builds or strengthens their relationships with anti-social peers and can normalise prison in their lives.

In the exercise of true self-determination, no Aboriginal child or young person would be incarcerated. However, we know that this won't happen overnight. We need to know that the children and young people who are in youth justice centres now are not being harmed or exposed to conditions or practices that pose a risk to their health, safety and wellbeing. They need to be safe. They need to stay connected with family, community, culture and Country, to have visitors come

in, and to come home on visits. They need fresh air, access to outdoor spaces, and culturally strengthening programs and services delivered by Aboriginal workers. And we need them to be supported when they come out, when they come home, to make sure they never go back in again.

## Pakap's story

Pakap<sup>1698</sup> is a young person who loves music and playing sport. He told us about how his difficult childhood, including experiences of family violence, has affected his life.

*I didn't feel safe at home. Like, it was fun playing with my brothers and sisters but you never knew what would happen next. My older brother would come in and round us up and say be quiet, and it was fucked hearing mum scream and stuff and get pushed around. I couldn't get help because no one understood.*

*I started drinking when I was 13 or 14 because I had a hard life with just too much on my mind. I get real bad anxiety and paranoia because of my childhood. I'd get sweaty and shaky.*

*The first time I was arrested I was with mates and I was drunk. I broke into a [property] and there was a theft of motor vehicle and arson. Once you're drunk, one thing leads to another.*

Pakap's alcohol misuse continued throughout his teenage years and after several charges he was sentenced to youth justice custody.

*It is pretty shit. It's hard when we're locked down because of staff rotations. They need more staff because we go crazy in our rooms. You get anxious and paranoid stuck in a room when you can't do nothing. Some clients self-isolate and staff don't do much about it. They should move them or do something about it, not just leave them sitting in their rooms. I can never self-isolate. It would fuck with my head so much.*

*They need heaps more stuff for us boys to do. Sometimes they take away our TVs as punishment. Most of the days and weekends we're just sitting around doing nothing, playing PlayStation, playing cards, and that's when the childish behaviour starts, when the fights break out, because there's nothing to do and then staff call codes and stuff and act surprised that we're mucking up.*

*We need more access to stuff instead of being locked behind fences. We can't go out onto the oval. We're never allowed because it affects movements and stuff because the oval is right in the middle. We need movement and space to do stuff. Even just walking laps.*

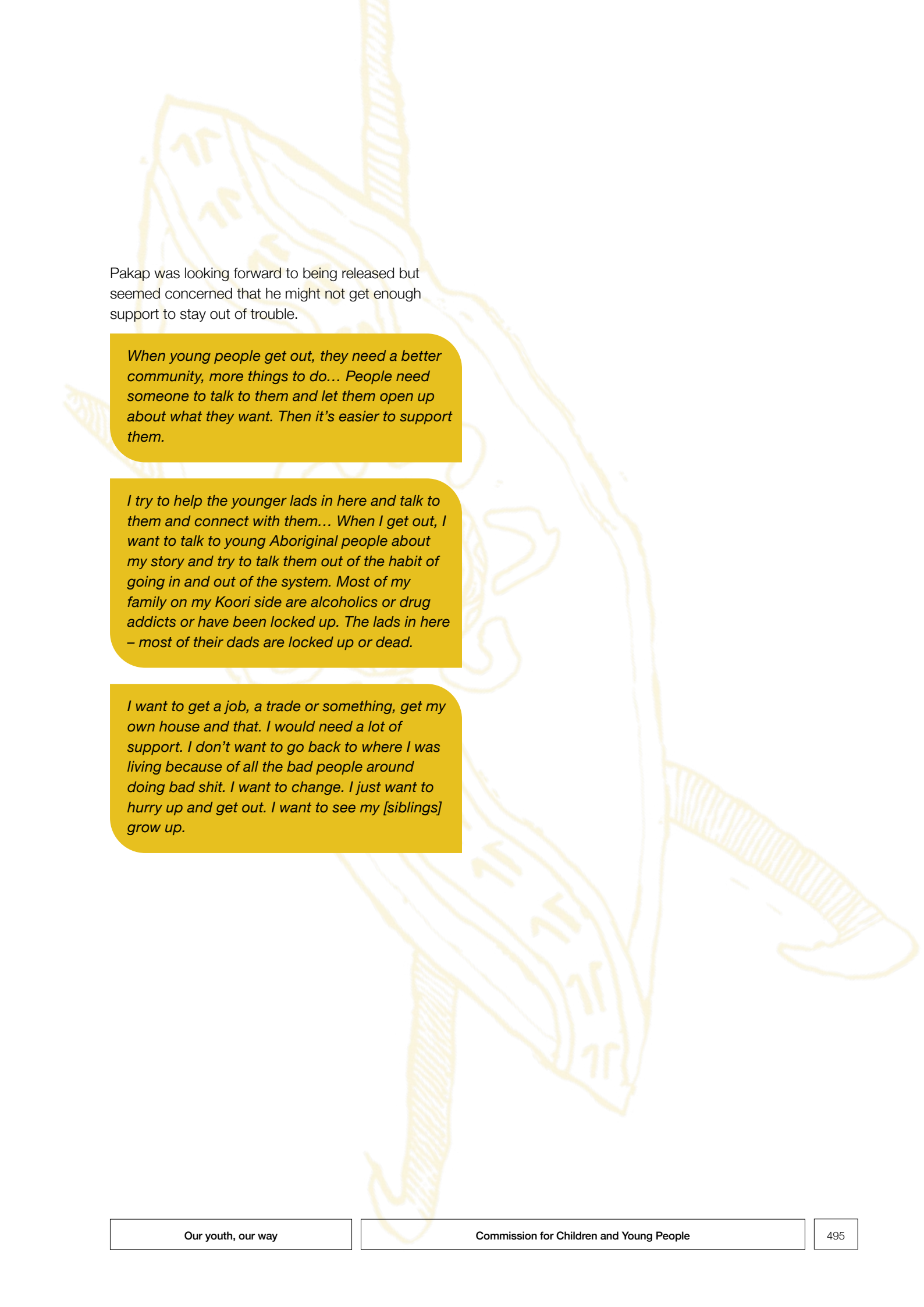
*You should see some of the rooms, they're trash. Some of the rooms are dirty because of clients, but they don't clean it properly before the new admission comes in. We put in a fix-it like a shower that isn't working, and they'll put a request in, and it takes a month or 2 to get a shower fixed.*

*My YJ worker [community-based Youth Justice case manager] is real organised. Whenever I need something, he tells me to call him and he'll get me what I need, like someone on my phone list or my visit list. Staff here are real slow with stuff like seeing a psych and getting meds, but my YJ worker can get it for me right away. Staff are slow. They don't do anything – we can ask them something and it takes weeks.*

*We need our mental health to be better. I think if they really cared about us they'd let us see a psych, not just go straight back in the fishbowl and start talking to the other staff members.*

<sup>1698</sup> Pakap is a pseudonym meaning 'grass tree' or 'fire sticks' in Kirrae Wurrung.





Pakap was looking forward to being released but seemed concerned that he might not get enough support to stay out of trouble.

*When young people get out, they need a better community, more things to do... People need someone to talk to them and let them open up about what they want. Then it's easier to support them.*

*I try to help the younger lads in here and talk to them and connect with them... When I get out, I want to talk to young Aboriginal people about my story and try to talk them out of the habit of going in and out of the system. Most of my family on my Koori side are alcoholics or drug addicts or have been locked up. The lads in here – most of their dads are locked up or dead.*

*I want to get a job, a trade or something, get my own house and that. I would need a lot of support. I don't want to go back to where I was living because of all the bad people around doing bad shit. I want to change. I just want to hurry up and get out. I want to see my [siblings] grow up.*

## Chapter at a glance

- The best performing youth justice systems show that it is essential to shift from large institutional facilities to small, home-like residences close to young people's communities. Instead, Victoria's large-scale institutional youth justice centres are harmful, often unsafe environments for Aboriginal children and young people.
- Despite significant efforts to improve youth justice centres in recent years, Aboriginal children and young people:
  - experience isolations and lockdowns too frequently
  - are over-represented in incidents involving attempted suicide and self-harm in Victoria's youth justice centres
  - experience violence and use of force at unacceptable rates.
- Aboriginal Liaison Officers play an important role in supporting the cultural needs of Aboriginal children and young people in youth justice centres, and there have been other efforts to improve cultural safety in youth justice custody. Despite this, Victorian youth justice centres are not culturally safe for Aboriginal children and young people.
- Aboriginal children and young people do not have consistent access to culturally appropriate services and supports when they leave custody. This support, including housing, employment and training, and mental health, drug and alcohol and cultural support services, is essential to assist children and young people to stay out of custody.

### Key data

- In 2018 and 2019 Aboriginal children and young people accounted for 16% of the youth justice centre population despite being approximately 1.5% of the Victorian population of children and young people.
- From 2018 to 2019 Aboriginal girls and young women accounted for 35%, and in some months made up half, of girls and young women in youth justice centres.
- In 2018 and 2019, 51% of Aboriginal children and young people at Parkville youth justice centre and 68% of Aboriginal children and young people at Malmsbury youth justice centre were placed in isolation or self-isolated at least once.
- The rate of lockdowns increased between 2017–18 and 2019–20. In 2019–20, there were 56,890 instances of lockdown (this figure represents the number of children and young people affected by each lockdown rather than the total number of lockdowns).
- Aboriginal children and young people were involved in 42% of all reported suicide attempts and 34% of all reported self-harm incidents in custody in 2018 and 2019.
- In 2018 and 2019, force and restraints were used against Aboriginal children and young people in Victorian youth justice centres in 1,689 incidents.

## Current context

Aboriginal children and young people are over-represented in Victoria's youth justice centres, accounting for 16% of the youth justice centre population<sup>1699</sup> despite being approximately 1.5% of the Victorian population of children and young people.<sup>1700</sup>

The over-representation is even more stark when focusing on Aboriginal girls and young women, who on average from 2018 to 2019 accounted for 35%, and in some months made up half, of girls and young women in youth justice centres.<sup>1701</sup>

More recently, Youth Justice has reported lower numbers of Aboriginal children and young people entering youth justice centres. As outlined in Chapter 3 'Overview of the Victorian youth justice system', DJCS implemented measures during 2020 to alleviate pressure on the custodial system in response to COVID-19, by supporting children and young people to receive timely access to bail and parole. The reduction in numbers may also be attributable to work undertaken by the legal profession and/or courts to avoid the placement of children and young people in custody during the COVID-19 pandemic.

Aboriginal children and young people involved in the youth justice system often have many complex needs and experience disadvantage in many areas of their lives (see Table 13.1). Many have experienced family violence, have low educational attainment, present with cognitive difficulties or disability and experience mental health issues. It is also well-documented that a substantial proportion of children and young people in the youth justice system have past or current involvement with the child protection system – see

Chapter 8.1 'Child Protection involvement' for more discussion of these issues.

The over-representation of Aboriginal children and young people in youth justice centres, and the disadvantage commonly experienced by these children, is inextricably linked to the past and ongoing ways that Aboriginal people have been dispossessed and disempowered through colonisation.<sup>1702</sup> The incarceration of Aboriginal children and young people continues this process of colonisation.

The Victorian Aboriginal Affairs Framework acknowledges that the consequences of colonisation are far-reaching,<sup>1703</sup> and aims to eliminate Aboriginal over-representation in the justice system.<sup>1704</sup> The Youth Justice Strategic Plan recognises that 'Aboriginal children... who commit offences should be dealt with in a way that upholds their cultural rights and sustains their ties to family, community, culture and country'.<sup>1705</sup>

In Victoria, the CYFA is the principal legislation governing custodial services. As noted elsewhere, the Youth Justice Review recommended the development of a dedicated Youth Justice Act to replace the CYFA.

Under the CYFA, children and young people aged 10 years and over can be held in youth justice custody if they are denied bail and remanded, or if they are sentenced to custody. The CYFA is clear that courts must apply the least restrictive sanction possible,<sup>1706</sup> which means that in most instances detention should only be used as a last resort.

<sup>1699</sup> Average monthly figure from 2018 to 2019, compiled from DJCS data regularly provided to the Commission. The custodial population figure of 16% is used in this chapter (rather than the 2019–20 Productivity Commission figure of 13% – see Chapter 3 'Overview of the Victorian youth justice system'), as the period from 2018 to 2019 aligns with the Taskforce and inquiry investigation period.

<sup>1700</sup> According to the ABS, there are 1,144,500 children and young people aged 10 to 23 years in Victoria and 17,402 Aboriginal children and young people in that age bracket in Victoria. See ABS, *National, state and territory population*; ABS, *Estimates and projections, Aboriginal and Torres Strait Islander Australians*.

<sup>1701</sup> Average monthly figure from 2018 to 2019, compiled from DJCS data regularly provided to the Commission.

<sup>1702</sup> Royal Commission into Aboriginal Deaths in Custody, National Reports, Volume 1, 1.4.2; Victorian Aboriginal Legal Service, *Submission to the Australian Law Reform Commission Inquiry into the incarceration rate of Aboriginal and Torres Strait Islander Peoples* [PDF], Australian Law Reform Commission, 2017, p 5.

<sup>1703</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 26.

<sup>1704</sup> State of Victoria, *Victorian Aboriginal Affairs Framework 2018–2023*, p 13.

<sup>1705</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 22.

<sup>1706</sup> CYFA, s 361.

**Table 13.1** Youth Justice survey key variables by Aboriginal status, 31 December 2019

Key variable	Aboriginal (%)	Non-Aboriginal (%)	All (%)
Had been a victim of abuse, trauma or neglect as a child	84	65	67
Had been subject to a previous and/or current child protection order	64	37	41
Was residing in, or released to, a residential or out-of-home care placement	17	10	11
Had experienced family violence	63	40	43
Had used family violence	33	24	25
Had a highest completed level of education of Year 9 or less	78	52	55
Was participating in education	37	36	36
Was participating in employment	3	17	16
Had previously been suspended/expelled from school	65	63	63
Presented with mental health issues	66	54	55
Had a history of self-harm or suicide ideation	40	30	32
Presented with cognitive difficulties or disability (which impacts on daily functioning)	49	28	31
Had a history of drug and/or alcohol misuse	94	85	86

Note: Data is inclusive of children and young people under community and custodial supervision.

Source: Department of Justice and Community Safety (DJCS), *Young people involved with Youth Justice in 2019: annual survey – summary*, DJCS, Victorian Government, unpublished, p 6.

Victoria also has a unique ‘dual track’ system that allows adult courts to sentence young people to serve a custodial sentence in a youth justice centre instead of an adult prison.<sup>1707</sup> This means that youth justice centres can accommodate some young people up to 24 years of age.

The CYFA imposes duties on the Secretary of the Department of Justice and Community Safety, including that they must ‘determine the form of care, custody or treatment which he or she considers to be in the best interests’ of the child or young person.<sup>1708</sup> The CYFA also states that children and young people in youth justice centres are entitled, among other things, to:

- have their developmental needs catered for

- receive visits from parents, relatives, legal practitioners, persons acting on behalf of legal practitioners and other persons<sup>1709</sup>
- have reasonable efforts made to meet their medical, religious and cultural needs including, in the case of Aboriginal children, their needs as members of the Aboriginal community.<sup>1710</sup>

Staff must also comply with the Victorian Charter of Human Rights and Responsibilities. Youth Justice guidelines and procedures provide staff with more detail about their obligations.

The Commission gains insights into the experience of youth justice custody through its regular monitoring of youth justice centres. This monitoring includes reviewing reports of serious incidents in youth justice

<sup>1707</sup> The ‘dual track’ system allows adult courts to sentence young people under the age of 21 years to serve a custodial sentence in a youth justice centre instead of an adult prison: Sentencing Act, s 32(1).

<sup>1708</sup> CYFA, s 482(1)(a).

<sup>1709</sup> This is subject to section 501 of the CYFA, which sets out the rules for people wishing to communicate with, or visit, children and young people on a youth justice order.

<sup>1710</sup> CYFA, s 482.

centres, daily lockdown reports and regular engagement with senior operational custodial staff.<sup>1711</sup>

The Commission also undertakes onsite visits to youth justice centres and operates the Independent Visitor Program, which enables volunteer visitors to observe conditions and to hear directly from children and young people about issues affecting them at both Parkville and Malmsbury youth justice centres. Volunteers conduct monthly visits, and the program aims to ensure that Aboriginal children and young people are visited by an Aboriginal Independent Visitor. Issues identified by children and young people in detention are raised with the relevant senior staff or Minister. Independent Visitors also conduct exit interviews with children and young people being released from youth justice custody.

This chapter draws on the Commission's regular monitoring work, in addition to the experiences of Aboriginal children and young people in youth justice custody conveyed through the Taskforce and the inquiry. It is divided into 3 parts:

- 13.1 'Cultural safety and support in custody' considers cultural safety and support for Aboriginal children and young people in youth justice custody, including the role of ALOs.
- 13.2 'Conditions in youth justice custody' examines some of the more harmful conditions and practices utilised in youth justice centres, including the use of isolation and lockdowns and the use of force. The high rates of self-harm in youth justice custody among Aboriginal children and young people are also examined in this part. This part concludes with a discussion of best-practice youth justice facilities and recommendations for creating new facilities for Aboriginal children and young people serving a custodial sentence.
- 13.3 'Leaving custody' examines Aboriginal children and young people's transition from custody to the community.

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**1711** Since March 2016, section 60A of the Commission for Children and Young People Act has required the Secretary to provide the Commission with information about adverse incidents occurring in youth justice centres. DJCS and the Commission's agreed protocols define 'adverse incidents' as Category 1 incidents, and specified Category 2 incident types, including allegations of assault by Victoria Police reported to Youth Justice and incidents that require a child to be taken off-site for medical treatment.

# 13.1 Cultural safety and support in custody

This chapter examines:

- the cultural safety of Victoria's youth justice centres
- the role of ALOs in supporting Aboriginal children and young people in custody.

## The cultural safety of Victoria's youth justice centres

### Finding 35

Despite some efforts to improve cultural safety, Victorian youth justice centres are large institutional facilities that are not culturally safe for Aboriginal children and young people.

*Trying to provide a child with cultural connection is more than the traditional dance, games and activities. It's the normality of having regular everyday contact with older people of your community and learning about your culture on a drip feed, rather than the structure a program delivers. For a culturally safe youth justice system there needs to be Elders in residence, and a mob of Aboriginal community members just there every day for this kind of interaction to be possible.*  
– RAJAC Chair

Depriving children and young people of their liberty deprives them of their childhood.<sup>1712</sup> The nature of youth justice custody in Victoria means that incarcerated Aboriginal children and young people are separated from the lands, waters, families and communities that would usually nurture their connection to culture. This creates a challenge for Youth Justice to ensure that Aboriginal children and young people in custody can enjoy the cultural rights protected in the Victorian Charter of Human Rights and Responsibilities, including the right to:

- enjoy their identity and culture
- maintain and use their language
- maintain their kinship ties
- maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.<sup>1713</sup>

As well as being a fundamental right, connection to culture is a strong protective factor for Aboriginal children and young people (see also Chapter 7.4 'Connection with culture'). Active and enduring connections to culture, land and spirituality are foundational to building resilience, can reduce the impact of stress<sup>1714</sup> and can have a positive impact on Aboriginal people's social and emotional health, wellbeing and safety.<sup>1715</sup> For some Aboriginal children

<sup>1712</sup> UN General Assembly, *Global study on children deprived of liberty*, paragraph 3.

<sup>1713</sup> Charter of Human Rights and Responsibilities, s 19(2).

<sup>1714</sup> Australian Indigenous Psychologists Association, *Living on the edge: social and emotional wellbeing and risk and protective factors for serious psychological distress among Aboriginal and Torres Strait Islander people*, Cooperative Research Centre for Aboriginal Health, 2009, p 22.

<sup>1715</sup> M Chandler and T Proulx, 'Changing selves in changing worlds: youth suicide on the fault-lines of colliding cultures', *Archives of Suicide Research*, 2006, 10(2):125–140, p 125; A Cox et al., 'Using participatory action research to prevent suicide in Aboriginal and Torres Strait Islander communities', *Australian Journal of Primary Health*, 2014, 20(4):345–349.

and young people, connection to culture and kinship are intrinsic elements of their sense of identity, and are a source of great strength and pride.<sup>1716</sup> Other Aboriginal children and young people may be in the early stages of discovering what their Aboriginality means to them, and they have the right to strengthen or develop their connection to culture.

The effects of institutionalisation on Aboriginal children are particularly destructive because Aboriginal culture and 'institutional' culture are virtually direct opposites – the former is permissive, egalitarian, strongly interactive and kin-based, while the latter is authoritarian, punitive, hierarchical, individualistic and impersonal.<sup>1717</sup> When Aboriginal children and young people are incarcerated, they lose not only their liberty, but also their connection to their personal identity and whatever protective factors they rely on.

For Aboriginal children and young people, the social isolation and alienation from family, community and Country can be more intense, particularly for children from regional areas. This places great stress on the child, and on the community they were removed from. The flow-on effect is also felt through family and community disharmony, impaired connection to positive family members including Elders, and reduced opportunities to fulfil and engage in important cultural obligations including ceremonies and initiation.

In 2018, the Commission partnered with the Victorian Equal Opportunity and Human Rights Commission to publish *Aboriginal cultural rights in youth justice centres*, a report drawing on the advice of people who work closely with Aboriginal young people to make recommendations to improve the protection and promotion of Aboriginal cultural rights in youth justice centres. Also in 2018, the Victorian Auditor-General's Office found that cultural supports for Aboriginal children and young people in youth justice centres were inadequate.<sup>1718</sup>

Since then, Youth Justice has made efforts to better support Aboriginal children and young people in custody, including significantly increasing the number of

Aboriginal roles<sup>1719</sup> and piloting a leadership program for girls and young women on remand or sentence at Parkville youth justice centre. The operating philosophy for Victoria's youth justice centres, developed in 2019, also states:

- All Aboriginal children and young people will leave custody with a stronger understanding of, and connection to, their family, community and culture, formalised in an individual Cultural Support Plan.
- Custodial services and infrastructure will protect Aboriginal cultural rights in accordance with the Victorian Charter of Human Rights and Responsibilities, and *Burra Lotjpa Dunguludja's* principles of self-determination and respect for Aboriginal knowledge, history and experience.
- Restorative justice approaches will inform our work with Aboriginal children and young people, supporting transition from custody and community reintegration.<sup>1720</sup>

Over a 9-month period in 2019, most (71%, n = 12) Aboriginal children and young people who completed exit interviews said that their cultural needs were met.<sup>1721</sup> However, throughout the inquiry we heard from Aboriginal children and young people and community members that Victoria's youth justice centres are culturally unsafe, and that more needs to be done to support Aboriginal children and young people to maintain, develop and strengthen their cultural connections while in custody.

<sup>1716</sup> Australian Indigenous Psychologists Association, *Living on the edge*, p 22.

<sup>1717</sup> Royal Commission into Aboriginal Deaths in Custody, Regional report of inquiry in New South Wales, Victoria and Tasmania, p 354.

<sup>1718</sup> Victorian Auditor-General's Office, *Managing rehabilitation services in youth detention*, p 59.

<sup>1719</sup> Youth Justice appointed an Aboriginal Director to the Aboriginal Youth Justice team, increased the number of ALO positions to 2 at Parkville and 2 at Malmesbury, introduced an additional Aboriginal Liaison Officer Team Leader position, and introduced the position of Manager, Aboriginal Youth Justice Operations to oversee Aboriginal children and young people across both youth justice centres. Further, there is now an Aboriginal Disability Support Officer working across both centres.

<sup>1720</sup> DJCS, *An operating philosophy for Victoria's youth justice centres*.

<sup>1721</sup> Data from the Independent Visitor Program exit survey collected from April to December 2019.

## 13.1 Cultural safety and support in custody

*No, I don't think they are culturally appropriate or safe... Some of the units are named after massacres. Campaspe Plains had a massacre of Dja Dja Wurrung people, and one of the boys said, 'You know about this name?' And I said, 'Yeah, I knew there was a massacre,' and he was like, 'They got me in this unit.'* – Aboriginal Independent Visitor<sup>1722</sup>

### Physical environments of Victoria's youth justice centres

Cultural safety is affected by the physical design of youth justice centres. The importance of good design across youth justice centres is often underestimated. Design not only shapes what children and young people can do while in custody, it also has a significant impact on how they feel and behave. Best practice shows that more normalised custodial facilities that include soft furnishings, colour, timber and natural light provide safer environments for staff and young people.<sup>1723</sup> Research has shown that young people and staff in institutional settings view each other as 'worse and tougher' compared with those housed in residential designs, which are more likely to create a calm atmosphere.<sup>1724</sup> As discussed below, good cultural design can also provide a link between Aboriginal children and young people and their spirituality and culture.

The Beijing Rules specify that any custodial facility for children and young people 'should be of a correctional or educational rather than of a prison type', and that 'priority should be given to "open" over "closed" institutions'.<sup>1725</sup> The Havana Rules specify that the

design of detention facilities for children and young people and the physical environment should be in keeping with the rehabilitative aim of residential treatment, with due regard to the needs of the young person for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure time activities.<sup>1726</sup>

The only open facility available in the Victorian youth justice system is the senior site at Malmsbury youth justice centre, which accommodates young people aged 18 to 24 years as part of the dual track system. This site features 3 units that are unlocked during the day, allowing free movement between the units and the outdoors, and independent access to program, medical and education facilities. These units represent only 37 beds of a total of 277 beds in the youth justice system.

The remainder of children and young people at both Parkville and Malmsbury youth justice centres are accommodated in secure units that more closely resemble adult prisons than the normalised environments that can effectively rehabilitate children and young people (see Chapter 3 'Overview of the Victorian youth justice system' for a discussion of the focus on security in youth justice centres after 2016). High fences, razor wire and anti-climb cylinders surround not only the external perimeter but also enclose every secure area within the centres. The gymnasiums, indoor basketball courts and swimming pools are the only places within Victoria's youth justice centres that 'look and feel' like the equivalent facilities in the community, and where it is possible to ignore that they are located in a secure environment.

*Youth Justice workers are trained as guards but expected to do therapeutic care. You can't do therapeutic care within a prison setting. They'd have to change the environment, having more artwork up and less clinical feel and spaces. You can't have a therapeutic breakthrough when it feels like a hospital or a police station. – Youth Justice worker*

Youth Justice and Parkville College have attempted to create suitable learning environments for children and young people. Education and program areas have some natural light, and most feature posters or other

<sup>1722</sup> DJCS was first made aware of this issue during the course of the inquiry. DJCS has advised that it plans to change the unit's name. The Commission has no evidence that there are units other than Campaspe named after massacres.

<sup>1723</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 2, p 160. The Northern Territory Royal Commission stated that 'The rationale for softening the environment is not simply compassion, but operational effectiveness. The young people in detention are often frightened, angry and isolated when they arrive. Many of them are victims of trauma. If they remain stressed and agitated, they are much more likely to act aggressively, and much less likely to engage in services directed at their rehabilitation. A normalised environment helps lower the stress levels of both young people and staff.': Northern Territory Royal Commission Final Report, Volume 2B, p 433.

<sup>1724</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 444.

<sup>1725</sup> Beijing Rules, rule 24.

<sup>1726</sup> Havana Rules, rule 32.



decoration on the wall. However, these rooms are often in very poor condition, furniture is typically flimsy and the rooms do not feel like classrooms.

*Physical spaces are sterile, they're reinforced with metal, the doors clink, there are locks and keypads, they echo, they're fortified, they are made to keep people in, they are not therapeutic environments. I would like them to look like a classroom that our children would go to in the free world, a classroom that any child in the general public can go to. – Executive Principal of Parkville College*

Parkville College acknowledged the scrutiny that DJCS is under and indicated that the physical environment of classrooms in youth justice centres is a consequence of viewing students and spaces in terms of risk.

Most units in the system accommodate between 12 and 18 young people and include communal spaces where children and young people eat together. Only some units have a kitchen facility to enable children and young people to prepare food for themselves and others. Aboriginal Independent Visitors described their shock at the conditions of these units, telling us that they did not meet the expectations they held before their first visit.

*The units don't have a good vibe. They're very regimented and kids can't open doors, they have to be opened for them. Just to get fresh air and light – that would be amazing and change their behaviours to have access to that. – Aboriginal Independent Visitor*

*Of particular concern to the Aboriginal Independent Visitors is the lack of humanising furniture and fittings in units that would make it possible to have meaningful interactions with, and between, children and young people. The units are horrible, absolutely horrible. It's not a relaxing environment to be in, those units are very outdated. – Aboriginal Independent Visitor*

Children and young people sleep in rooms that more closely resemble prison cells than bedrooms. Most rooms are single capacity, though there are some that

allow 2 children and young people to share, which is encouraged for Aboriginal children and young people.<sup>1727</sup> All rooms have heavy duty metal doors that are locked from 8 pm to at least 8 am, and whenever a child or young person is being isolated in their room. These doors have a slot that staff members can speak or deliver food through, and windows that staff can use to observe children and young people inside. Most rooms have a stainless steel toilet and a shower, often separated from the sleeping area by a partial wall and no door. As Pakap, featured at the start of this chapter, said:

*You should see some of the rooms – they're trash. Some of the rooms are dirty because of clients, but they don't clean it properly before the new admission comes in. We put in a fix-it like a shower that isn't working, and they'll put a request in, and it takes a month or 2 to get a shower fixed. – Pakap, 16*

Independent Visitors have frequently raised issues about bedrooms, including the dehumanising impact of rooms without shelving that means children and young people must store their possessions on the floor.<sup>1728</sup>

*I expected the insides to look as though you were in the army or whatever, that you'd have beds and sheets – something that looked like a home. It's shocking, they set people up to become criminals. There's nothing there that says rehabilitation. – Aboriginal Independent Visitor*

Another significant issue is the inability for children and young people to move freely within spaces, or to freely access cultural spaces such as the Koori gardens (discussed below). For the most part, children and young people cannot access their bedrooms, communal areas or education and program areas without being escorted by Youth Justice staff.

<sup>1727</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 3.4: management of young people room share assessment*, DJCS, Victorian Government, unpublished, accessed 14 September 2020, p 5.

<sup>1728</sup> In response to the draft of this report, DJCS informed the Commission that most rooms in youth justice custody now have shelving.

### 13.1 Cultural safety and support in custody



*Kitchen in the Cullity Unit, Parkville youth justice centre*



*'Jaara Jaara' Koori garden at Parkville youth justice centre*

Some units are designed so that children and young people can freely access an enclosed outdoor space, such as a basketball court, but in other units, children and young people cannot access fresh air unless a staff member is available to let them out.

*We need more access to stuff instead of being locked behind fences. We can't go out onto the oval. We're never allowed because it affects movements and stuff, because the oval is right in the middle. We need movement and space to do stuff. Even just walking laps. – Pakap, 16*

This issue is exacerbated for boys aged 10 to 14 years and all girls and young women at Parkville youth justice centre, as they share an outdoor space but are not allowed to access it at the same time. The girls and young women also have access to another fenced area; however, access is only possible under staff supervision and the Commission has raised on several occasions that it is too small.

*I think the area that the girls have needs to undergo renovations. They don't have an area where they can go out and sit down. It's been on the agenda for quite a long time, but nothing has actually happened. Those units are not very user-friendly. They're stark, they're often dirty. – Aboriginal Independent Visitor*

## Cultural spaces

The Commission heard that Victoria's youth justice centres need more spaces where Aboriginal children and young people on remand or sentence can meet with other members of their communities. Although both youth justice centres have Koori gardens, we heard that groups are often prevented from using them due to their location within the facilities, security concerns and bad weather.

*Apparently the Koori garden [at Malmsbury], they can't use it, or they can't use it as much as they want, because it sits between units. It's totally inappropriate where they've put it. It looks nice and the symbolism is nice, but they can't use it. – Aboriginal Independent Visitor*

The only dedicated program space for Aboriginal cultural programs within Victoria's youth justice centres is the Coorong Tongala room on the senior site at Malmsbury. We heard that this is a positive cultural space, and that having a dedicated room provides greater consistency for delivering programs.

*Each week it's about trying to find a space that's available. It's usually the Cullity art room. Even if we have a space, then if something happens we just get kicked out – like we're just an add on or something. I'd like to see something like what is available on the senior site at Malmsbury. A room that is our own, that we can come to for a program. It's so different to meet in that space. You've got young people that can't engage in any other class who come and sit for 2.5 hours in that space. – Aboriginal Education Leader, Parkville College*

*I do like the Malmsbury Koori education room. It's really open and safe. It's a nice place to be. When the boys come in they absolutely love it because they get to see each other and go online. That's a really good place and area for kids to be – if that could be replicated in Parkville especially for the girls, there's nothing for the girls. The girls want to go to the cultural program more often than they can, they are bound to mix with the boys – I know they want to keep them separate but they mixed in the program and absolutely loved it. – Aboriginal Independent Visitor*

Youth Justice is creating a new dedicated Aboriginal cultural space in a converted shipping container within the Koori garden at Parkville youth justice centre.

Good cultural design can help promote a spiritual connection between Aboriginal children and young people, and be a reminder of where they are from and to whose Country they belong. Well-designed spaces can provide opportunities for education, reflection, sharing stories and mentoring. Other benefits of a facility that embeds elements of Aboriginal culture and customs include reductions in stress, isolation and fear among Aboriginal people.

### 13.1 Cultural safety and support in custody

Custodial facilities are foreign environments that can have a devastating impact on vulnerable children, particularly those from remote regions. Adaptations to the structural and physical environment can alleviate these stressors if combined with cultural activities, programs and opportunities to connect with family and community members on a regular basis. In this context, cultural design refers to not only the incorporation of Aboriginality into the design, but ensuring that the resulting spaces enable and support Aboriginal people to enjoy their culture.

*Indigenous spirituality and culture should be embraced as design generators and symbolism should arise from an informed process directed by Aboriginal stakeholders, and it is not enough to randomly incorporate token symbolism.*<sup>1729</sup>

The Commission has previously reported that while the Koori garden at Parkville youth justice centre is seen as an example of good cultural design, Aboriginal community members considered that more could be done.

*There must be use of earthy tones, circular rooms and spaces that reflect the environment, things that offer some means to connect to country.*<sup>1730</sup>

In addition to increasing the number of cultural spaces available, we also heard that Aboriginal children and young people need increased Aboriginal-specific places of cultural meaning and practices, and to allow more cultural practices to take place, such as healing circles.

*I do [think the Koori garden is a positive space]. The way they use it and the way it's part of the culture overall and the teaching and the learning and the stories but if they could bring cooking things in and sit down by the fireside and cook, but juvenile justice is not set up to take risks.  
– Aboriginal Independent Visitor*

<sup>1729</sup> E Grant, 'Approaches to the design and provision of prison accommodation and facilities for Australian Indigenous prisoners after the Royal Commission into Aboriginal Deaths in Custody', *Australian Indigenous Law Review*, 2013, 17(1): 47–55, p 50.

<sup>1730</sup> VEOHRC and Commission for Children and Young People, *Aboriginal cultural rights in youth justice centres*, p 14.

### Cultural programs

One way to support cultural connection for Aboriginal children and young people on remand or sentence in youth justice custody is to engage Aboriginal community members to run cultural programs. Cultural programs offer many benefits:

- promoting health and wellbeing
- inviting young people to take responsibility for their actions before respected cultural figures
- enabling young people to raise issues they are uncomfortable discussing with youth justice centre staff and family
- providing young people with an opportunity to learn about culture
- showing young people strong Aboriginal role models and enabling them to engage one-on-one
- generally improving the morale of children and young people.<sup>1731</sup>

There are infrequent and limited cultural programs running in Victoria's youth justice centres. Parkville College delivers Maggolee Mang, which incorporates elements of language, storytelling, art, history and cultural identity. The program is intended for all Aboriginal children and young people in all youth justice centres each fortnight; however, this is not always achieved. For Aboriginal young men at Malmsbury youth justice centre's senior site, a male Elder delivers a weekly cultural program. In 2019, the Korin Gamadjij Institute piloted a cultural program for girls and young women at Parkville youth justice centre, which Youth Justice indicates may be continued.

In 2020, Youth Justice engaged Dardi Munwurro and Strong Brother Strong Sister to provide cultural supports to Aboriginal children and young people in both Parkville and Malmsbury youth justice centres outside of school hours, and each year Youth Justice celebrates NAIDOC week in both centres.<sup>1732</sup> Most Aboriginal children and young people who talked to us about cultural programs in youth justice centres were positive about the programs. Many said that they would like them to run more often, and to offer different experiences, such as more smoking ceremonies and learning language.

<sup>1731</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 463.

<sup>1732</sup> Information provided to the Commission by DJCS on 4 December 2020.

*The Aboriginal program should be weekly, not every fortnight. I would come here every time it's on. I like to hang with other Aboriginal boys, that's important. There are a lot of Aboriginal people distant from their culture and here we can learn about it together. – Chris, 20*

The Commission also heard about the importance of cultural programs through the Independent Visitor Program.

*I know they like the cultural program – they always ask me if it's on. They look forward to that because they get to meet the others. Those on secure get to meet the ones in the open. It's the only time all the Kooris get to meet each other. – Aboriginal Independent Visitor*

*And the Aboriginal program once a week isn't enough. It needs to be more consistently run, and that consistent connection to culture and country – all that sort of stuff. – Aboriginal Independent Visitor*

Young people have told Independent Visitors that cultural programs do not always run, and several reports have been raised about particular Aboriginal children and young people not being able to attend. Youth Justice has advised that at times this is due to security concerns, clashes with other programs, education, court or visits. While there may at times be genuine barriers to providing programs, Youth Justice's obligation to protect and promote the enjoyment of cultural rights means that every effort should be made for all Aboriginal children and young people to attend cultural programs.

We have also heard some concerns that operational constraints mean that the programs don't always run as planned.

*Malmsbury secure site, I've only been able to run one program all term, because of either lockdowns or rotations. A couple of times it's been their group AOD appointment. – Aboriginal Education Leader, Parkville College*

Access to programs has been an endemic issue in Youth Justice for years due to widespread lockdowns because of staff shortages.<sup>1733</sup> Lockdowns effectively prevent the successful delivery of programs designed to assist and develop children, including cultural programs. These constraints were acknowledged in a program report completed by the Korin Gamadji Institute following their pilot leadership program for girls and young women at Parkville youth justice centre. The program report noted that 'consistency and content delivery was challenging with various lock downs, visits, codes and dynamics frequently changing', and that the 'need to rely on the floor staff on facilities... and to move around facilities was a challenge at times'.<sup>1734</sup> The report also notes that when it was possible to meet for an outdoor barbecue lunch, there were better group dynamics and cohesion, and the program could be delivered more effectively. This demonstrates the importance of access to culturally appropriate spaces in youth justice centres.

### **Continual cultural connection**

Many Aboriginal children and young people told us that they want ways to express, celebrate and practice their culture beyond the opportunities and experiences available through designated cultural programs. The youth justice system needs to ensure that Aboriginal children and young people experience continual cultural connection, and are able to exercise cultural rights throughout their time in custody, regardless of their status and security classification.

<sup>1733</sup> Commission for Children and Young People, *The same four walls*.

<sup>1734</sup> Korin Gamadji Institute, *KGI & Parkville Youth Justice women's cultural program 6 week report*, p 6.

## 13.1 Cultural safety and support in custody

*And like our cultural rights, there's no cultural rights in here. The cultural programs only go for an hour once every 2 weeks and it's not enough. I want more time with Elders and maybe like painting or weaving, more connection to land and that. They just show us videos and stuff. It's been alright but they could do more. I think we need more smoking ceremonies, like once a week... I think we need more cultural stuff in our rooms. I think we need to be able to do more art and have art in our rooms and maybe having Elders come visit us and share stories.*  
– Dustin, 15

In 2018 and 2019, Aboriginal children and young people raised at least 17 issues with Independent Visitors relating to cultural needs beyond a weekly cultural program. This included needing art materials in their room and wanting to attend cultural events.

Aboriginal Independent Visitors emphasised to us the importance of Aboriginal children and young people being able to connect with culture outside of cultural programs. Suggestions to support this included allowing art materials in bedrooms, increasing cultural activities and ensuring that Aboriginal children and young people can be together.

*The cultural officers there work 9 to 5. But culture doesn't have a timeline on it, it's not a 9 to 5 thing.* – Aboriginal Independent Visitor

*Something like an Elders day once a year would be amazing to do – open up to the wider community, give the kids something to look forward to. That's the thing – there's nothing for them to look forward to, and connecting to community before you get out is imperative, but I've never seen anything like that. I know that they do leave to a cemetery to do gardening and horticultural work and to do work experience, like with a barber or a cafe. It would be good if they could have a bit more leave and join in on NAIDOC activities when that happens, and surely they do cultural activities at schools? My kids' schools do smoking ceremonies once a year – so just get out and connect to their schools so they're not forgotten.* – Aboriginal Independent Visitor

Physical design that incorporates cultural elements throughout youth justice centres can also alleviate anxiety, stress and discomfort within a custodial environment. Artwork and murals in the mainstream areas, in addition to increased access to the dedicated cultural spaces described above, can have a very real impact on wellbeing and behaviour.

Contact with Aboriginal staff is also key to Aboriginal children and young people feeling a cultural connection while in youth justice centres. This is discussed in more detail below under 'The role of Aboriginal Liaison Officers'.

### Placement with other Aboriginal children and young people

Some Aboriginal children and young people told us that the best way to create cultural safety in custody would be to establish a dedicated Aboriginal unit.

*We have Koori programs here, they're shit. What I really want is an Aboriginal unit. Like, put all the Kooris together. That way there's no problems with anyone. My Nan passed away like 2 weeks ago and there's heaps of Koori boys in here, but I couldn't talk to any of them. For times like that, blackfellas understand.* – Jasper, 17

Among people who work or volunteer with Aboriginal children and young people in custody, views about an Aboriginal unit were mixed. Some told the Commission that this would be beneficial, while others were concerned about the 'siloining' effect this could have.

*You just can't have them on their own in a unit, I think engaging with all the youth is a good thing.*  
– Aboriginal Independent Visitor

*To be culturally safe, I would see setting up a unit staffed by cultural workers, have a lot of input from Aboriginal Elders, and that Parkville College has Aboriginal cultural lessons. It needs to be something that is ongoing. At the moment it is ad hoc.* – Aboriginal Independent Visitor

Aboriginal Independent Visitors told the inquiry that, at a minimum, Youth Justice should ensure that Aboriginal children and young people have at least one other

Aboriginal person in the unit to create cultural safety. However, this doesn't always happen.

*There are instances in the last couple of visits where we've had young people in a unit on their own as the only Aboriginal child, and to make it culturally safe you need to have numbers together. – Aboriginal Independent Visitor*

*When Aboriginal kids are in these units on their own and there's no other Aboriginal kids with them, and there will be another Aboriginal kid on his own, and why can't they be together? That needs to be at the forefront. Every time we raise it, they'll look into it, but it's just not on their radar. – Aboriginal Independent Visitor*

Youth Justice has a 'buddy system' that requires staff to consider whether an Aboriginal child or young person can share a room, preferably with another Aboriginal child or young person.<sup>1735</sup> There is also a requirement that an ALO be consulted when an Aboriginal child or young person is being transferred between units, and that placement decisions consider a young person's cultural needs.<sup>1736</sup> DJCS informed the Commission that the current practice of the ALO team is to advocate for Aboriginal children and young people to be placed in a unit with another Aboriginal child or young person for cultural connection and support.<sup>1737</sup> However, this is not reflected in policy or procedures.

<sup>1735</sup> This consideration must occur when an Aboriginal child or young person is admitted to a youth justice centre or if they are identified as at risk of self-harm or suicide: DJCS, *Director's instruction no: 3.4*, p 5.

<sup>1736</sup> Department of Justice and Community Safety (DJCS), *Custodial classification, placement and case coordination: Youth Justice practice guideline*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, pp 11–12.

<sup>1737</sup> There is an expectation that the Classification and Placement Unit will consult with an ALO when deciding where to place an Aboriginal child or young person, and the ALO will attend the Review Placement Panel to present their views on the transfer request: Department of Justice and Community Safety (DJCS), *Custodial classification, placement and case coordination*, p 5.

## Cultural safety in young offending programs

The Commission heard that assessments and programs designed to address children and young people's offending behaviour are not designed for or by Aboriginal people and fail to reflect the unique experiences or needs of Aboriginal children and young people.

In response to the Youth Justice Review, Youth Justice has introduced new Level of Service assessment tools and a range of young offending programs. These include offence-specific programs for children and young people with a custodial order with a minimum length of 4 months who are assessed as being at moderate, high or very high risk of reoffending.<sup>1738</sup> Offence-related programs such as drug and alcohol programs and psychosocial programs that address emotional and social skills are available to all young people in custody, irrespective of legal status.<sup>1739</sup>

Youth Justice uses the Level of Service tools to screen and assess children and young people's risk of reoffending,<sup>1740</sup> criminogenic needs, non-criminogenic needs, responsivity issues and strengths. They are used with children and young people on custodial sentences, community-based orders and to inform youth control order assessments. They are not used for children and young people on remand.

The process involves the following steps:

1. Youth Justice case managers conduct a Tier 1 screening process for every sentenced child or young person, and every child and young person being considered for a youth control order.
2. For those children and young people screened as having a reoffending risk of 'moderate' or above, Youth Justice case managers will also conduct a comprehensive risk and needs assessment. For this assessment, case managers use the Youth Level of Service/Case Management Inventory (YLS/CMI) for

<sup>1738</sup> Children and young people on community orders are also eligible for offence-specific programs if they are assessed as being at high or very high risk of reoffending on the Level of Service assessment tools.

<sup>1739</sup> Psychosocial programs are also available to all children and young people in the community on intensive bail.

<sup>1740</sup> DJCS advised the Commission that the risk assessment tools assess risk of violence, family violence and sex offending. These tools are used with young people from all cultural backgrounds, as there are no validated tools currently available specifically for use with Aboriginal young people.

### 13.1 Cultural safety and support in custody

children and young people under 18 years old, or the Level of Service/Case Management Inventory (LS/CMI) for young people over 18 years old.

3. Youth Justice case managers must refer all children or young people for a Clinical Tier 2 Assessment by Youth Offending Programs Clinicians if they are assessed as:
  - high or very high risk of reoffending for those on community-based orders
  - moderate/medium, high or very high risk of reoffending for those on custodial orders.<sup>1741</sup>
4. Youth Offending Programs Clinicians complete a Clinical Tier 2 Assessment Report, including a formulation, risk assessment, case management recommendations (particularly regarding relapse prevention), treatment recommendations, and treatment plan for group or individual treatment with anticipated duration of treatment.

The YLS/CMI tools have been the subject of 2 Australian studies that appear to show that they accurately predict recidivism for Aboriginal children and young people.<sup>1742</sup> There are, however, criticisms in the literature about the cultural appropriateness of the tools.<sup>1743</sup> The Commission also heard concerns that the tools are culturally inappropriate and may contribute to higher rates of Aboriginal children and young people

<sup>1741</sup> Youth Justice case managers must also automatically refer all children and young people with sex offences, family violence offences or terrorism/violent extremism offences for a Clinical Tier 2 Assessment, irrespective of the risk rating on the Level of Service assessment tools.

<sup>1742</sup> SM Shepherd, JP Singh and R Fullam, 'Does the youth level of service/case management inventory generalize across ethnicity?' *The International Journal of Forensic Mental Health*, 2015, 14(3):193–204. The authors of this study cautioned that 'replicative work needs to be conducted before we can be confident that the instrument satisfactorily adjudicates cross-cultural risk' (p 202). They also recommended the review of the risk assessment criterion for cultural applicability, noting that it remains unresolved how cultural differences would be appraised, and what cultural factors should be considered. Further, the authors suggested that any subsequent treatment schemes should incorporate cultural learning styles. In the meantime, it should be ensured that professionals undertaking assessments are culturally proficient. See also SM Shepherd, Y Adams, E McEntyre and R Walker, 'Violence risk assessment in Australian Aboriginal offender populations: a review of the literature', *Psychology, Public Policy, and Law*, 2014, 20(3):281–293, p 286.

<sup>1743</sup> See, for example, SM Shepherd and BL Spivak, 'Finding colour in conformity part II – reflections on structured professional judgement and cross-cultural risk assessment', *International Journal of Offender Therapy and Comparative Criminology*, 2020, 65(1): 92–99; SM Shepherd and T Anthony, 'Popping the cultural bubble of violence risk assessment tools', *The Journal of Forensic Psychiatry & Psychology*, 2018, 29(2):211–220.

being categorised as 'high risk'. In April 2021, DJCS advised the Commission that it will consider the most appropriate way to validate the tools.

Data shows that Aboriginal children and young people are more likely to receive a higher risk rating than non-Aboriginal children and young people. Between 1 January 2019 and 22 June 2020, 199 YLS risk assessments and 263 LS risk assessments were conducted (see Table 13.2). YLS assessments of Aboriginal children and young people resulted in most receiving a high or very high risk rating (69%, n = 22), compared with less than half of non-Aboriginal children and young people (42%, n = 70). LS assessments of Aboriginal children and young people resulted in almost all receiving a high or very high risk rating (95%, n = 35), compared with only three-quarters of non-Aboriginal children and young people (77%, n = 174).<sup>1744</sup>

Studies have also shown that Aboriginal children and young people are likely to receive a higher risk rating than non-Aboriginal children and young people.<sup>1745</sup> This is problematic because it can stigmatise a young person to be classified as 'high risk', and also because it may channel Aboriginal children and young people into higher intensity interventions than they require, which can in itself be criminogenic.<sup>1746</sup> DJCS advised that ALOs provide input to the assessment of general risk of reoffending through the care team and through consultation with the case manager. This process is not specified in guidelines.

<sup>1744</sup> DJCS data provided to the Commission on 17 August 2020.

<sup>1745</sup> Shepherd et al., 'Violence risk assessment in Australian Aboriginal offender populations: a review of the literature', p 288; M Frize, D Kenny and C Lenings, 'The relationship between intellectual disability, Indigenous status and risk of reoffending in juvenile offenders on community orders', *Journal of Intellectual Disability Research*, 2008, 52(6):510–519.

<sup>1746</sup> Daffern et al., *Youth Support Service/Aboriginal Youth Support Service evaluation*, p 11.



**Table 13.2** YLS and LS assessment ratings by Aboriginal status, 1 January 2019 to 22 June 2020

Rating	YLS assessments				LS assessments			
	Aboriginal		Non-Aboriginal		Aboriginal		Non-Aboriginal	
	No.	%	No.	%	No.	%	No.	%
Very high	1	3%	13	8%	29	78%	95	42%
High	21	66%	57	34%	6	16%	79	35%
Moderate	9	28%	86	51%	2	5%	40	18%
Low	1	3%	10	6%	0	0%	9	4%
Very low	0	0%	0	0%	0	0%	1	<1%
N/A*	0	0%	1	<1%	0	0%	2	<1%
<b>Total†</b>	<b>32</b>	<b>100%</b>	<b>167</b>	<b>100%</b>	<b>37</b>	<b>100%</b>	<b>226</b>	<b>100%</b>

YLS = Youth Level of Service; LS = Level of Service

\* Unable to be scored: Insufficient information available.

† Percentages may not add up to 100 due to rounding.

Source: DJCS data provided to the Commission on 17 August 2020.

The Commission heard that a key issue is that, because programs have not been developed for Aboriginal children and young people, they may not be culturally appropriate or responsive to their needs and experiences. For example, driving programs do not address licensing issues. This means that for many Aboriginal children and young people these programs won't address the criminogenic factors causing their offending behaviour. Another issue is that while ACCOs can deliver alcohol and other drugs programs, there are other programs that ACCOs are not contracted to, or may not yet have capacity to, deliver. This includes the Adolescent Violence Intervention Program, family violence intervention programs for children, and sex offence programs.

However, the Commission heard that Aboriginal staff can advocate for Aboriginal children and young people to attend programs delivered by an ACCO in culturally sensitive and appropriate ways, rather than being required to complete mainstream programs that may be culturally unsafe or ineffective. The Commission is aware of examples where Aboriginal staff have worked creatively in partnership with an ACCO to deliver driving offence programs, and art therapy to children and young people on remand. DJCS also advised that there are several processes in place to improve the cultural safety and responsiveness of youth offending

programs.<sup>1747</sup> However, the ideal would be for programs and services to be designed, developed and delivered by Aboriginal organisations wherever possible.

### Improving cultural connection in Victoria's youth justice centres

It is clear that there is more work to be done to properly embed the protection and promotion of cultural connection in youth justice centres. Chapter 7.4 'Connection with culture' discusses how this can be partially achieved through tailored cultural support plans. However, there are other significant opportunities to specifically meet the cultural needs of Aboriginal children and young people in custody.

International best practice shows that Victorian youth justice centres would benefit from more involvement from community and family to increase the likelihood of behavioural change and successful reintegration back

<sup>1747</sup> DJCS advised that the current provider employs a senior Aboriginal consultant who can consult with the youth offending program clinicians, who also regularly consult ALOs about Aboriginal children and young people in custody. The relevant Youth Justice Directors also collaborate to consider how current treatment offerings may be tailored to best meet the needs of Aboriginal young people, or if alternative cultural interventions would be most appropriate. There are also practice resources and guidelines on enhancing cultural safety for Aboriginal young people who are participating in offending programs. Additional resources are being developed, particularly for the offence-specific programs, to improve the cultural safety and responsiveness of these programs.

### 13.1 Cultural safety and support in custody

into the community.<sup>1748</sup> In particular, there should be greater investment in partnerships with ACCOs and Aboriginal leaders to provide in-reach and culturally strengthening programs and services, particularly those that provide throughcare and will facilitate ongoing connection, reintegration and re-entry back into community. This would also help Aboriginal children and young people get to know them and increase the likelihood that they would continue to engage with services when back in the community.<sup>1749</sup>

The Youth Justice Strategic Plan commits to establishing an in-reach Elders Support Program 'to strengthen cultural protective factors for young Aboriginal people', and to delivering a cultural and leadership program to Aboriginal girls and young women in custody.<sup>1750</sup> As outlined above, an Elder is providing cultural mentoring to young men at Malmsbury youth justice centre, and Dardi Munwurro and Strong Brother Strong Sister have commenced delivering programs to young people in custody. In addition, DJCS advised the Commission that a Connecting to Country initiative will be established at Malmsbury youth justice centre.

While these are positive initiatives, more cultural programming and cultural activities are needed. Many suggestions made in the *Aboriginal cultural rights in youth justice centres* report have not been implemented. These include:

- a dedicated art program taught by Koori artists, which allows art supplies to be kept in bedrooms
- a radio program to share the voices of young people in custody, similar to Kutcha Edwards's Beyond the Bars radio show in prisons
- an art exhibition to show and sell young people's artwork made in custody
- a choir where the young people sing in language
- Charcoal Lane cooking classes
- family tracing, including helping young people to learn about their family history and develop a family tree.<sup>1751</sup>

<sup>1748</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 84.

<sup>1749</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 84.

<sup>1750</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 23.

<sup>1751</sup> VEOHRC and Commission for Children and Young People, *Aboriginal cultural rights in youth justice centres*, p 9.

Cultural programs should be designed and delivered by Aboriginal communities, who should be resourced to do so. VALS has recommended that programs should be:

- *designed, delivered and managed by Aboriginal and Torres Strait Islander people*
- *well-resourced and consistent*
- *supported by case management by Aboriginal community controlled organisations, both in prison and in transition*
- *supported by prison staff who are trained in cultural awareness; and*
- *designed around Aboriginal understandings of health, which includes 'mental health, physical, cultural and spiritual health', and understands that land is central to wellbeing.*<sup>1752</sup>

An Aboriginal steering committee could ensure that these principles are met in youth justice centres. In 2014, the Archie Roach Foundation formed a Council of Elders to provide advice to Parkville College to facilitate a cultural and arts program. An Elder now chairs the Elders Advisory Council that provides advice to Parkville College about working with children and young people from all cultural backgrounds. However, this group is focused on education rather than broader youth justice custody issues. Working with Aboriginal communities, Youth Justice should develop a process to ensure that Elders, respected people, family members and children and young people can determine the nature and design of cultural programs, and monitor their delivery.

Youth Justice must also find a way to ensure that cultural programs can be provided consistently, beyond the pressures of rotations, lockdowns and competing demands for space. One means for doing this is through the provision of specific, permanent, indoor and outdoor cultural spaces in every youth justice centre. The Youth Justice Strategic Plan commits to maintaining and improving the Koori garden at Parkville youth justice centre.<sup>1753</sup> Youth Justice has also advised the Commission that the cultural spaces at Parkville and Malmsbury youth justice centres are currently being redeveloped. At Parkville youth justice centre, there is a new indoor cultural space within the Koori garden, and the ALO team is working with children and young people to develop the space. A similar project is

<sup>1752</sup> ALRC, *Pathways to justice*, p 297.

<sup>1753</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 23.

occurring at the Malmsbury senior site, with young people, Traditional Owners and a local Aboriginal artist, to improve the existing program room and garden. There is also a new Koori garden at the Malmsbury secure site.

The masterplan for the new youth justice centre at Cherry Creek includes a dedicated Aboriginal cultural and spiritual centre, and is planned for use for cultural events and cultural activities, and there is a well-used cultural room in the open site at Malmsbury youth justice centre. A commitment to develop a similar space on the secure site at Malmsbury youth justice centre would ensure that all Aboriginal children and young people and community members visiting youth justice centres had access to a safe cultural space.

Of course, cultural safety does not only apply to those programs and activities that aim to directly meet cultural needs. All programs and services should be culturally safe, including risk assessments. A recent review of violence risk assessments in Australia found that:

*Given the history of disenfranchisement and overrepresentation of Aboriginal people in Australia's criminal justice system for violence related offenses, it is important that violence risk assessment instruments are validated as culturally appropriate for use with Aboriginal offenders to avert further inequity.*<sup>1754</sup>

It is just as important that DJCS validates the use of the YLS/CMI for Aboriginal children and young people.

DJCS must also ensure that offending programs designed to address the criminogenic risks and needs of children and young people are culturally safe. It is key that programs are designed and delivered in culturally appropriate ways, either by or in partnership with Aboriginal organisations. An added benefit of this model would be that Aboriginal children and young people could be connected to Aboriginal organisations that could continue to support them once they leave custody.

Another important way of embedding cultural safety is to ensure that, where possible, an Aboriginal child or young person is not the only Aboriginal child or young person in a unit. It would be beneficial for procedures to require that placement decisions should prioritise,

where possible, placing Aboriginal children and young people with at least one other Aboriginal child or young person.

A further way that Youth Justice can create opportunities for cultural connection is to ensure that every Aboriginal child and young person in custody is able to engage in cultural expression and practice, at any time in their own room. As part of its response to COVID-19, Youth Justice has begun providing Aboriginal children and young people with a possum skin, jigsaw puzzles and activities, journals, and seedlings to plant in the garden.<sup>1755</sup> This initiative is a positive step, but could be improved by tailoring the items to each Aboriginal child or young person in recognition of the diversity of Aboriginal cultures in Victoria. For example, these could include art, photos and the contact details for Elders in their region. This should be made a permanent part of an Aboriginal child or young person's experience in custody, beyond the duration of the pandemic. Subject to individual risk assessment, these packs should also include art materials. These cultural connection packages should not be part of an incentive or behaviour-based program, in recognition that cultural connection is a right, not a privilege. This would not be a replacement for cultural support planning, which is discussed in detail in Chapter 7.4 'Connection with culture'.

<sup>1754</sup> Shepherd et al., 'Violence risk assessment in Australian Aboriginal offender populations', p 282.

<sup>1755</sup> DJCS, *COVID-19 related activity and impacts across the justice system*, p 2.

## Recommendation 68

That DJCS:

- a) work with Aboriginal communities in Victoria to establish a community steering committee to guide and monitor the design and implementation of cultural services and programs in youth justice centres
- b) validate its risk assessment tools for use with Aboriginal children and young people
- c) ensure that all Aboriginal children and young people have access to culturally safe youth offending programs in custody, preferably delivered by Aboriginal organisations
- d) establish a dedicated, permanent indoor cultural space at the Malmsbury youth justice centre secure site
- e) evaluate the recent improvements to cultural spaces in youth justice centres and continue to improve these spaces to provide access to culturally enriching environments
- f) ensure that custodial placement decisions prioritise, where possible, placing Aboriginal children and young people with at least one other Aboriginal child or young person
- g) give every Aboriginal child or young person remanded or sentenced to custody a cultural connection package, preferably tailored to their needs and cultural connection. This care package should not be connected with behaviour management and incentive programs.

## The role of Aboriginal Liaison Officers

### Finding 36

Aboriginal Liaison Officers play an important role in supporting the cultural needs of Aboriginal children and young people in youth justice centres. However, these roles are ill-defined and overloaded.

Throughout the Taskforce and inquiry, the Commission observed the important role that ALOs play in supporting Aboriginal children and young people in youth justice centres.

Several young people told us about their positive experience with an ALO.

*[The ALO] was really good. He helped me a lot – he come past every day and we'd play b-ball, we do Koori art... I feel comfortable with the ALOs and I listen to what they say. – Watanom, 19*

Most young people who did an exit interview with Commission volunteers said that they felt supported by the ALOs.

*Every time I have a death in the family, they come to see me and get me to the funeral. Come to see me nearly every day. – Young person exit interview*

*The strengths of Aboriginal Liaison Officers are that they are critical to respond to cultural needs of young people. It can be an unsafe environment, can raise many issues for young people. The ALO team provide a safe place so they know there's a safety net around them. It's a spider web connecting to young people, family, community and the care team. It's provided around the young person and the advocacy work, they do it to make sure the voice of the child is heard and listened to in care team meetings, to make people accountable, to consider what's led them to custody, what can be provided so they don't come back.*  
– Youth Justice staff member

The Lead Consultant Forensic Psychiatrist for youth justice centres also told us how much value ALOs contribute to therapeutic treatment.

*Having ALOs there completely changes the therapeutic results. The Aboriginal clients suddenly open up and the ALOs do a ton of work explaining to the young people how it's going to work and that it's just a chat. If I was designing the perfect service, we would have one-on-one support for every Aboriginal young person.*  
– Lead Consultant Forensic Psychiatrist, Orygen

During the Taskforce case planning sessions, the Commission also observed the positive contributions that ALOs made to care teams and the lives of Aboriginal children and young people. Examples include assisting a young person to get their driver's licence and connecting with family and workers outside of custody.

In 2019, an inspection of Malmsbury youth justice centre for the Victorian Ombudsman observed that ALOs are well respected within the facility and noted that their services are in high demand.<sup>1756</sup>

Despite the value that the youth justice system places in these roles, the Commission observed that ALOs are overloaded and the role experiences high turnover. Five positions are currently funded, including a team leader. However, Youth Justice has been unable to fill all roles at any given time. During the Taskforce, 2 of the 4

ALOs working across both youth justice centres resigned. Several months later, new staff were still being recruited.

*The ALOs are under the pump. One has left and there's 2 others. How do we make sure we keep them in these roles and support them? Give them more resources.* – Aboriginal Independent Visitor

## Current expectations of the Aboriginal Liaison Officer role

The position description for the ALO role represents it as very proactive, program-based and directed towards providing holistic cultural care to Aboriginal children and young people in custody.

The Commission heard that, in practice, ALOs are also required to perform a reactive, crisis-driven role and are spread thin across their multiple duties. Nevertheless, ALOs do an excellent job and are valued within youth justice centres. DJCS advised the Commission that all ALOs are performing well against their current job descriptions and meeting or exceeding the inherent requirements of their roles.

*Eighty per cent of the Aboriginal Liaison Officer's day is spent responding, whether that's to a fight, or self-harming, refusing to go to school or a program, up on the roof... I think the ALO role would be better focused on procuring more cultural programs.* – Youth Justice staff member

Interviews with Youth Justice staff and a review of policies and procedures show that ALOs must:

- be involved in the admission process and conduct a 'check-in' for every Aboriginal child and young person who enters custody
- have an ongoing involvement in case planning, including attending care team meetings, for every Aboriginal child and young person in youth justice custody
- offer to complete a cultural support plan for every Aboriginal child and young person in youth justice custody

<sup>1756</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 192.

### 13.1 Cultural safety and support in custody

- be on an 'on-call' roster, which is shared between the ALO team and may require the provision of support over the phone or attendance in person
- be involved when an Aboriginal child or young person is self-harming in youth justice custody<sup>1757</sup>
- attend a unit where an Aboriginal child or young person is being isolated to assist in keeping the young person safe and to ensure that cultural support is provided.

The Commission heard that on-call staff may be contacted several times in an evening, and then required to attend their usual work hours the following day.

In combination, these tasks create an overwhelming workload, particularly considering that the ALO team usually has vacant roles. Even with a full complement, 5 staff would struggle to meet the above duties for the average of 31 Aboriginal children and young people in custody each month.<sup>1758</sup> This workload, and the mismatch between the role and the position description, may contribute to higher turnover rates.

*The bad thing is that there's no Koori support in there – there's one Koori support team and they have to be across the whole of Parkville.  
– Peyton, 16*

The Commission heard that much of the role that ALOs are expected to perform could be done by general Youth Justice staff, which could free up the ALOs' time to do more specialist cultural work.

*If it's an Aboriginal kid, an ALO will be called as well as other staff. Every young person should be dealt with in the same way, with staff talking with them. It's the staff job to talk with kids and work through the chaos. There's fear on one side that if it's a Koori kid others will stuff it up. Also an attitude that 'It's not my problem, get the Aboriginal Liaison Officer.' This is happening 10 to 15 times a day. – Youth Justice worker*

<sup>1757</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 2.9: safety and security immediate response to suicidal and self-harming behaviour*, DJCS, Victorian Government, unpublished, accessed 14 September 2020, p 5.

<sup>1758</sup> There was an average of 30.5 Aboriginal children and young people in custody each month in 2018 and 2019: compiled from DJCS data regularly provided to the Commission.

Adding to the pressures of the ALO role is an expectation that they should not have contact with the Aboriginal children and young people they work with in custody after those children and young people have left custody. A reason for this is not provided in Youth Justice procedures, but is likely to be related to confidentiality requirements of Youth Justice workers and the need to maintain professional boundaries. This is challenging, both for children and young people who have bonded with an ALO while in custody, and for ALOs who want to be able to provide ongoing connection and participate fully in their communities.

Given the significant role that ALOs play, the Commission is concerned that people beginning in the role receive only a one-day induction program, compared with the 6 weeks of intensive training that Youth Justice workers receive. Of particular concern is that ALOs are required to attend when an Aboriginal child and young person is self-harming or displaying violence, but are not provided with training in de-escalation or emergency crisis response.<sup>1759</sup> Without knowledge and training, there is a risk that a child will be further agitated by an ALO's engagement, however well-intentioned.

#### Supporting and retaining Aboriginal Liaison Officers

The Youth Justice Strategic Plan promises to 'continue to support' the ALO program.<sup>1760</sup> However, the Commission is concerned that if Youth Justice does not change fundamental aspects of the ALO program, high turnover will continue.

A full review of the program and roles is required. This should include:

- reconsidering the need to involve ALOs in day-to-day incidents and behavioural management (including consideration of the Ombudsman's recommendation to consider advice from Aboriginal support workers regarding each instance of isolation and separation – discussed further below under Finding 37)
- ensuring that appropriate induction, case management, trauma, emergency crisis response and de-escalation training is provided to Aboriginal

<sup>1759</sup> In response to the draft of this report, DJCS advised the Commission that ALOs are required to complete training on working with young people at risk of suicide and self-harm.

<sup>1760</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 23.

staff with direct contact with Aboriginal children and young people in youth justice centres

- developing a retention and support plan for all Aboriginal staff working in youth justice centres
- considering the need for an Aboriginal Youth Engagement Officer at each youth justice centre
- ensuring that there is capacity and time to proactively plan and implement cultural programs. It may be necessary to create a separate role to enable this to occur.

## Recommendation 69

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That DJCS review the Aboriginal Liaison Officer program to assess how it can meet the competing needs and demands placed on the program, with a view to strengthening it. The review should include an assessment of the training needs of, and remuneration for, the Aboriginal Liaison Officer role.

# 13.2 Conditions in youth justice custody

This chapter examines:

- isolations and lockdowns in youth justice centres and their impact on Aboriginal children and young people
- self-harming by Aboriginal children and young people in custody
- violence and the use of force in youth justice centres
- how to improve youth justice custodial facilities for Aboriginal children and young people.

## Isolations and lockdowns

### Finding 37

While the number of isolations in youth justice custody has reduced in recent years, isolations and lockdowns are harsh and damaging practices that occur too frequently for Aboriginal children and young people in Victoria's youth justice centres.

Children and young people in Victorian youth justice centres may be subject to a range of isolation practices for a variety of reasons, including:

- to prevent a child or young person from harming themselves, another person or property ('behavioural' isolations)<sup>1761</sup>
- to maintain security in the centre as part of whole of centre lockdowns or as part of 'rotations', where

units or parts of units are locked down for a set amount of time while other children and young people are allowed out of their rooms<sup>1762</sup>

- as a means to detect, prevent or mitigate the transmission of COVID-19, known as a 'COVID isolation'.<sup>1763</sup>

Children and young people can be isolated in their own rooms or a dedicated isolation cell, which are usually stark rooms equipped with a toilet, handbasin and a drain hole in the middle of the room, without any soft finishes or access to personal or recreational items. Some do not have windows to the outside, although all have an observation window that allows staff to watch isolated children and young people. As the Commission noted in its 2017 inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system:

*No matter what the situation... the result was usually the same: children and young people enclosed alone between four walls with limited access to fresh air, human interaction, stimulation, [or] psychological support.*<sup>1764</sup>

### Impacts on children and young people

The practice of isolation in custodial settings is known to pose significant risks to a person's psychological and physical health. A 2017 paper by Australian Children's Commissioners and Guardians noted that:

*It is almost impossible to reconcile seclusion with the 'best interests' of the child as it serves no integrative or rehabilitative objective. Children in detention are particularly susceptible to medical, social and psychological problems which can be seriously exacerbated by the use of seclusion cells or being left*

<sup>1761</sup> CYFA, s 488(2).

<sup>1762</sup> CYFA, s 488(7).

<sup>1763</sup> CYFA, s 600M.

<sup>1764</sup> Commission for Children and Young People, *The same four walls*, p 5.



alone in their own cells for extended periods of time.<sup>1765</sup>



Isolation room at Parkville youth justice centre

The psychological impacts of isolation can include ‘anxiety, nervousness, obsessive rumination, anger, violent fantasies, nightmares, trouble sleeping, as well as dizziness, unduly perspiring hands and heart palpitations’.<sup>1766</sup> Isolation can increase an individual’s risk of suicide and self-harm,<sup>1767</sup> which is particularly concerning given that in 2019, 66% of children and young people under Youth Justice supervision presented with mental health issues.<sup>1768</sup>

The impact of isolation for Aboriginal children and young people is greater due to their cultural needs. The Royal Commission into Aboriginal Deaths in Custody stated that the isolation of Aboriginal people in custody

should be avoided at all costs, noting its capacity to increase feelings of alienation and disorientation, leading to self-harm.<sup>1769</sup>

An Aboriginal Independent Visitor consulted as part of this inquiry noted the particularly harmful impact of custodial isolation on Aboriginal young people.

*I think for Aboriginal children, isolation, if you’ve come from a family of neglect or been in and out of foster [care] or Child Protection, isolation just continues that paradigm of people not caring about them, that they’re just a pain that needs to be hidden. It’s a generational thing – our ancestors were moved on to missions, off Country, split from family. I think it brings up that past trauma. It’s not good for their mental health at all. It does more damage than good.*  
– Aboriginal Independent Visitor

Thirteen young people spoke to the Commission about their experience of isolation and lockdowns in custody. Eleven young people spoke about this as a negative experience, where the majority of commentary related to whole of unit or centre lockdowns. Young people largely spoke about the negative impact of isolation and lockdown on their mental health and wellbeing.

*A couple weeks ago at Parkville I was in lockdown for a week and a half. It mentally fucks you up.* – Jasper, 17

*If they lock down, I go crazy and I try to kill myself. I hate being locked in my room. I like my room because I’m clean and I have [photos of] my family up in my room, but I just don’t like spending too much time in my room.* – Harry, 16

Young people spoke about the difficult conditions during lockdown, such as only being allowed out for very brief periods in the day, and the tensions that result among young people and staff.

<sup>1765</sup> Australian Commissioners and Guardians, *Human rights standards in youth detention facilities in Australia: the use of restraint, disciplinary regimes and other specified practices*, Australian Commissioners and Guardians, 2016, p 62.

<sup>1766</sup> E Grant, R Lulham and B Naylor, ‘The use of segregation for children in Australian youth detention systems: an argument for prohibition,’ *Advancing Corrections*, 2017, 3:117–136, p 124.

<sup>1767</sup> Grant et al., ‘The use of segregation for children in Australian youth detention systems’, p 124.

<sup>1768</sup> DJCS, *Young people involved with Youth Justice in 2019*, p 6.

<sup>1769</sup> Royal Commission into Aboriginal Deaths in Custody, *National Reports, Volume 1*, 3.3.34.

## 13.2 Conditions in youth justice custody

*They let us out for 15 minutes one at a time to make a phone call. It was like that for 8 days. Then we were on rotations, half the unit was up then we'd go up... After lockdown there's been a few fights, cos everyone was sick of being locked out. Makes everyone angry. – Harley, 19*

*A couple of weeks ago, the whole place was locked down for 2 to 3 weeks... The first time we got out of our rooms, we were out of our rooms for half a day, then someone was swearing at the staff and we got locked up again. One of the staff was rude, and someone swore at them. – Cole, 16*

One young person talked about being in isolation for an extended period upon entering custody, and another young person referred to the phenomenon of young people self-isolating, with little support from staff.

*When I first went in there, they kept me in the 'iso' box, for 2 or 3 weeks. I think they would have heard from the judge that I was using methamphetamine. – Zeke, 18*

Young people indicated that lockdowns were not acceptable due to their impact on wellbeing.

*We shouldn't have lockdown. We should be out for the whole day. We shouldn't have rotations. It makes kids angry. [I feel] stressed out, try and pump push-ups but get sick of that. Pull out that gold colouring book. – Cole, 16*

Several young people noted staff shortages as a cause of lockdowns. As Pakap indicated in his story, at the beginning of Chapter 13, this is something that needs to be addressed.

### Legislation and rules governing isolation in youth justice centres

Section 488 of the CYFA regulates the use of isolation in youth justice centres. Section 488(2) provides that the isolation of a child or young person can be authorised if:

- (a) all other reasonable steps have been taken to prevent the person from harming himself or herself or any other person or from damaging property; and
- (b) the person's behaviour presents an immediate threat to his or her safety or the safety of any other person or to property.

The CYFA prohibits the use of isolation as a punishment<sup>1770</sup> and stipulates that it must only be used when all other reasonable steps have been taken.<sup>1771</sup>

The Youth Justice *Isolation* procedure provides that behavioural isolation should only last as long as necessary to prevent an immediate threat to the child or young person, others, property or the security of the precinct.<sup>1772</sup> The Commission has previously recommended that this should also be required by legislation.<sup>1773</sup> Aboriginal young people must be constantly observed. Additional procedures in relation to Aboriginal young people include that the ALO should be called as soon as possible to ensure the child or young person receives appropriate cultural support, and the health service must be called if there are specific health concerns.

Lockdowns are regulated by section 488(7) of the CYFA, which allows isolation in the interests of the security of the centre. The Youth Justice *Unit lockdown* procedure states that lockdowns should be used only when absolutely necessary to ensure the safety of a unit.<sup>1774</sup> Permissible reasons for a lockdown under the procedure include a shortage of staff to safely run the unit, and a lack of alternate options to otherwise manage the children and young people. Young people must be frequently observed depending on the risk and circumstances, and Aboriginal young people may need to be on a higher level of monitoring. Rotations can occur to allow young people to spend alternate periods in their rooms and common areas.

<sup>1770</sup> CYFA, s 487A.

<sup>1771</sup> CYFA, s 488(2)(a).

<sup>1772</sup> Department of Justice and Community Safety (DJCS), *Isolation: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 3.

<sup>1773</sup> Commission for Children and Young People, *The same four walls*, p 18.

<sup>1774</sup> Department of Justice and Community Safety (DJCS), *Unit lockdown: Youth Justice custodial procedure*, DJCS, Victorian Government, unpublished, accessed 27 August 2020, p 1.

Reasonable force may be used to place a child or young person in isolation under either section 488(2) or section 488(7).

The legislative requirements and conditions of COVID isolations are discussed in more detail below under 'COVID-19 isolations'.

## Human rights considerations

International human rights instruments provide relevant guidance for isolation practices, some of which are likely to be contravened by Victorian practices.

When children and young people are held in isolation or lockdown for protracted periods, they are generally not able to access educational and other specialist programs and activities. This is in conflict with rules 13.5 and 26.2 of the Beijing Rules, which provide that while in custody or detention, young people shall receive all necessary individual assistance, including social, educational, vocational, psychological, medical and physical, as appropriate to their age, sex and needs.<sup>1775</sup> Rule 26.4 of the Beijing Rules highlights the requirement to provide special attention to the needs of girls and young women and ensure fair treatment.<sup>1776</sup>

Over prolonged periods, isolation can amount to solitary confinement, which raises a distinct set of human rights concerns. The Mandela Rules define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement refers to solitary confinement for a time period in excess of 15 consecutive days.<sup>1777</sup>

Australia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) requires the government to implement a monitoring system in places of detention, in order to prevent torture and cruel, inhuman or degrading treatment. Relevant to this inquiry, the Australian Government has included youth justice facilities and police lock-up or police station cells in the group of primary places of detention that will need to ensure OPCAT

compliance.<sup>1778</sup> The Victorian Government can choose whether to establish a new body, or designate one or multiple existing bodies as the National Preventive Mechanism (NPM) to monitor these primary places of detention.<sup>1779</sup> To date, the Victorian Government has made no announcements about how it intends to approach the designation of NPMs.<sup>1780</sup>

As discussed below, the Victorian Ombudsman reaffirmed that isolation practices could lead to the solitary confinement of children and young people, and increase the potential for cruel, inhuman or degrading treatment.<sup>1781</sup> Victorian law is currently silent on minimum requirements for fresh air and meaningful human contact for children and young people in youth justice custody, despite the Commission previously recommending that this be legislated.<sup>1782</sup> The *Isolation* procedure does specify that isolated children and young people must receive at least one hour of fresh air per day; however, the *Unit lockdown* procedure does not.

This is contrary to sections of the Havana Rules, which state that:

- all disciplinary measures constituting cruel, inhuman or degrading treatment shall be strictly prohibited, including corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned<sup>1783</sup>
- every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits, during which time appropriate recreational and physical training should normally be provided.<sup>1784</sup>

<sup>1778</sup> Commonwealth Ombudsman, *Implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): baseline assessment of Australia's OPCAT readiness*, Commonwealth Ombudsman, 2019, p 5.

<sup>1779</sup> Commonwealth Ombudsman, *Implementation of OPCAT*, p 7.

<sup>1780</sup> The Commonwealth Attorney-General's Department has indicated that it intends that a federated model of National Preventive Mechanisms be established by January 2022: Australian Human Rights Commission (AHRC), *Implementing OPCAT in Australia (2020)*, AHRC website, 2020, accessed 5 March 2021.

<sup>1781</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 156.

<sup>1782</sup> Commission for Children and Young People, *The same four walls*, p 19.

<sup>1783</sup> Havana Rules, rules 17, 67.

<sup>1784</sup> Havana Rules, rule 47.

<sup>1775</sup> Beijing Rules, rules 13.5 and 26.2.

<sup>1776</sup> Beijing Rules, rule 26.

<sup>1777</sup> Mandela Rules, rule 44.

## 13.2 Conditions in youth justice custody

Rule 46 of the Mandela Rules states that:

*Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.*<sup>1785</sup>

The approval of a medical officer is not a required process for isolations in youth detention facilities, and staff are only required to contact medical services if there is an apparent medical concern. In addition, conditions for young people during lockdowns and isolations may not meet many of the minimum standards set by the Mandela Rules, including that persons should have at least one hour of daily exercise in the open air, access to hygiene and clean clothing.

### Current isolations and lockdowns in Victoria

The Commission has long held concerns about the isolation and lockdown practices in youth justice centres. In 2017, the Commission published a report on its inquiry into the use of isolation, separation and lockdown practices in Victorian youth justice centres.<sup>1786</sup> The inquiry found that children and young people were subject to an unacceptable level of isolation and were frequently locked down in units due to staffing issues.

The Victorian Government accepted all 21 recommendations of the inquiry, in full or in principle, and has implemented the majority. DJCS has indicated that an additional 2 will be addressed as part of the development of the Youth Justice Act. At the time of writing, a further 2 recommendations require additional work. These relate to designated accommodation options for vulnerable children and young people and publishing policies online for transparency.

In 2018–19, the Commission inspected isolation cells following complaints raised by children and young people. The Commission discovered that some children had not had basic amenities provided, in clear contravention of minimum human rights standards. As a result, Youth Justice implemented new daily processes and corresponding systems for checking these processes were being followed.

<sup>1785</sup> Mandela Rules, rule 46.3.

<sup>1786</sup> Commission for Children and Young People, *The same four walls*.

In 2019, the Victorian Ombudsman undertook an investigation into practices related to the solitary confinement of children and young people in order to consider the practical implications of implementing OPCAT.<sup>1787</sup> This involved an inspection of Malmsbury youth justice centre, Port Phillip prison and a secure welfare facility against OPCAT standards and included staff from other bodies with relevant expertise, including the Commission for Children and Young People. Consistent with the Commission's previous findings, the Ombudsman found that isolation practices are not always used as a last resort or meeting legal safeguards. Isolations were sometimes used punitively and there was a lack of understanding among staff of the impact of isolation on children and young people.

The Victorian Ombudsman made 26 recommendations.<sup>1788</sup> This included calling on the Victorian Government to legislate against solitary confinement and ensure that anyone in isolation is provided with meaningful human contact. In relation to Aboriginal children and young people, the Ombudsman recommended that authorities ensure that isolation registers record whether an Aboriginal support officer was contacted upon isolation<sup>1789</sup> and establish therapeutic spaces as alternatives to isolation rooms.<sup>1790</sup> The Victorian Government accepted all of the Victorian Ombudsman's recommendations in full or in principle.

To inform this inquiry, the Commission received data that shows that isolation has been reducing but that lockdowns were extensively used in 2018 and 2019. This data is discussed in more detail below.

### Isolation data

DJCS now publishes isolation data on its website, allowing for greater transparency and monitoring of the use of isolation.<sup>1791</sup> Isolation data indicates a positive downward trend in the use of section 488(2) 'behavioural' isolations, which have reduced by more than two-thirds from 2017 to the end of 2020 (Figure 13.1). While it is very promising to see that the practice

<sup>1787</sup> Victorian Ombudsman, *OPCAT in Victoria*.

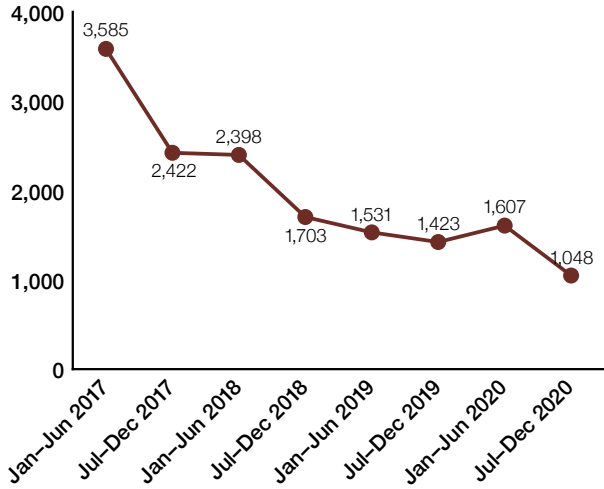
<sup>1788</sup> Victorian Ombudsman, *OPCAT in Victoria*, pp 242–258.

<sup>1789</sup> Recommendation 18: Victorian Ombudsman, *OPCAT in Victoria*, p 258.

<sup>1790</sup> Recommendation 3: Victorian Ombudsman, *OPCAT in Victoria*, p 254.

<sup>1791</sup> DJCS also publicly reports the current quarterly custodial incident data on the DJCS website.

has decreased, behavioural isolations continue to be a daily occurrence in youth justice centres.



**Figure 13.1** Isolations recorded in youth justice custody, January 2017 to December 2020

Source: Compiled from DJCS data provided to the Commission on 29 April 2021.

Detailed analysis relating to the 2-year period of this inquiry, 2018 to 2019, indicates that there were 1,039 instances of custodial isolation under section 488(2) for Aboriginal children and young people, and between one-half and three-quarters of Aboriginal children and young people were isolated at least once.<sup>1792</sup> The average number of isolations per individual who was isolated was similar at both Malmsbury and Parkville youth justice centres (9.4 times for Aboriginal children and young people at Parkville and 10.1 times at Malmsbury).<sup>1793</sup>

The Commission and Victorian Ombudsman’s previous inquiries found Aboriginal children to be over-represented in isolations at Malmsbury; however, in 2018 and 2019 they appeared to be proportionately represented at both youth justice centres, given that they made up 16% of the custodial population in this period and 15% of isolations.<sup>1794</sup>

**1792** In Parkville, 51% of Aboriginal children and young people (n = 70) and 53% of non-Aboriginal children and young people (n = 420) were isolated at least once. In contrast, at Malmsbury, 68% of Aboriginal children and young people (n = 38) and 71% of non-Aboriginal children and young people (n = 245) were isolated at least once: DJCS data provided to the Commission on 23 March 2020.

**1793** DJCS data provided to the Commission on 23 March 2020.

**1794** DJCS data provided to the Commission on 23 March 2020.

There was a disproportionately high rate of isolations for all children and young people on remand across the custodial population. In the 2-year period 2018 to 2019, the isolation of children and young people on remand accounted for 61% of all isolations,<sup>1795</sup> where the remand population was 45% of the average monthly custodial population in this period.<sup>1796</sup> This may be indicative of the negative impact of remand and the unsettling effect it has on children and young people.

Most children and young people who experienced isolation were isolated for short periods of less than 2 hours. A smaller number of isolations lasted 2 to 6 hours (10% of isolations of Aboriginal females and 15% of Aboriginal males) and approximately 1% were held in isolation for 6 to 12 hours. There were 2 recorded instances of Aboriginal males being isolated for 12 to 24 hours.<sup>1797</sup> VALS raised with this inquiry its concerns that in 2019 one client was isolated for the entire period of their remand;<sup>1798</sup> however, this episode was not reflected in Youth Justice records and, when responding to the draft of this report, DJCS questioned the accuracy of this claim. The median duration of isolations for Aboriginal children and young people was 60 minutes, which was equal to the median duration of isolation for non-Aboriginal children and young people.<sup>1799</sup>

Aboriginal children and young people were over-represented in isolations in particular circumstances, including ‘self-isolations’, making up 25% of the 53 isolations in this category.<sup>1800</sup> This is likely to indicate that during this period there was a cohort of Aboriginal children and young people who did not feel safe in custody.

Aboriginal children and young people were also over-represented among isolations concerning an immediate threat to their own safety (19% of 320 isolations) and immediate threat to property (18% of 546 isolations). This could suggest the need for

**1795** DJCS data provided to the Commission on 23 March 2020.

**1796** Compiled from DJCS data regularly provided to the Commission.

**1797** In response to the draft of this report, DJCS questioned the validity of this data.

**1798** VALS, *Submission to Our youth, our way inquiry*, p 21.

**1799** DJCS data provided to the Commission on 23 March 2020.

**1800** It should be noted that this was for a relatively small number of isolations, representing 13 self-isolations of Aboriginal young people: DJCS data provided to the Commission on 23 March 2020.

## 13.2 Conditions in youth justice custody

calming interventions, including sensory items or rooms.

Aboriginal girls and young women were much more likely to be isolated than their male peers. Although Aboriginal boys and young men were over-represented in self-isolations, immediate threat to their own safety, and immediate threat to property, the scale of over-representation of Aboriginal girls and young women in isolations for these reasons was far greater (see Table 13.3). This is indicative of the pronounced impact of custody on Aboriginal girls and young women.

The 10 to 14 years age group was over-represented in behavioural isolations for both sexes (see Table 13.4). Aboriginal girls were acutely over-represented, accounting for 57% of all female isolations in this age group. Aboriginal boys were also over-represented, accounting for 20% of male isolations in that age group.

The data shows that while the use of behavioural isolations has declined, they are being disproportionately experienced by some of the most vulnerable children and young people in custody.

**Table 13.3** Isolations by sex, reason for isolation and Aboriginal status, 2018 and 2019

Sex and reason	Aboriginal		Non-Aboriginal	
	No.	%	No.	%
<b>Female</b>	<b>126</b>	<b>38%</b>	<b>202</b>	<b>62%</b>
Immediate threat to safety (others)	97	38%	156	62%
Immediate threat to safety (self)	11	41%	16	59%
Immediate threat to property	8	33%	16	67%
Self-isolation	6	43%	8	57%
Authorised Individual Secure Care Plan	4	40%	6	60%
<b>Male</b>	<b>913</b>	<b>14%</b>	<b>5,791</b>	<b>86%</b>
Immediate threat to safety (others)	631	13%	4,263	87%
Authorised Individual Secure Care Plan	136	14%	820	86%
Immediate threat to property	90	17%	432	83%
Immediate threat to safety (self)	49	17%	244	83%
Self-isolation	7	18%	32	82%
<b>Total</b>	<b>1,039</b>	<b>15%</b>	<b>5,993</b>	<b>85%</b>

Source: DJCS data provided to the Commission on 23 March 2020.

**Table 13.4** Percentage of isolations by sex, age group and Aboriginal status, 2018 and 2019

Sex and age	Aboriginal (%)	Non-Aboriginal (%)
<b>Female</b>	<b>38</b>	<b>62</b>
10–14	57	43
15–17	36	64
18–24	32	68
<b>Male</b>	<b>14</b>	<b>86</b>
10–14	20	80
15–17	11	89
18–24	17	83
<b>Total</b>	<b>15</b>	<b>85</b>

Source: DJCS data provided to the Commission on 23 March 2020.

## Lockdown data

Data provided to the Commission shows the extensive use of lockdowns in Victorian youth justice centres, and that the rate of lockdowns has increased over the past 3 years (see Table 13.5). This may be due, in part, to changes to reporting practices made by Youth Justice in 2018 to place a greater focus on recording every episode that a young person is placed in a locked room being counted as an episode of isolation. In 2019–20, there were 56,890 instances of lockdown, where this figure represents the number of children and young people affected by each lockdown rather than the total number of lockdowns. Because lockdowns are implemented across units or the whole youth justice centre, rather than directed towards individuals, the data does not show if Aboriginal children and young people were disproportionately affected by lockdowns.

**Table 13.5** Lockdowns under s488(7) of the *Children Youth and Families Act 2005* at Youth Justice locations, 2017–18 to 2019–20

	Malmsbury	Parkville	Total
<b>2017–18</b>			
Number of lockdowns	7,288	8,437	<b>15,725</b>
Average population	109	92	<b>201</b>
Rate of lockdowns per child/young person	67	92	<b>78</b>
<b>2018–19</b>			
Number of lockdowns	22,685	26,716	<b>49,401</b>
Average population	104	84	<b>188</b>
Rate of lockdowns per child/young person	218	317	<b>262</b>
<b>2019–20</b>			
Number of lockdowns	22,917	33,973	<b>56,890</b>
Average population	92	90	<b>181</b>
Rate of lockdowns per child/young person	249	377	<b>314</b>

Source: Commission for Children and Young People, *Commission for Children and Young People annual report 2019–20*, Commission for Children and Young People, Melbourne, 2020, p 43.

The Victorian Ombudsman’s report showed that staff shortages accounted for 40% of the lockdowns in its investigation period.<sup>1801</sup>

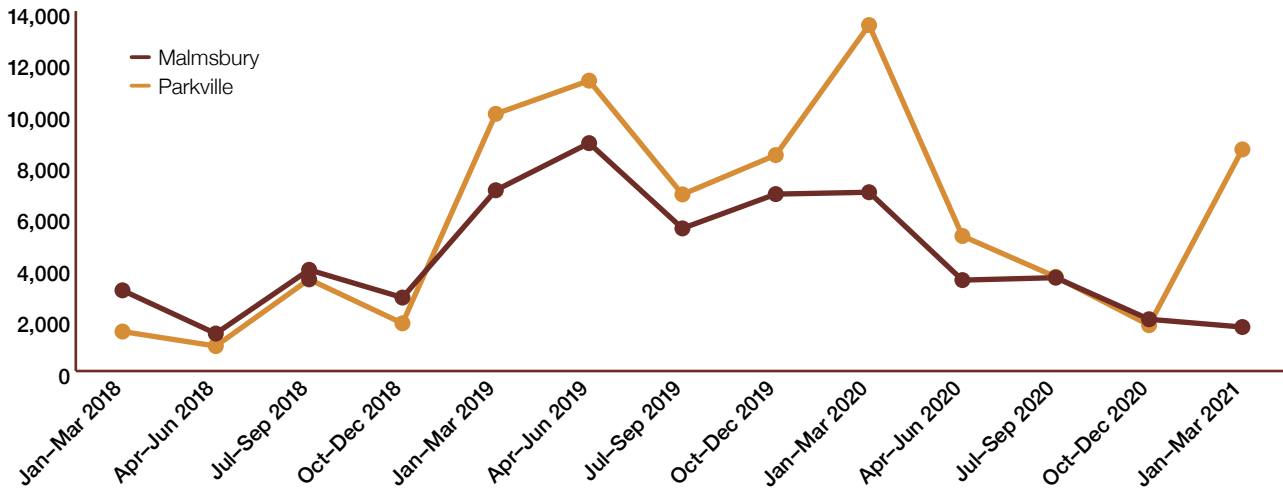
**1801** In its period of investigation, between 25 February 2018 and 25 February 2019, there were 13,653 lockdowns at Malmsbury youth justice precinct (where this figure represents the number of children and young people affected by each lockdown rather than the total number of lockdowns): Victorian Ombudsman, *OPCAT in Victoria*, p 156.

### 13.2 Conditions in youth justice custody

The high rate of lockdowns in 2019–20 suggests that children and young people are continuing to spend considerable periods of time alone in their rooms, when they should instead be engaged in meaningful activities. While the Commission was encouraged to note a marked reduction in lockdowns in the last quarter of 2019–20, when lockdowns fell by more than half, this trend does not appear to have continued at Parkville youth justice centre (Figure 13.2).

For example, in February 2021, Youth Justice recorded a substantial number of lockdowns. The majority of these were at Parkville, where, on average during

February 2021 two-thirds of the centre’s units were affected by lockdowns or rotations every day. These lockdowns were not related to infection control requirements, but were instead identified by Youth Justice as being due to staff shortages. Many of these involved full days of hourly rotations (where half of the children and young people in a unit are out of their rooms, and the rest are locked in their rooms), or half days of rotations and full lockdowns of the whole unit for several hours. The Commission continues to hold serious concerns about, and to closely monitor, the use of lockdowns.



**Figure 13.2** Lockdowns recorded in youth justice custody, January 2018 to March 2021

Note: These figures represent the number of children and young people affected by each lockdown rather than the total number of lockdowns.

Source: Compiled from DJCS data provided to the Commission on 29 April 2021.



## COVID-19 isolations

In April 2020, the Victorian Government amended the CYFA to allow youth justice centres to isolate a young person to detect, prevent or mitigate the transmission of COVID-19. The legislative amendments specify that children and young people in COVID isolation must:

- not be isolated for more than 14 consecutive days<sup>1802</sup>
- receive the same entitlements as others detained in a youth justice centre, except under limited circumstances<sup>1803</sup>
- be permitted access to outdoor recreational activities for 'a reasonable period of time' each day<sup>1804</sup>
- be closely supervised and observed at a minimum of 15-minute intervals<sup>1805</sup>
- receive medical and mental health support and treatment that the person reasonably requires.<sup>1806</sup>

Youth Justice has utilised this legislation in various ways since it was introduced. COVID isolations have varied in length from one to 14 days, depending on the extent of community transmission. At the height of community transmission in 2020, Youth Justice directed that all new admissions were to be isolated for 14 days and until they returned 2 negative COVID-19 test results (following tests on day 1 and day 11 of admission). Procedures also require that any child or young person with a potential, suspected, close contact or confirmed case must be isolated 'for a period consistent with current health advice'.<sup>1807</sup>

Youth Justice staff deliver meals to children and young people in their rooms, where they eat alone. ALOs are expected to be in regular contact with any Aboriginal child or young person in COVID isolation, including through visits if appropriate personal protective equipment is worn. Aboriginal Elders have also provided mentoring programs and in-reach support for Aboriginal children and young people. Children and young people have been provided with electronic devices for visits, education and entertainment, and Parkville College has provided laptops and educational

materials. While there was a period in 2020 where teachers were not able to provide lessons, access to education is now being progressively restored.

The Commission has observed the introduction of many beneficial measures for children and young people in COVID isolations that have not been available to children and young people in other forms of isolation, and commends DJCS for this. These include activity packs, printed exercise routines, fitness DVDs, laptops and other electronic devices for entertainment<sup>1808</sup> and wellbeing kits with materials to support mental health and wellbeing such as stress balls, music players and puzzles.<sup>1809</sup> The Commission has also heard accounts of Youth Justice staff organising games and quizzes that children and young people can participate in over the intercom system, creating opportunities for human connection and helping to pass the time. Children and young people are also entitled to personal phone calls (minimum of 14 per week) and, where appropriate, virtual contact with other children and young people in youth justice custody.<sup>1810</sup>

After receiving their first negative test result, children and young people may also leave their bedrooms if certain activities cannot be facilitated in their bedroom, such as:

- scheduled personal/professional visits (phone or video) calls
- meetings with Youth Justice support staff
- religious or cultural supports
- connection to culture for Aboriginal young people
- educational activities.<sup>1811</sup>

This approach to COVID isolations shows that there are many ways that Youth Justice can ensure that human connection is maintained and help to alleviate the frustration and boredom of isolation. Youth Justice has indicated that many of these elements will be maintained beyond the end of the COVID-19 pandemic.

<sup>1802</sup> CYFA, s 600M(3).

<sup>1803</sup> CYFA, s 600N.

<sup>1804</sup> CYFA, s 600N(1).

<sup>1805</sup> CYFA, s 600M(5)(a). The Director's instruction indicates that consideration should be given to more frequent observations for Aboriginal children and young people: DJCS, *Director's instruction no: 3.13*, p 19.

<sup>1806</sup> CYFA, s 600M(5)(b).

<sup>1807</sup> DJCS, *Director's instruction no: 3.13*, p 3.

<sup>1808</sup> DJCS, *Director's instruction no: 3.13*, p 19.

<sup>1809</sup> DJCS, *Director's instruction no: 3.13*, pp 18–19.

<sup>1810</sup> DJCS, *Director's instruction no: 3.13*, p 15.

<sup>1811</sup> DJCS, *Director's instruction no: 3.13*, p 16.

## Reducing the impact of isolation and lockdowns

While there has been a welcome reduction in the use of isolations, it is clear that lockdowns and, to a lesser degree, isolations remain widespread in Victoria's youth justice centres, causing children and young people to spend too much time alone in their rooms. The Victorian Ombudsman's 2019 report recognised that isolation in youth justice centres was routinely used in response to staff shortages,<sup>1812</sup> suggesting that the Commission's earlier findings about staff shortage-triggered lockdowns had not been addressed at that stage.<sup>1813</sup> The more recent increase in lockdowns at Parkville suggests this remains a problem.

In 2019, the Victorian Ombudsman recommended that DJCS '[i]mplement as a priority its plan to reduce to zero the number of lockdowns and rotations due to staff shortage at Malmsbury'.<sup>1814</sup> In response, DJCS advised that there has been an active campaign to recruit new Youth Justice staff,<sup>1815</sup> and DJCS has also released a Youth Justice workforce plan that aims to address recruitment, retention, and learning and development.<sup>1816</sup> DJCS should monitor and report on how well these strategies meet the needs of their staff and the centres more broadly. DJCS should also analyse reductions in the rate of lockdown in 2020 to determine if they provide lessons in how to reduce lockdowns in the future, or whether they were due to short-term impacts of the COVID-19 pandemic, including a more stable than usual workforce.

Despite lower numbers of behavioural isolations, stakeholders told us that better behaviour management methods could reduce their use even further. Trauma-informed de-escalation training would provide skills needed for this (see Recommendation 73). Stakeholders also suggested that therapeutic environments and tools for relieving tension, boredom and anger, including access to music and art materials, could assist in de-escalating behaviour.

*[There's a] need to upskill and work properly with these kids in a safe space... ask specialists what they need. You can't expect a young person who's got bad habits to change them if they can't practice good behaviour inside. They need a room for that, chalk walls and paintings to express. – Youth Justice staff member*

*Some of the boys have anger management issues and want to tune out and listen to music, but you can't get [an MP3 player] unless you're on some tier as a behaviour incentive, and sometimes that just needs to be given to them for mental health for something to listen to, rather than constant door-banging and screaming. – Aboriginal Independent Visitor*

The Commission has previously noted the benefits of sensory items, such as stress balls and chalkboards in isolation rooms, and has been disappointed that plans to introduce sensory rooms at Parkville and Malmsbury youth justice centres were never completed.<sup>1817</sup> The Youth Justice Strategic Plan includes an action to establish an Intensive Intervention Unit at Cherry Creek youth justice centre, which would create 'a therapeutic environment to manage the behaviour of young people who cause harm in custody, and provide intensive intervention to reduce the risk of violent offending'.<sup>1818</sup> This will not be ready for a number of years. An interim Intensive Intervention Unit was opened at Parkville youth justice centre in June 2020; however, it is too soon to know how effective it has been in meeting the needs of children and young people. It has also not been planned as a culturally-specific response for Aboriginal children and young people.

For these reasons, the Commission reiterates the Victorian Ombudsman's recommendation to:

*[e]nsure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in prisons, youth justice centres and secure welfare services.<sup>1819</sup>*

<sup>1812</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 254.

<sup>1813</sup> Commission for Children and Young People, *The same four walls*.

<sup>1814</sup> Recommendation 21: Victorian Ombudsman, *OPCAT in Victoria*, p 258. The Ombudsman did not inspect Parkville youth justice centre.

<sup>1815</sup> DJCS response quoted in Victorian Ombudsman, *OPCAT in Victoria*, p 198.

<sup>1816</sup> DJCS, *Youth Justice custodial workforce plan*.

<sup>1817</sup> Commission for Children and Young People, *The same four walls*, p 61.

<sup>1818</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 28.

<sup>1819</sup> Recommendation 3: Victorian Ombudsman, *OPCAT in Victoria*, p 254.

In the short term, providing sensory items could help to reduce the impact of any lockdown or isolation. In its submission to this inquiry, the Human Rights Law Centre recommended, among other things, that children and young people in isolation be given access to family, lawyers, education, exercise, recreational material and services. As noted above, in response to the COVID-19 pandemic, the youth justice system has shown that it can provide children and young people with access to family, education, services and new materials, such as care packages and electronic devices, while they are isolated in their rooms. This simple solution should be made permanent beyond the duration of the COVID-19 pandemic to assist in reducing the negative impacts of isolation.

At a big-picture level, the ratification of OPCAT and the establishment of an NPM should help to prevent ill treatment of children in detention and mitigate the risk that the use of isolation or lockdown ever amounts to solitary confinement. The Commission has previously noted the importance for the designated NPM to have specialist expertise in understanding the particular risks that are faced by children and young people in detention and to have skills in engaging with vulnerable children and young people.<sup>1820</sup>

Given the over-representation of Aboriginal children and young people in the youth justice system, the body named as the NPM should employ Aboriginal staff at all levels and hold expertise in the particular experiences of Victoria's Aboriginal community, as well as children and young people.<sup>1821</sup> The Commission meets these requirements, and would be well-placed to function as the NPM for children and young people detained in youth justice centres, secure welfare services, police custody and offender transport in Victoria.<sup>1822</sup>

Designating the Commission as part of the NPM would be consistent with conclusions drawn by the Northern Territory Royal Commission, which recommended that the Northern Territory Commission for Children and Young People 'be provided with functions that are

compatible with the requirements of a National Preventive Mechanism as set out in OPCAT'.<sup>1823</sup>

## Recommendation 70

That DJCS:

- a) urgently progress the implementation of the *Youth Justice custodial workforce plan*, and monitor the extent to which it is reducing the use of isolation and lockdown
- b) ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in youth justice centres
- c) immediately introduce care packages for all children and young people experiencing isolation or lockdown to relieve stress, boredom and psychological damage.

## Recommendation 71

That the Victorian Government ensure that the body designated as the National Preventive Mechanism for youth justice facilities is a body with specialist expertise in children and young people including child development, working with vulnerable children and young people, and Aboriginal children and young people.

<sup>1820</sup> Commission for Children and Young People, *Submission to consultation on the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in Australia*, Commission for Children and Young People, 2017, accessed 1 March 2021, p 1.

<sup>1821</sup> Commission for Children and Young People, *Submission to consultation on OPCAT in Australia*, p 6.

<sup>1822</sup> Commission for Children and Young People, *Submission to consultation on OPCAT in Australia*, p 2.

<sup>1823</sup> Recommendation 40.4: Northern Territory Royal Commission Final Report, Volume 4, p 29.

## Self-harm

### Finding 38

**Aboriginal children and young people are at higher risk of serious injury or death by self-harm or suicide than other children and young people in Victoria’s youth justice centres.**

Self-harm refers to acts of self-poisoning or self-injury, and may be done with or without the intention of committing suicide.<sup>1824</sup> There are many reasons that people self-harm; however, it commonly occurs in response to overwhelming emotional pain and psychological distress.<sup>1825</sup> It may also be caused by a lack of other coping strategies.<sup>1826</sup>

Self-harming by children and young people is not uncommon. National prevalence studies show that approximately one-quarter of all children and young people will have self-harmed at least once by the time they are 25 years old.<sup>1827</sup> This rate is higher for girls and young women.<sup>1828</sup>

Aboriginal children and young people are 5 times more likely to self-harm than non-Aboriginal children and young people.<sup>1829</sup> The prevalence among children and young people in youth justice custody is disproportionately high.<sup>1830</sup>

### Self-harming in Victoria’s youth justice centres

Aboriginal children and young people are substantially over-represented in incidents involving attempted suicide and self-harm in Victoria’s youth justice centres. This may indicate that these children and young people are experiencing significant levels of distress in response to being incarcerated.

<sup>1824</sup> J Robinson, L McCutcheon, V Browne and K Witt, *Looking the other way: young people and self-harm*, Orygen: The National Centre of Excellence in Youth Mental Health, Melbourne, 2016, p 11.

<sup>1825</sup> Robinson et al., *Looking the other way*, p 9.

<sup>1826</sup> Robinson et al., *Looking the other way*, p 9.

<sup>1827</sup> Robinson et al., *Looking the other way*, p 12.

<sup>1828</sup> Robinson et al., *Looking the other way*, p 12.

<sup>1829</sup> Robinson et al., *Looking the other way*, p 16.

<sup>1830</sup> Robinson et al., *Looking the other way*, p 14.

Data drawn from the *Report on Government Services* shows that in 2018–19, while Aboriginal children and young people in Victorian youth justice centres did not require hospitalisation for a self-harming incident, incidents not requiring hospitalisation occurred at approximately twice the rate of non-Aboriginal children and young people (Table 13.6).<sup>1831</sup>

Due to different counting rules, Youth Justice incident reports show an even higher overall number of incidents of self-harming and attempted suicide than those reported through the *Report on Government Services*.<sup>1832</sup> These reports also show an alarming over-representation, with Aboriginal children and young people involved in 42% of all reported suicide attempts and 34% of all reported self-harm incidents in 2018 and 2019, despite accounting for only 16% of the monthly average youth justice population (Table 13.7).<sup>1833</sup>

<sup>1831</sup> Productivity Commission, *Report on Government Services 2020: 17 Youth justice services*, Productivity Commission, Australian Government, 2020, 17A Youth justice services – data tables, data table 17A.19.

<sup>1832</sup> The *Report on Government Services* only counts self-harming incidents that require either hospitalisation or medical or psychological treatment.

<sup>1833</sup> DJCS data provided to the Commission on 23 March 2020. ‘Category One incidents are the most serious incidents and include incidents such as the death of a young person; allegations of physical or sexual assault; and serious behavioural issues that impact on young people or staff safety.’: Department of Justice and Community Safety (DJCS), *Youth justice custodial quarterly incident reporting (1 October to 31 December 2016)*, DJCS, Victorian Government, accessed 14 February 2021. ‘Category Two incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others.’: Grover, *Youth justice in Victoria*, p 40.

**Table 13.6** Number and rate of self-harm and attempted suicide incidents in Victorian youth justice custody by Aboriginal status, 2018–19

Aboriginal status	Requiring hospitalisation				Not requiring hospitalisation			
	Incidents		Young people		Incidents		Young people	
	No.	Rate per 10,000 custody nights	No.	Rate per 10,000 custody nights	No.	Rate per 10,000 custody nights	No.	Rate per 10,000 custody nights
Aboriginal	0	0	0	0	28	24.6	13	11.4
Non-Aboriginal	2	0.3	1	0.2	97	16.6	34	5.8
<b>Total</b>	<b>2</b>	<b>0.3</b>	<b>1</b>	<b>0.1</b>	<b>125</b>	<b>17.9</b>	<b>47</b>	<b>6.7</b>

Note: The term ‘incidents’ refers to the number of self-harming events, whereas the term ‘young people’ refers to the number of individuals who were involved in a self-harming event. It is not possible to compare self-harming across Australia’s youth justice centres because the methods of data collection vary across jurisdictions.

Source: Productivity Commission, *Report on Government Services 2020*, data table 17A.19.

**Table 13.7** Number of Youth Justice Category 1 and 2 incident reports relating to attempted suicides and self-harm by Aboriginal status, 2018 and 2019

Aboriginal status	Attempted suicide			Self-harm		
	Category 1	Category 2	Total	Category 1	Category 2	Total
Aboriginal	2	49	<b>51</b>	1	156	<b>157</b>
Non-Aboriginal	5	66	<b>71</b>	4	306	<b>310</b>
<b>Total</b>	<b>7</b>	<b>115</b>	<b>122</b>	<b>5</b>	<b>462</b>	<b>467</b>

Note: Category 1 incidents are the most serious incidents and include incidents such as the death of a young person, allegations of physical or sexual assault, and serious behavioural issues that impact on young people or staff safety. Category 2 incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others.

Source: DJCS data provided to the Commission on 23 March 2020.

It is clear that gender also plays a role in self-harming in custody. Aboriginal girls and young women are substantially over-represented in reports relating to self-harm. In 2018 and 2019, Aboriginal girls and young women were involved in 63% (n = 63) of Category 2 incident reports relating to self-harm, despite only accounting for 35% of the female population in youth justice centres.<sup>1834</sup>

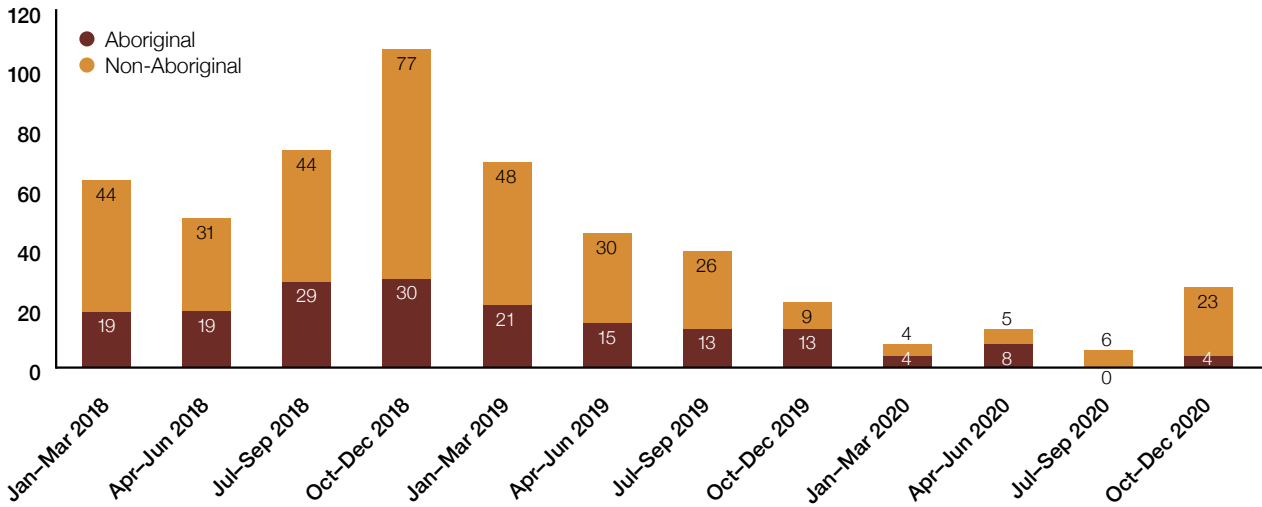
Analysis of the reports indicated that there is no substantial difference in the numbers of incident reports involving Aboriginal children and young people who are sentenced compared with those on remand.

In response to the draft of this report, DJCS advised the Commission that incidents of Aboriginal self-harm in youth justice custody show a recent decline. DJCS

also advised that there have been no recorded incidents of suicide among Aboriginal children and young people in youth justice custody. Figure 13.3 and Figure 13.4 show Category 1 and Category 2 incident reports relating to attempted suicides and self-harm from 2018 to 2020.

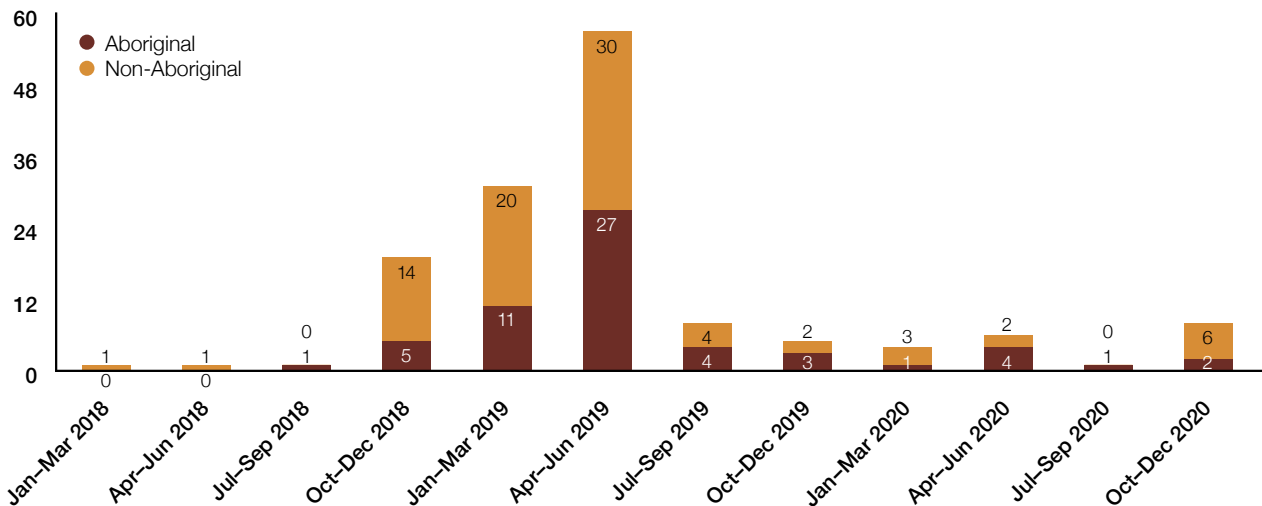
<sup>1834</sup> DJCS data provided to the Commission on 23 March 2020.

### 13.2 Conditions in youth justice custody



**Figure 13.3** Youth Justice Category 1 and 2 incident reports relating to self-harm by Aboriginal status, 2018–2020

Source: Compiled from DJCS data provided to the Commission on 29 April 2021.



**Figure 13.4** Youth Justice Category 1 and 2 incident reports relating to attempted suicide by Aboriginal status, 2018–2020

Source: Compiled from DJCS data provided to the Commission on 29 April 2021.

While the decline in numbers is a positive development, the most recent data provided to the Commission by DJCS shows that, in 2020, Aboriginal children and young people were over-represented in the low numbers of both self-harming and attempted suicide incidents. Aboriginal children and young people accounted for 30% (n = 16) of Category 1 and 2 incidents relating to self-harm and 42% (n = 8) of Category 1 and 2 incidents relating to attempted suicide. The Commission will continue to monitor incidents reports relating to attempted suicide and self-harm.

## Responses to self-harming in youth justice centres

One young person spoke to us about the importance of a supportive response to self-harming in custody.

*I sat there with the other boys and the workers. Most of the workers I didn't trust. If I would go off, I'd get restrained and stuff ... I [self harmed] in there and the psych goes, 'Why'd you do it?' and fuck that, you don't just come at someone like that when they're going through something. But [another psychologist] just sat down with me to have a yarn. – Djiran, 19*

Youth Justice currently has 2 Director's instructions relating to suicide and self-harm, *Safety and security immediate response to suicidal and self-harming behaviour* and *Safety and security framework for the prevention of suicidal and self-harming behaviour*. These policies are intended to guide the system to prevent and respond to attempted suicide and self-harm by children and young people.

Risk assessment and prevention begins at admission.<sup>1835</sup> All children and young people remanded or sentenced to youth justice custody are screened by the Primary Health Service to assess their risk of suicide or self-harm. Children and young people at higher risk will be observed more closely until they are determined to be at lower risk, unless it is known that constant observations can lead to further distress or agitation.<sup>1836</sup>

The policies articulate 3 'zones' of 'proactive', 'active' and 'reactive' interventions that Youth Justice staff should employ to prevent and respond to the risk of suicide and self-harm. There are many positive aspects of these policies, including that they direct staff:

- not to leave a young person who is actively suicidal or engaging in self-harming behaviours unattended under any circumstance<sup>1837</sup>
- to employ active interventions that can de-escalate situations to prevent incidents from occurring<sup>1838</sup>
- that restrictive interventions are not recommended as an initial response to self-harming<sup>1839</sup>
- to take immediate action when a young person is self-harming, or when they are behaving in a way that indicates they are planning to harm themselves<sup>1840</sup>
- to involve health services at key points.<sup>1841</sup>

The policies are also explicit that Aboriginal children and young people may be even more vulnerable than non-Aboriginal young people in custody.<sup>1842</sup> For this reason, staff are directed to consult an ALO when an Aboriginal child or young person is self-harming or suicidal. The ALO's role is to attend the unit, provide strategies for supporting the young person, and participate in the Client Safety Review after the incident.<sup>1843</sup> The ALO is also involved in any decision to reduce, increase or cease observation of an Aboriginal child or young person.<sup>1844</sup>

While a tailored response for Aboriginal children and young people is necessary, issues relating to inadequate training discussed in Chapter 13.1 'Cultural safety and support in custody' are relevant here. Without proper training in the de-escalation or therapeutic interventions that would enable ALOs to provide effective support when an Aboriginal child or young person is self-harming, it appears that ALOs must rely on existing skills and any prior relationship and rapport they have developed with the child or young person. As discussed in Chapter 13.1, ALOs are currently under so much strain that they do not always have the time to do this foundational relationship-

<sup>1835</sup> As noted in Chapter 9.1 'Mental health', Aboriginal children and young people must receive a health and mental health screening within 12 hours of admission to custody and a comprehensive assessment within 3 days: DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38. DJCS advised the Commission that, after the young person is assessed, the mental health clinician will engage with the care team, including ALOs and an Aboriginal health worker where appropriate, to put a care plan in place to manage any ongoing risk. This risk will then be assessed at regular intervals.

<sup>1836</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 2.10: safety and security framework for the prevention of suicidal and self-harming behaviour*, DJCS, Victorian Government, unpublished, accessed 14 September 2020, pp 9, 11.

<sup>1837</sup> DJCS, *Director's instruction no: 2.9*, p 4.

<sup>1838</sup> DJCS, *Director's instruction no: 2.9*, p 7.

<sup>1839</sup> DJCS, *Director's instruction no: 2.9*, p 6.

<sup>1840</sup> DJCS, *Director's instruction no: 2.9*, p 4.

<sup>1841</sup> DJCS, *Director's instruction no: 2.10*, p 9. As noted above, Aboriginal children and young people must receive a health and mental health screening within 12 hours of admission to custody and a comprehensive assessment within 3 days: DJCS, *Youth Justice Strategic Plan 2020–2030*, p 38.

<sup>1842</sup> DJCS, *Director's instruction no: 2.10*, p 9.

<sup>1843</sup> DJCS, *Director's instruction no: 2.9*, p 6.

<sup>1844</sup> DJCS, *Director's instruction no: 2.9*, p 11.

## 13.2 Conditions in youth justice custody

building work with Aboriginal children and young people in youth justice centres.

Since August 2017, the Commission has raised specific concerns with DJCS about a number of suicide and self-harm incidents. By reviewing incident reports and some footage relating to these incidents, the Commission has identified several worrying practice issues:

- **reliance on restrictive practices in response to distress** – The Commission has monitored many incidents where Youth Justice staff have initiated a restrictive practice in response to a child or young person self-harming, despite policy statements that restrictive practices should not be used as an initial response. A particularly concerning example is provided in Sharna’s story (below), where Youth Justice staff applied handcuffs to an Aboriginal girl attempting suicide.
- **increasing the risk of self-harming behaviour through isolation** – Many incidents involving self-harming also involve an isolated young person. In some incidents, Youth Justice staff isolated a highly distressed child or young person, who soon after began to self-harm or attempt suicide. In other incidents, such as Troy’s story (below), a child or young person appeared to threaten self-harm in response to being isolated for other reasons, such as being in lockdown or ‘on rotations’.
- **lack of flexible responses to self-harming** – Sharna’s story provides an example where a more creative response, such as taking Sharna for a walk, could have reduced harm to the young person. In another example from November 2019, a young person with mental health concerns was isolated despite showing clear signs that they required mental health support.

The Commission has also observed how effectively some Youth Justice and health staff can de-escalate distressed children and young people, and at times manage to avert more serious incidents of self-harm. An example of this is provided in Troy’s story below.

In response to the Commission’s concerns, since August 2017 DJCS has:

- agreed to provide the Commission with incident reports relating to restraints and self-harm or suicide attempts requiring offsite medical attention, which now inform the Commission’s monitoring work

- developed the *Responding to suicidal and self-harming behaviour* procedure (released in February 2018)
- updated policies to direct senior unit staff to immediately attend, assess risk and make decisions for action
- delivered several rounds of related training to staff at all levels (commencing in 2017)
- initiated new internal review processes – currently, the Youth Justice Custodial Services Operation Strategy and Innovation Unit reviews staff responses to every incident of self-harm or attempted suicide and then provides guidance or further training to staff involved. DJCS now also provides the Commission with Category 2 incident reports relating to self-harm or suicide attempts where offsite medical attention was required.

While these changes have been welcome, the Commission continues to receive incident reports involving self-harming and suicide attempts that show that children and young people are at risk of serious harm.



## Sharna

Sharna is an Aboriginal girl who is affected by her experiences of trauma. She experiences high levels of distress in the custodial environment.

As part of its monitoring work, the Commission received a report in June 2019 describing Sharna's involvement in a 'suicide attempted' incident. The Commission also reviewed the footage of this incident.

The incident began when Sharna requested to exit her room around midday. It is unclear why she had been locked in her room. Youth Justice workers refused to unlock her door until she had made her bed and tidied her room, which Sharna initially refused to do. At this point Sharna appeared distressed. The report states that Sharna 'started to get verbally and physically heightened'.

After Sharna complied with staff direction to tidy her room, staff allowed her into the communal area of the unit, but left her there alone while they watched her from behind the staff office door. The incident report states that Sharna became more heightened, and 'started kicking the staff door and continued to threaten and swear at staff'. Staff called the Security and Emergency Response Team (SERT), who tried briefly to

negotiate with Sharna to return to her room, and then restrained her and moved her to the 'safe room' of the unit by force.

The above events unfolded within 7 minutes.

SERT staff left Sharna alone in the 'safe room'. This room is bare and featureless. The floor, walls and seating are concrete, and there is a metal sink and toilet bowl.

Sharna showed signs of extreme distress, ripping her shirt and using it as a ligature around her neck. SERT responded by entering the room, cutting the ligature off with a safety knife, and then leaving Sharna alone again. This happened 3 times. On her fourth attempt to tie a ligature, SERT staff restrained and handcuffed Sharna. The incident report states that this was done 'for her own safety as she was unable to de-escalate', and that once she was handcuffed Youth Justice staff were able to calm Sharna down. While handcuffed, Sharna can be heard asking staff to take her outside.

Sharna was handcuffed for 16 minutes. Most of this time she was in distress, crying or shouting, face down on the concrete floor, within centimetres of the toilet.<sup>1845</sup>

This case study is provided to demonstrate that Youth Justice staff may at times use force where other options could be available.

It also shows how quickly things can escalate, how being locked up and isolated can exacerbate the situation, and how there is sometimes an unrealistic expectation that a child or young person will be able to calm themselves down. Instead, Youth Justice staff should have the skills and awareness to know how to de-escalate a young person. It is also an example of how a restrictive response fails to address the needs of

a traumatised young person, and breaches their right to be treated with dignity and respect. In this case, a less restrictive, more flexible and trauma-informed approach may have prevented or minimised the risk of harm.

<sup>1845</sup> In response to the draft of this report, DJCS noted that, during this period, a senior staff member sat with Sharna, trying to comfort and de-escalate her.

## Troy

Troy is an Aboriginal young person with a cognitive disability who has self-harmed several times while in custody. Numerous incident reports received by the Commission show that Troy becomes frustrated and distressed when alone in his room or placed in an isolation room; however, he is often isolated.

For example, in early 2019, Troy told staff that he was going to kill himself. Youth Justice staff called for SERT to attend the unit, although it is unclear if this was related to the threats to self-harm or damage to property. Troy made ligatures, which he put into his shorts.

Despite Troy appearing calm, SERT placed him in handcuffs and moved him to an isolation cell, where they placed him face down on the ground. Three SERT staff restrained Troy while attempting to remove the handcuffs. While restrained, Troy cried out and repeatedly asked SERT staff to get off his legs. Once the handcuffs were removed, the SERT staff left Troy alone in the isolation cell, and the door was closed.

Troy lay on the floor in obvious distress for almost 10 minutes while staff observed him through the cell window without responding. Health staff then attended to Troy and identified potential soft tissue damage to his clavicle, sternum and leg. At no point was an ALO consulted.

In stark contrast to this incident, other incident reports reviewed by the Commission show that Youth Justice staff are often able to successfully de-escalate Troy by talking with him, taking him outside or calling the ALO or health staff.

## Reducing risk of self-harming in custody

Urgent steps are needed to prevent and respond to self-harming and suicide to reduce their impact on Aboriginal children and young people in custody. Without action, Aboriginal children and young people are in danger of serious injury or death.

*As a worker it petrifies me that a kid will bleed out, cut themselves, someone else, tear away at their wrist. You can't ignore a call. Kids know that you have to come see them if they self-harm. It shows that's a cry for help. – Youth Justice staff member*

To properly address self-harming by Aboriginal children and young people, Youth Justice requires an understanding of Aboriginal communities' definition of mental health and its relationship to social and emotional wellbeing. Recognising this definition, which encompasses a person's connection to 7 domains of wellbeing, means recognising that a holistic response is required (see Chapter 9 'Wellbeing' for detail on the importance of improving the social and emotional wellbeing of all Aboriginal children and young people involved in the youth justice system).

A systemic and structural overhaul of the way that Youth Justice incarcerates Aboriginal children and young people is also necessary. This is discussed below, and in Chapter 5.2 'Age-appropriate responses to Aboriginal children and young people', in relation to increasing the minimum age of criminal responsibility and youth justice custody.

*The lack of nuance that we can add to behaviour support plans is hard – the feather or the sledgehammer are the only options. You're mixing with everyone or you're locked in your room, and this is a population that we know struggle to regulate their emotions. A middle space like a sensory room or courtyard would help them and it would also minimise the use of sedatives as a treatment option. – Lead Consultant Forensic Psychiatrist, Orygen*

In the short term, there is much that can and should be done to minimise the risk of self-harming and improve the experiences of Aboriginal children and young

people currently in youth justice centres. The Youth Justice Strategic Plan commits to some improvements, such as:

- Young people will have 24-hour access to primary mental health nursing, access to general practitioner services and have mandatory at-risk assessments within 2 hours of presenting behaviours that indicate a risk of suicide or self-harm.<sup>1846</sup>
- Culturally relevant supports are provided through an Aboriginal health worker and a health promotion officer.<sup>1847</sup>
- Behavioural support will be embedded in both the Parkville and Malmsbury precincts. This will support custodial staff to engage and work effectively with complex young people through trauma-informed practice, debriefing and reflective practice, de-escalation techniques, and evidence-based and person-centred interventions.<sup>1848</sup>

Youth Justice has also informed the Commission that there are plans to create softer environments for children and young people experiencing distress, and to ensure that soothing objects are always available to children and young people. Examples of soothing objects include kinetic sand, weighted blankets or animals, and blackboards and chalk.

A more therapeutic response to self-harming is welcome. However, it cannot wait a decade. Therapeutic elements will also be meaningless if Youth Justice staff are simultaneously using restrictive practices to respond to distress signals, or don't feel equipped to support therapeutic interventions. All staff, including ALOs, require training and support to develop the right skills to support a therapeutic approach.

Although there is clearly some good practice in youth justice centres, it is clear that Youth Justice needs to find a way to embed those positive practices across the board. Youth Justice needs a coordinated strategy that embeds a therapeutic response to self-harming by Aboriginal children and young people. The strategy must place the wellbeing of Aboriginal children and young people at the centre and ensure that all interventions work towards addressing trauma, protecting rights and providing beneficial support.

## Recommendation 72

That DJCS urgently develop a strategy to provide improved, consistent and therapeutic responses to children and young people at risk of suicide or self-harm in youth justice centres. The strategy should include specific elements to ensure a culturally safe and improved response to Aboriginal children and young people.

<sup>1846</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 29.

<sup>1847</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 29.

<sup>1848</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 47.

## Violence and use of force

### Finding 39

Aboriginal children and young people inside Victorian youth justice centres experience violence and use of force at unacceptably high rates.

DJCS states that Youth Justice custodial services aim to:

- provide a safe environment
- rehabilitate young people and reduce the likelihood of further offending
- address factors associated with offending through evidence-based programs
- provide integrated and well-coordinated services that meet the individual needs of young people with complex and challenging behaviours.<sup>1849</sup>

Our evidence shows that these aims are not being met. Recidivism data shows that custody fails to rehabilitate, with 77% of all children and young people released from Victorian youth justice centres in 2017–18 returning to supervised supervision within 12 months.<sup>1850</sup>

The isolation and self-harming data discussed above indicates that Youth Justice is failing to provide a safe custodial environment for children and young people. Experiences of violence, restraints and use of force, discussed below, further suggest that youth justice centres are not safe places for Aboriginal children and young people.

### Violence in Victoria's youth justice centres

The high rate of violence in Victoria's youth justice centres 'indicates that Victoria's youth justice custodial facilities are struggling to provide a safe environment for the care of young offenders'.<sup>1851</sup>

Many Aboriginal children and young people told us about experiencing or witnessing conflict and violence in youth justice custody, and some described their fear of violence.

*I never really liked Parkville and I was put in a unit with a newbie who was crying and then someone stabbed him for crying, and I absolutely shit myself. I didn't say nothing.*  
– Cameron, 17

*Because if you're not affiliated, you're seen as a loner. And if you snitch or something, then you'll get killed for it.* – Malkar, 19

Youth Justice incident reports show that in 2018 and 2019 there were high numbers of physical assaults in Victoria's youth justice centres, including:

- 579 by children and young people towards staff
- 143 by staff and 'other' towards children and young people<sup>1852</sup>
- 1,425 between children and young people.<sup>1853</sup>

Tables 13.8 and 13.9 provide these figures by report type and Aboriginal status. Aboriginal children and young people are over-represented in several incident types, including Category 1 reports relating to staff assault towards clients, other towards clients, and Category 2 reports relating to client assault towards staff. While the low numbers should be read with some caution, this may suggest a particularly volatile and distrustful relationship between Aboriginal children and young people and many of the staff in youth justice centres.

The *Report on Government Services* shows that in 2018–19 Victorian Aboriginal children and young people were alarmingly over-represented in relation to injury as a result of a serious assault, with a rate of 4.4 per 10,000 custody nights (see Table 13.10).<sup>1854</sup>

<sup>1849</sup> Department of Justice and Community Safety (DJCS), *Custody in the youth justice system*, DJCS website, 2020, accessed 26 June 2020.

<sup>1850</sup> AIHW, *Young people returning to sentenced youth justice supervision 2018–19*, supplementary table S16.

<sup>1851</sup> Armytage and Ogloff, *Youth justice review and strategy*, Part 1, p 135.

<sup>1852</sup> 'Other' includes anyone who is not staff or another client, for example, police.

<sup>1853</sup> DJCS data provided to the Commission on 23 March 2020.

<sup>1854</sup> Productivity Commission, *Report on Government Services 2020*, data table 17A.16.

**Table 13.8** Category 1 incident reports by incident type and Aboriginal status, 2018 and 2019

Assault incident type	Aboriginal		Non-Aboriginal		Total
	No.	%	No.	%	No.
Staff towards clients	12	24%	38	76%	50
Clients towards staff	4	10%	37	90%	41
Between clients	4	18%	18	82%	22
Other* towards client	2	29%	5	71%	7
Client towards other*	0	0%	1	100%	1
<b>Total</b>	<b>22</b>	<b>18%</b>	<b>99</b>	<b>82%</b>	<b>121</b>

\* 'Other' includes anyone who is not staff or another client, for example police.

Note: Category 1 incidents are the most serious incidents and include incidents such as the death of a young person, allegations of physical or sexual assault, and serious behavioural issues that impact on young people or staff safety.

Source: DJCS data provided to the Commission on 23 March 2020.

**Table 13.9** Category 2 incident reports by incident type and Aboriginal status, 2018 and 2019

Assault incident type	Aboriginal		Non-Aboriginal		Total
	No.	%	No.	%	No.
Other* towards clients	16	19%	70	81%	86
Clients towards staff	109	20%	429	80%	538
Between clients	201	14%	1,202	86%	1,403
Client towards other*	4	44%	5	56%	9
<b>Total</b>	<b>330</b>	<b>16%</b>	<b>1,706</b>	<b>84%</b>	<b>2,036</b>

\* 'Other' includes anyone who is not staff or another client, for example police.

Note: Category 2 incidents relate to events that threaten the health, safety and/or wellbeing of children, young people and others.

Source: DJCS data provided to the Commission on 23 March 2020.

**Table 13.10** Rate of young people in Victorian youth justice custody injured as a result of an assault by severity and Aboriginal status, 2018–19

Aboriginal status	Serious assault		Assault	
	Rate per 10,000 custody nights	No.	Rate per 10,000 custody nights	No.
Aboriginal	4.4	5	13.2	15
Non-Aboriginal	1.9	11	13.5	79
<b>Total</b>	<b>2.3</b>	<b>16</b>	<b>13.5</b>	<b>94</b>

Source: Productivity Commission, *Report on Government Services 2020*, data table 17A.16.

## 13.2 Conditions in youth justice custody

### Use of force

Research shows that use of force against children and young people in a custodial setting:

- rarely leads to behavioural change<sup>1855</sup>
- can be counterproductive in managing behaviour<sup>1856</sup>
- cannot ever be an entirely safe way to restrain children and young people in youth justice detention<sup>1857</sup>
- can retraumatise already vulnerable children and young people<sup>1858</sup>
- can cause physical and psychological harm.<sup>1859</sup>

The use of force in youth justice detention is prohibited in New Zealand, where non-violent approaches are used to de-escalate crises.<sup>1860</sup>

One young person spoke to us about his experience of force and restraints, and what a difference it made when staff could instead connect with him and respond to his needs.

*If I would go off and I'd get restrained and stuff and I tried to [injure] one of the workers and they'd come up with shields and helmets, and it was [a relative's] death anniversary and I was upset and trying to take it out on all of the people around me. They dragged me into a room and got me handcuffed, and then this woman worker and a few others sat down and told me that they weren't there to hurt me, that they were there to help me and tried to build that trust. The lady calmed me down and they explained it to me, and the big manager came down and explained everything to me at Parkville that there would be a lockdown. Then they realised I needed to be on medication. They had a psych come in and evaluate me... So, if I ever go back to juvie, I would have a lot of workers that I trust now. They'd sit there with the trap open and try to talk to me. If I need something, I'll express it. I'll go off or throw a chair around my room or yell that I need to speak to someone. As soon as I got heightened and all that, they would understand that I might need to make a phone call or go to the health services. They'd give me options and not just throw me in a cell. Articulating is something that I've learned over time. – Wyatt, 19*

<sup>1855</sup> A Day and M Daffern, *Inquiry into the policy and practice in the use of physical restraint in South Australian residential facilities for children and young people*, Office of the Guardian for Children and Young People, South Australia, 2009, pp 2, 19, 50; A Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, The Howard League for Penal Reform, United Kingdom, 2008, p 42.

<sup>1856</sup> Carlile, *An independent inquiry into the use of physical restraint, solitary confinement and forcible strip searching of children in prisons, secure training centres and local authority secure children's homes*, p 47.

<sup>1857</sup> HM Inspectorate of Prisons, *Behaviour management and restraint of children in custody: a review of the early implementation of MMPR by HM Inspectorate of Prisons*, HM Inspectorate of Prisons, London, 2015, p 10.

<sup>1858</sup> Day and Daffern, *Inquiry into the policy and practice in the use of physical restraint in South Australian residential facilities for children and young people*, p 7.

<sup>1859</sup> P Smallridge and A Williamson, *Independent review of restraint in juvenile secure settings*, Ministry of Justice, United Kingdom, 2008, p 5.

<sup>1860</sup> Oranga Tamariki (Residential Care) Regulations 1996 (NZ), r 22. See also I Lambie, *Youth Justice secure residences: a report on the international evidence to guide best practice and service delivery*, Ministry of Social Development, Wellington, New Zealand, 2016, p 128.

The CYFA prohibits use of force that is unreasonable, punitive or unnecessary for the security of the centre.<sup>1861</sup> Youth Justice Director's instructions provide more guidance, stating that:

*The aim in controlling situations and incidents is to do so using no force, but where force is required, only such force as is reasonable and necessary to control the situation, keeping in mind the particular physical and mental vulnerabilities of young people.*<sup>1862</sup>

Youth Justice trains all new staff in various types of force, including 'strikes', 'holds' and the use of mechanical restraints, namely handcuffs, disposable flexi cuffs and closeting chains. Under an exemption to the *Control of Weapons Act 1990* (Vic), certain staff are

<sup>1861</sup> CYFA, s 487(b). Further, section 487(c) of the CYFA prohibits the use of corporal punishment ('any action which inflicts, or is intended to inflict, physical pain or discomfort') as a punishment in youth justice custody.

<sup>1862</sup> Department of Justice and Community Safety (DJCS), *Director's instruction no: 2.1: safety and security use of force (tactical options)*, DJCS, Victorian Government, unpublished, accessed 14 September 2020, p 4.

also permitted to use extendable batons, OC (oleoresin capsicum) spray and other types of tear gas in youth justice centres. Before March 2021, only staff from the Corrections Victoria Security and Emergency Services Group (SESG) carried extendable batons and OC spray. Since March 2021, some Youth Justice SERT staff carry OC spray. In April 2021, DJCS advised the Commission that SERT staff do not carry batons.

Youth Justice data shows that force is frequently used on children and young people in Victorian youth justice centres (see Table 13.11). In 2018 and 2019, force and restraints were used against Aboriginal children and young people in Victorian youth justice centres in 1,689 incidents, which translates to more than twice a day, each day. The use of handcuffs on Aboriginal girls and young women was disproportionately high, accounting for 48% of incidents involving girls and young women (where Aboriginal girls and young women make up only 35% of the female population).<sup>1863</sup>

**Table 13.11** Number of episodes where force was used against children and young people by first type of technique and Aboriginal status, 2018 and 2019

Type of technique	Aboriginal		Non-Aboriginal		Total
	No.	%	No.	%	No.
Handcuffs	955	17%	4,638	83%	5,593
Bear hug	185	15%	1,073	85%	1,258
Redirection	161	14%	956	86%	1,117
Arm bar	159	18%	731	82%	890
Escort hold	96	17%	470	83%	566
Seat belt	24	14%	153	86%	177
Two man takedown	17	14%	103	86%	120
Wall restraint	15	14%	95	86%	110
No technique recorded	14	13%	96	87%	110
Blanket hold	20	20%	82	80%	102
Shoulder roll	13	13%	86	87%	99
Clearance strike	11	13%	77	88%	88
Wrist lock	14	34%	27	66%	41
Figure 4 leglock	1	4%	25	96%	26
Three man takedown	3	13%	21	88%	24
Use of shield/shield	1	20%	4	80%	4
Room extraction	0	0%	1	100%	1
<b>Total</b>	<b>1,689</b>	<b>16%</b>	<b>8,638</b>	<b>84%</b>	<b>10,327</b>

Note: This table refers to the first type of force recorded by DJCS in the use of force register for each episode.

Source: DJCS data provided to the Commission on 24 March 2020.

In addition to the above, in 2018 and 2019, SESG staff used OC spray against children and young people in 7 incidents, including one recorded incident involving an Aboriginal child or young person.

It was beyond the scope of this inquiry to assess the use of force incidents in more detail; however, the over-representation of Aboriginal children and young people who had some types of use of force techniques used against them warrants further analysis and monitoring by Youth Justice to understand the causes and monitor ongoing trends.

<sup>1863</sup> DJCS data provided to the Commission on 24 March 2020.

## 13.2 Conditions in youth justice custody

We are also unable to conclude whether these incidents all complied with Youth Justice's requirements that force is only used when necessary and reasonable. The Victorian Ombudsman recently found that there 'appeared to be an almost routine use of restraints when children and young people were moved into and out of isolation at Malmsbury',<sup>1864</sup> and that in many of these cases the use of restraints did not appear to be reasonable.<sup>1865</sup>

The Commission's recent monitoring of incident reports indicates that force has, at times, been unreasonable and unnecessary, such as that described in Troy's story above. This is indicative of a more adult style correctional approach, which is unwarranted for children and young people. In particular, the Commission has raised concerns throughout 2019–20 about SESG's deployment of tear gas without first attempting to engage young people and secure compliance by other means. In one incident, OC vapour was deployed 3 times within a contained area, including directly into children's faces after an incident appeared to have been contained. The use of tear gas is a particularly harmful practice, which poses serious health risks. This has reinforced the Commission's conviction that these staff and weapons should not be present within Victorian youth justice centres. In June 2020, the Commission requested government to urgently reconsider the role of SESG in Victoria's youth justice system.

### Feelings of safety and institutionalisation

Despite the high levels of violence and use of force in Victoria's youth justice centres, there are mixed findings about whether children and young people *feel* safe in youth justice custody. As discussed above, many children told us they feared violence in custody. In 2018 and 2019, at least 10 Aboriginal children and young people spoke to Independent Visitors about being frightened in custody, mostly of other children and young people. The Victorian Ombudsman's 2019 investigation found that almost one-quarter of young people surveyed said that they would sometimes self-isolate to avoid others, indicating 'a risk that needs [to] be effectively managed by staff'.<sup>1866</sup> The over-representation of Aboriginal children and young people

who self-isolate, as shown by youth justice data and discussed above, most likely indicates that these children and young people did not feel safe.

However, 22 Aboriginal children and young people (23%) spoke to us about custody as a safe and structured place.

*It's crazy I like it here. I wouldn't mind coming back. Just for a break, get away for a bit... yeah, it's pretty good here, not as bad as what people say. – Leroy, 15*

*It was pretty scary leaving. I didn't know what it would be like walking back out here and dealing with all the drama. – Gabrielle, 15*

Some told us that life is safer behind bars. This included an Aboriginal young woman who told us that custody 'is alright, you get food, get a bed'. Gabrielle also told us that custody was the only place where her basic needs for food and safety were met. She also said that she wished she could go to boarding school because she would like the structure and to get an education.

*Parkville felt like home. I went to school every day. I had my own room and I was all set up. The workers helped me, and I could talk to them. I knew that when I woke up that I would have food and stuff and wouldn't have to worry about going without food. The great part about Parkville is that I knew I was safe. One day I reckon if I have a really shit day I would try to do something to end up back in there. I think if you were allowed to smoke in Parkville, kids wouldn't want to leave ever. – Gabrielle, 15*

Some Aboriginal children and young people told us that staff and other young people in custody had become like family to them.

<sup>1864</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 153.

<sup>1865</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 154.

<sup>1866</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 184.



*First time, Parkville is scary and not comfortable, but then I got used to it and it became a second home. Workers, once you get to know them, they are good people. But then you become institutionalised and you start liking it and would do things to get back in. Once I got released, no contact with any of those people, and then I start going down the wrong track. I think, it's not too bad, I get to go back where there is good people. – Watanom, 19*

Without discounting the positive effect that some Youth Justice staff, teachers and health professionals can have for children and young people in custody, this also indicates that the Victorian Government is failing in its obligation to ensure that all Aboriginal children and young people have the support they need to grow and thrive outside custody. Many of the children and young people who told us that custody was positive for them had also had prior involvement with the child protection system, suggesting that there had been a failed opportunity to provide safety and security in the community.

This also all suggests that some Aboriginal children and young people experience a type of institutionalisation in youth justice centres, where it becomes hard for them to imagine a life beyond the gates. It is a serious indictment on the government and society if children and young people feel that they prefer to be in custody than outside.

### Improving staff responses to challenging behaviour

The high rate of use of force suggests that Youth Justice staff could be better supported to manage challenging behaviour without resorting to physical interventions and restraints.

The Youth Justice Strategic Plan acknowledges the need for better behaviour support across youth justice centres to:

*support custodial staff to engage and work effectively with complex young people, trauma-informed practice, debriefing and reflective practice, de-escalation techniques, and evidence-based and person-centred interventions.*<sup>1867</sup>

<sup>1867</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 47.

The Youth Justice Review made 2 recommendations relevant to behaviour management in youth justice centres, with an emphasis on training and development.<sup>1868</sup> DJCS has advised the Commission that one of these recommendations has been completed through the development of the Youth Justice Case Management Framework.<sup>1869</sup> The 2020–21 State Budget also committed \$2.77 million for 13 new behaviour support specialists, who will work directly with children and young people in youth justice centres and build the capacity of custodial staff to support children and young people with complex needs. These functions are further supported by a dedicated Aboriginal Disability Advisor role.

Other relevant reforms include the creation of the interim Intensive Intervention Unit to reduce the risk of violent behaviour, and the Classification and Placement Unit, which assesses the risks and needs of children and young people and determines their placement within custody. In June 2020, DJCS also partnered with Jesuit Social Services to trial a restorative justice program with dedicated professional development sessions to support relational security and stability in custodial settings.<sup>1870</sup>

Additional trauma-informed behavioural management training is also likely to support responses to behaviour that might otherwise result in isolation. The Victorian Ombudsman found in her recent report that in facilities that 'prioritised a trauma-informed approach to managing the children and young people in its care' there was a greater 'tendency of staff at the facility to recognise the harm caused by isolation and other restrictive practices'.<sup>1871</sup>

<sup>1868</sup> Recommendations 6.46 and 8.25: Armytage and Ogloff, *Youth justice review and strategy*, Executive Summary, pp 38, 50.

<sup>1869</sup> DJCS advised the Commission that 'A new Youth Justice Case Management Framework was implemented across community and custody in February 2019. An essential part of the Framework is identifying a young person's responsibility factors that can impede their ability to engage in, or benefit from, case management interventions. This includes management of behavioural issues. The Framework also sets out four key components to managing behaviour, covering the management of: high risk behaviours; non-compliance; critical incidents; and suicide and self harm risk.' Information provided to the Commission by DJCS on 6 August 2020.

<sup>1870</sup> Premier of Victoria, *Youth Justice trial to boost safety and reduce reoffending* [media release], Victorian Government, 16 September 2020, accessed 16 April 2021.

<sup>1871</sup> Victorian Ombudsman, *OPCAT in Victoria*, p 237.

## 13.2 Conditions in youth justice custody

DJCS advised the Commission that a new Certificate IV in Youth Justice for all custodial staff will commence in 2021. The 12-month course will be mandatory for new custodial Youth Justice workers and will include a specific focus on de-escalation strategies and trauma-informed practice, including developmental trauma and implications for offending behaviours.<sup>1872</sup> This is welcome, if overdue. Existing staff will be encouraged and supported to complete the qualification, but it will not be mandatory.<sup>1873</sup> Similar training is needed for all existing staff, and needs to be fast-tracked to create a system that can respond to challenging behaviours exacerbated by past experiences of trauma.

### Recommendation 73

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That DJCS fast-track plans to equip custodial staff with the training and skills they need to undertake trauma-informed, evidence-based and person-centred interventions. This should include support to understand the trauma often experienced by, and complex needs of, children and young people in custody, and to anticipate, de-escalate and respond effectively to challenging behaviours without resorting to the use of force. Training should also include a specific focus on intergenerational trauma.

<sup>1872</sup> DJCS also advised the Commission that this will include specific training on understanding children and young people, effective communication, engaging with young people who have experienced trauma, and sexual development, sexual exploitation and trauma.

<sup>1873</sup> DJCS advised that the current Victorian Public Service Enterprise Agreement 2020 includes a new provision for all custodial Youth Justice workers (YJW1 classification) to receive a pay increase equivalent to 6 progression points upon completion of the Certificate IV. This applies to both new and existing staff.

# Improving youth justice custodial facilities

## Finding 40

Victoria’s large-scale institutional youth justice centres are harmful, often unsafe environments for Aboriginal children and young people. The best-performing youth justice systems show that it is essential to shift from large institutional facilities to small, home-like residences close to young people’s communities.

This chapter has presented evidence on the current conditions of Victoria’s youth justice centres, and leads the Commission to conclude that these large-scale institutional facilities are unsuitable for Aboriginal children and young people. While this chapter has made recommendations to ensure short-term improvements in Victoria’s current youth justice centres, the failings of these facilities indicate the need for significant change.

### Best-practice youth justice facilities

The Northern Territory Royal Commission considered extensive evidence and concluded that:

*The best results, in terms of ensuring community safety and rehabilitating young people are achieved in small facilities designed to be normalised and residential that focus on delivering therapeutic and educational services. Punitive institutional environments damage young people, endanger staff and do little, if anything, to make the community safer.*<sup>1874</sup>

Small, home-like residences work for a number of reasons. The Northern Territory Royal Commission noted that the ‘extent to which physical design affects behaviour is often underestimated’.<sup>1875</sup> Softer environments can reduce young people’s stress and anxiety, which improves behaviour and increases the

likelihood that they will engage in rehabilitation.<sup>1876</sup> The smaller scale also allows staff to build relational security rather than rely on physical restraints, and facilities with an emphasis on relational security usually have fewer incidents.<sup>1877</sup>

Using smaller residences also offers the opportunity to place children and young people closer to their families and communities, and enables more flexibility for community members to be part of the daily life of the residence. This provides children and young people with opportunities to build social skills and connections that improve their chances of a successful return to the community.<sup>1878</sup>

The Northern Territory Royal Commission also noted the importance of providing high-quality education, keeping young people busy, employing highly skilled staff, showing strong leadership and making decisions based on evidence.<sup>1879</sup>

Around the world, jurisdictions are showing that it is possible to create small, home-like residences that meet these requirements. Several examples are provided in Table 13.12.

<sup>1874</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 428.

<sup>1875</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 444.

<sup>1876</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 433.

<sup>1877</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 437.

<sup>1878</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 439.

<sup>1879</sup> Northern Territory Royal Commission Final Report, Volume 2B, pp 432–440.

## 13.2 Conditions in youth justice custody

**Table 13.12** Effective home-like residences for sentenced children and young people

Facility name and location	Features
Close to Home, New York, United States	<ul style="list-style-type: none"> <li>• These small group homes are designed to provide therapeutic services to young people as an alternative to placement in a secure detention facility. The homes can be 'non-secure' or 'limited secure'.</li> <li>• Non-Secure Placement residences are 8 to 13-bed facilities located throughout New York City. Many operate in retrofitted homes. Services are provided in the community, allowing children and young people to attend school.<sup>a</sup></li> <li>• Limited-Secure Placement facilities are designed to cater for young people who present higher risks (such as risk of harm to themselves or others, or of reoffending) compared to young people placed at Non-Secure Placement homes. Each Limited-Secure Placement facility caters for 6 to 20 young people, and some provide specialised services to certain cohorts of vulnerable young people. Services are provided within the facility.<sup>b</sup></li> <li>• Highest risk and highest needs young people are still placed in one of New York City's 2 secure detention facilities (one of which was purpose-built to be more home-like and therapeutic than its predecessor).<sup>c</sup></li> </ul>
Fundación Diagrama, Spain	<ul style="list-style-type: none"> <li>• Thirty-eight small centres each house between 40 and 110 young people, with separate units of no more than 12 young people. Each centre serves a radius of 45 kilometres, placing the young people as close to their families as possible. The system is based on a high ratio of staff to young people, including educators and psychologists, with some security guards.<sup>d</sup></li> <li>• There is a low recidivism rate (70% 'reintegration' rate).<sup>e</sup></li> <li>• There are low incidents of violence or self-harming, no escapes and little use of physical restraints.<sup>f</sup></li> </ul>
Kibble Safe Centre, Scotland	<ul style="list-style-type: none"> <li>• Three 6-bed houses accommodate young people, who all have their own room with an ensuite, and have shared kitchen and living areas.<sup>g</sup></li> <li>• The centre creates connections by inviting community members to use its facilities for sporting matches, theatre performances or meeting rooms.<sup>h</sup></li> </ul>
The Missouri Approach, United States	<ul style="list-style-type: none"> <li>• This facility is characterised by a shift away from residential, prison-like institutions to small, home-like facilities, where group-based therapeutic programs and other holistic services are provided to young people in or as close as possible to their home community<sup>i</sup></li> <li>• There is a low recidivism rate – in 2014, 69% of young people leaving Missouri's youth justice programs committed no further offences for at least 3 years.<sup>j</sup> This compares to re-arrest rates of around 55% within one year in other US states.<sup>k</sup></li> <li>• Other US jurisdictions have adopted reforms to shift their youth justice systems towards the Missouri model, including New York City and Santa Clara County in California.<sup>l</sup></li> </ul>
Healing Lodges, Canada <sup>m</sup>	<ul style="list-style-type: none"> <li>• This is a direct alternative to the use of imprisonment in mainstream facilities.</li> <li>• Legislation allows Correctional Services Canada to pay an Aboriginal community to provide correctional services, including community-based custodial facilities.</li> </ul>
Youth Justice residences, New Zealand <sup>n</sup>	<ul style="list-style-type: none"> <li>• Four residences provide safe and secure care and hold up to 40 children and young people each. Building rapport is a priority for staff. All staff are also expected to know the history and background of every young person at the residence, and learn how to deal with individual behaviours.</li> <li>• 'Risk profiles' are eliminated – instead, behaviour is managed through incentives and a focus on young people's strengths.</li> <li>• Girls and boys are mixed in the same facility, which was stated to be beneficial.</li> <li>• Residents participate in community activities outside the residences, such as sports and arts.</li> <li>• Residences have been described as looking like a 'high school'. They have vegetable gardens, bright murals, Māori carvings and inspirational quotes throughout.</li> <li>• Young people are not locked in their rooms at night.</li> <li>• <i>Te Au Rere a te Tonga</i> (a Youth Justice residence in Palmerston North) attributed its dramatic drop in assaults in the last few years to changes in culture.</li> </ul>

- a New York City Government, *Non-secure placement*, Administration of Children's Services website, 2021, accessed 14 February 2021.
- b New York City Government, *Non-secure placement*.
- c M Poggio, *New York alternative facility emphasises rehabilitation for raise the age candidates*, Juvenile Justice Information Exchange website, 2018, accessed 14 February 2021.
- d Jesuit Social Services (JSS), *#JusticeSolutions Tour Expanding the conversation*, JSS website, 2017, accessed 14 February 2021.
- e Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 139.
- f Parliament of Victoria, *Inquiry into youth justice centres in Victoria*, p 138.
- g Scotland Care Inspectorate, *Kibble Safe Centre Secure Accommodation Service*, p 2.
- h Northern Territory Royal Commission Final Report, Volume 2B, p 439.
- i Missouri Division of Social Services, *The Missouri approach – about the Missouri approach*, Missouri Division of Social Services website, 2018, accessed 14 February 2021.
- j Missouri Division of Social Services, *The Missouri approach – Results*, Missouri Division of Social Services, 2018, accessed 14 February 2021.
- k Development Services Group, Inc. *Juvenile reentry: literature review*, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C., 2017, p 1.
- l County of Santa Clara, *County of Santa Clara strategic investment in innovative juvenile support paying off* [media release], County of Santa Clara Government, 11 June 2012, accessed 14 February 2021.
- m Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 78.
- n Commission field visit to New Zealand, February 2020.

### Establishing home-like facilities for Victorian Aboriginal children and young people

The Youth Justice Strategic Plan acknowledges that international practice provides compelling evidence for a different model of youth justice custody, stating that:

*custodial settings are more settled, safe and effective when young people are placed in smaller, more rehabilitative and normalised environments that promote security through positive relationships, as opposed to large facilities that are like adult prisons. To address this, the government has revised the scale and design of the new Cherry Creek Youth Justice facility.*<sup>1880</sup>

Unfortunately, although the planned Cherry Creek youth justice centre has been scaled down, it remains too big to provide a panacea for Victoria's youth justice system. The centre will initially detain 140 of the 'most complex and challenging' children and young people between 15 and 18 years of age on remand and sentence, including an Intensive Intervention Unit and an 8-bed mental health unit.<sup>1881</sup> The centre will be master planned for up to 244 beds.<sup>1882</sup> Although plans include smaller units within the centre, these will be based within a secure perimeter fence.<sup>1883</sup>

A further drawback is that the facility will be located on the outskirts of Melbourne. The size of this facility, coupled with its distance from families and communities, mean that it will never be a wholly safe

and suitable environment for Aboriginal children and young people.<sup>1884</sup>

Victoria must prioritise continuing to reduce the number of children and young people in custody. In 2018 and 2019, there was a monthly average of 17 Aboriginal children and young people serving custodial orders each month.<sup>1885</sup> If our recommendations to increase the minimum age of criminal responsibility to 14 years and the minimum age of youth justice custody to 16 years are implemented, we would expect these numbers to drop by 18%.

The combined effect of implementing this report's recommendations will be that the number of Aboriginal children and young people in custody will fall substantially. Better systems for helping Aboriginal children and young people when they first need it, including at least 2 new healing centres (Recommendation 47), supported bail accommodation (Recommendation 60) and supporting Aboriginal children and young people to stay in school (Recommendation 49) will all contribute to lower numbers of Aboriginal children and young people in contact with the youth justice system. Improved supports for Aboriginal children and young people who engage in offending behaviour, such as family group conferencing (Recommendation 22), will mean that courts are less likely to rely as heavily on custodial sentences.

Victoria is well-placed to create culturally based, therapeutic residences for Aboriginal children and young people as alternatives to sentencing them to youth justice centres. Strong Aboriginal leadership means that Victoria already has the foundations needed to create these residences. This includes a commitment to self-determination, a formal partnership between Aboriginal communities and the Victorian Government to improve Aboriginal justice outcomes, and a statewide network of Aboriginal organisations.

Another strength is that, while Aboriginal children are still substantially over-represented in custody, Victorian courts sentence relatively low actual numbers of Aboriginal children and young people to youth justice

<sup>1880</sup> DJCS, *Youth Justice Strategic Plan 2020–2030*, p 30.

<sup>1881</sup> DJCS advised the Commission that Cherry Creek will initially have 8 mental health beds, with a footprint for a further 4 to be built if the site is expanded. The mental health service will treat young people with comorbidities (for example, AOD and mental health concerns), and Youth Justice is developing an integrated AOD treatment model for Cherry Creek, which will be underpinned by early intervention, holistic care and increased capacity to treat sub-acute issues.

<sup>1882</sup> Premier of Victoria, *Building a safer and more secure youth justice system* [media release], Victorian Government, 27 September 2019, accessed 14 February 2021.

<sup>1883</sup> DJCS advised the Commission that children and young people will have access to an outdoor courtyard whenever they are unlocked from their rooms (subject to any other security issues). They will also have access to a large outdoor community space shared by 32 children and young people.

<sup>1884</sup> DJCS advised the Commission that it is exploring options to transport families to Cherry Creek so that they can connect with children, and that Youth Justice is working with the Traditional Owners and the Aboriginal Justice Caucus so that the operating model for the facility and the cultural spaces are culturally safe and supportive.

<sup>1885</sup> Compiled from DJCS data provided regularly to the Commission.

centres. These low numbers place Victoria in a good position to work towards housing all sentenced Aboriginal children and young people in small, home-like facilities. Similar, open facilities for Aboriginal children and young people on bail or remand are discussed in Chapter 12.2 'Bail and remand', and should include many of the elements discussed below.

As these residences would need to be established through government and community partnership, the Commission does not intend to be overly prescriptive about their design and operation. Instead, we highlight below some important elements for consideration.

### Community involvement

The Victorian Government should work in partnership with Aboriginal communities as they transform detention for Aboriginal children and young people. In work undertaken on behalf of the Aboriginal Caucus of the Aboriginal Justice Forum, the Jumbunna Institute for Indigenous Education and Research suggests that 'there is also a need to think about the potential [for] ACCO-run residential alternatives for Aboriginal young people sentenced to detention'.<sup>1886</sup> The Commission is not aware of an ACCO or Aboriginal community that wishes to fully manage a closed facility for sentenced Aboriginal children and young people. Instead, a joint government and community management model similar to that used for Wulgunggo Ngalu Learning Place, a culturally based residential facility for Aboriginal men undertaking community correction orders, may be preferable.

An evaluation of Wulgunggo Ngalu found that it has created a culturally safe environment that provides a holistic program model with a strongly individualised approach taken to each participant and their needs.<sup>1887</sup> The General Manager of Wulgunggo Ngalu explained that:

*Success is about the cultural overlay and being culturally safe. Then it's about the custodians of the place, i.e. the workers, that have the magic to give, that's the secret. – General Manager, Wulgunggo Ngalu*

<sup>1886</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 78.

<sup>1887</sup> Clear Horizon Consulting, *Wulgunggo Ngalu Learning Place final evaluation report*, Clear Horizon Consulting, Melbourne, 2013, p 14.

At a minimum, the Victorian Government would need to work closely with Aboriginal children and young people, the Aboriginal Justice Forum and Aboriginal organisations to determine the location, design and operation of the new residences. It could also be expected that ACCOs would have significant input and presence at the residences. As the Jumbunna Institute noted:

*A movement away from larger prison-like facilities to small 'normalised' residential facilities which are locally based offers opportunities for involvement of local ACCOs which are more likely to have pre-existing relationships [with] young people and their families and close knowledge of the environments from which the young people have come.*<sup>1888</sup>

All residences should welcome the presence of community members, both to ensure transparency and community ownership of the way that Aboriginal children and young people are being cared for and to support children and young people to develop the social connection and skills for their return to the community.<sup>1889</sup> Community involvement could include participating in activities such as cooking, music or homework clubs. Children and young people should also be supported to participate in broader community activities outside the residences, such as sport, volunteering and art.

### Design

The need for these residences to feel like a home cannot be overstated. The residences should provide children and young people with free access to communal spaces, including a kitchen, lounge area and outdoor spaces. Soft furnishings, artwork, photos and accessible books and board games can all contribute to a home-like environment. In recommending a similar model, the Royal Commission into the Protection and Detention of Children in the Northern Territory provides guidance that:

*bedrooms should look much like a single bedroom given to a young person in a boarding school: a normal bed with regular bedding, a study desk, cushions and books. The common area for each unit will be a communal space with couches, board games, basic facilities for making a snack, stocked*

<sup>1888</sup> Cunneen, *Self-determination and the Aboriginal Youth Justice Strategy*, p 84.

<sup>1889</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 439.

## 13.2 Conditions in youth justice custody

*bookshelves and a television. These common areas should be available to young people as an area to socialise in a similar way to a lounge room in a house or a boarding school.*<sup>1890</sup>

As noted above, good cultural design can strengthen the link between Aboriginal children and young people and their culture. Cultural design must be informed by Aboriginal communities to ensure that it is meaningful and not tokenistic.

### Security

The residences for sentenced children and young people would be closed facilities, with a leave pass system to ensure that Aboriginal children and young people can access necessary supports and programs in the community.

The residences should ensure a focus on developing relational security as the primary means of creating safety for both residents and staff.

### Size

Based on international best-practice examples, each residence should accommodate no more than 6 children and young people. This would enable the residences to maintain a home-like environment, and allow staff to create better one-to-one therapeutic relationships.

### Gender mix

In keeping with the home-like environment, the residences would not need to be gender-specific. This would also enable the system more flexibility to place children and young people according to their needs rather than limiting Aboriginal girls and young women to one facility. In housing all genders together, Youth Justice would need to take the necessary precautions to ensure the safety of all children and young people.

### Model of care

The residences would need to provide therapeutic, trauma-informed care and be responsive to the needs of children and young people. This would necessarily include the ability to provide mental health support and drug and alcohol treatment.

Given the high numbers of youth justice system-involved Aboriginal children and young people with drug and alcohol issues, there may be some merit in establishing one custodial residence dedicated to housing Aboriginal children and young people with drug and alcohol support needs. The Wandoo Rehabilitation Prison in Western Australia provides an example of an effective therapeutic community established to deliver an alcohol and other drugs program in a custodial environment.<sup>1891</sup>

Given the number of incarcerated Aboriginal children and young people requiring significant mental health support, consideration should be given to establishing a specialist mental health custodial residence.

There should be a strong emphasis on employing Aboriginal staff to provide care and support in the residences. All staff must be trained and supported to work in a positive way with children and young people, and to resolve conflict through restorative justice approaches.

### Education

As discussed in Chapter 10 'Education & learning', high-quality education is key for children and young people involved in the youth justice system. The small-scale residences could provide an opportunity to provide tailored, small group or one-to-one education. Careful consideration could also be given to providing leave passes that would enable Aboriginal children and young people to attend local schools or training opportunities, further supporting their return to the community.

### Location

A significant benefit of the residence model is that it decentralises custody, and means that Aboriginal children and young people could be placed closer to their families and communities. This model would allow access to throughcare planning with local agencies that will support children and young people when they are returned to community.

<sup>1890</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 450.

<sup>1891</sup> Department of Justice, *Wandoo Rehabilitation Prison*, Western Australian Government Department of Justice website, 2021, accessed 10 February 2021; Office of the Inspector of Custodial Services (Western Australia), *Inspection of Wandoo Rehabilitation Prison*, Office of the Inspector of Custodial Services website, 2018, accessed 10 February 2021.



With this in mind, it could be beneficial to establish residences both in metropolitan Melbourne and regionally. Careful consideration would be needed to ensure that chosen locations could provide appropriate staffing and services.

## Recommendation 74

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That the Victorian Government work towards having no Aboriginal child or young person in custody. As a step towards this, the Victorian Government should work with Aboriginal communities to establish 3 small, home-like facilities for Aboriginal children and young people serving custodial sentences. These facilities should have no more than 6 beds. Although these facilities would be secure, they must allow for Aboriginal children and young people to connect with their culture and community.

# 13.3 Leaving custody

## Finding 41

**The transition from custody back into the community is a critical point in time, but Aboriginal children and young people do not have consistent access to culturally appropriate services and supports when they leave custody.**

The point at which a child or young person leaves custody, from remand or after completing a custodial sentence, is a critical juncture for their reintegration into the community and capacity to exit the youth justice system over the long term. According to the Northern Territory Royal Commission, without adequate planning for release from custody, children and young people are set up to fail, and without post-release support, 'the likelihood of failure inevitably increases'.<sup>1892</sup>

The literature regarding best practice in supporting children and young people to leave custody recommends individualised case management that addresses the specific needs of the child or young person and their risk factors for offending.<sup>1893</sup> Children and young people at greatest risk of reoffending should be provided with the most intensive support.<sup>1894</sup>

Human rights law provides a number of standards in relation to the supports that children and young people are entitled to when they leave custody. Rule 24 of the Beijing Rules states that 'at all stages of the proceedings' young people should be provided with 'necessary assistance', including accommodation, education or training, employment and any other

<sup>1892</sup> Northern Territory Royal Commission Final Report, Volume 2B, p 194.

<sup>1893</sup> GD Dawes, 'The challenges of reintegrating Indigenous youth after their release from detention', *Journal of Youth Studies*, 2011, 14(6):693–707, p 698.

<sup>1894</sup> Dawes, 'The challenges of reintegrating Indigenous youth after their release from detention', p 698.

assistance that facilitates the rehabilitative process.<sup>1895</sup>

The Mandela Rules state that prior to the completion of a sentence, steps should be taken to support a person to gradually return to society, and provide that a person leaving custody is entitled to 'efficient aftercare directed towards the lessening of prejudice' and social rehabilitation. Other rules provide further focus on addressing the needs of a person upon their release from prison – this includes the need for services that facilitate a person's return to society, which could include employment, clothing, transport and financial support.<sup>1896</sup>

## The importance of appropriate supports for Aboriginal children and young people leaving custody

The transition from custody to the community is a critical point in time for an Aboriginal child or young person to address their personal needs and aspirations, which will strengthen their ability to exit the justice system.

Thirty-seven Aboriginal children and young people spoke about their experiences leaving custody. Many children and young people talked about how happy they were to leave custody, while others highlighted their anxieties. Ten said they were afraid of leaving custody. Children and young people talked about the difficulty of meeting the expectations and conditions of their release, and reflected on the risks of returning to old environments without support.

*Feels amazing to be free. You don't have to wake up seeing a steel door at your feet. You don't see concrete walls around you. You can feel fresh air. It's amazing. But then it's also hard because you don't feel like yourself. – Malkar, 19*

<sup>1895</sup> Beijing Rules, rule 24.

<sup>1896</sup> Mandela Rules, rules 87, 90, 107, 108.

*I want to know what school I'm going to, where I'll be living, who is going to pick me up. I want YJ to be supportive of me. Who is going to be out the front waiting for me? I get the feeling that I'm going to walk out of here with my property, not going to know anyone, no phone, who to contact. I'm scared. It's like getting kicked out of home all over again. – Pearl, 19*

*I went home and basically just got on the drugs... I already feel like there was so much on my shoulders with court and criminal stuff that it was hard to breathe. The only time I felt good was when I was on drugs. That was my support. I was too young to think how I think now. – Felix, 21*

*Coming back to the same people and the same negative environments is bad. If I was to get out of jail here I'd get out of [town]. I'd leave, because I would know that was my trigger, being in this town for too long. Not only that, but the people here. – Djiran, 19*

*I want to get out without orders and no expectations, do it on my own without people telling me what to do. I've always had to do something when I've come out. I feel like coming out with expectations sets you up to fail. For me, it gives me anxiety to do all these things and meet all these people. Anxiety leads to drugs and leads to offending and offending leads me back here. – Watanom, 19*

Aboriginal children and young people reported to the Commission that they did not receive enough support when they left custody, and often felt that they were set up to fail. Children and young people said they needed the right kind of support after they left custody, including help with finding work, housing and transport, and being connected to cultural programs. Many children and young people indicated that they needed support for material needs, such as clothes, phones and transport.

*There was no one there to support me to come back into community, only my mum. She bailed me out, then the next day I got arrested. – Jamie, 18*

*I've been trying to call my YJ to get a plan and my lawyer but YJ don't answer. – Harley, 19*

*Oh my god, I was so happy to go home and watch a movie. They let me go and I went home, and they were there that night to make sure I was home, but you know they didn't give me any options, they just let me go. They didn't do anything to help, they just let me go. – Mitch, 17*

*Most of the young people they put straight back out on parole, but they could put them to a detox, right, where they can adapt to not having people telling them what to do, when to eat, when to shower and that. – Djiran, 19*

Children and young people also talked about the need for counselling support for anger and anxiety, as well as drug and alcohol treatment.

*I just needed help. I just wanted someone to talk to in Parkville, but no one knew where I was coming from. There was one Aboriginal security guard and he was alright. I was with mum and I had no money and had to steal clothes, and yeah, here we are [back in custody]. – Jamie, 18*

Tooran, whose story about her sister Wawal is included at the beginning of Chapter 6 'A child-centred system', also referred to the broken promises and lack of supports for Wawal on leaving custody. Chapter 6 examines failures by Youth Justice and other responsible agencies to collaborate effectively in planning for the release of Aboriginal children and young people from custody, and in providing the supports they need to avoid returning to the youth justice system.

Research has shown the importance of providing appropriate supports to Aboriginal children and young people leaving custody. A two-year longitudinal study

### 13.3 Leaving custody

tracked 40 young Aboriginal men as they transitioned from detention in North Queensland back to their communities.<sup>1897</sup> The study interviewed young people in custody, reinterviewed them 12 months following their release, and considered their perspectives on risks to reoffending and successful reintegration. It found that negative risk factors for the 30 young people who reoffended included being labelled as ‘a criminal’, including racist targeting by police, physical and emotional health, returning to an unsafe environment, criminal associations and the inability to engage with education or training opportunities.<sup>1898</sup> For the smaller cohort of 10 young people who did not reoffend, factors attributed to successful reintegration included engagement with full-time education, training or employment, engagement with culture and high levels of support from family members or significant others.<sup>1899</sup>

The 2018 ALRC *Pathways to justice* report affirmed the need for services for Aboriginal people exiting custody to transition back to the community. To this end, it recommended the development of prison programs in partnership with Aboriginal organisations to address underlying problems such as lack of vocational skills, drug and alcohol abuse, mental ill-health and relationship difficulties.<sup>1900</sup> The ALRC inquiry noted that programs should be available to people on short sentences and remand, and recommended the development of throughcare programs that provide ongoing support.<sup>1901</sup>

#### Current supports for children and young people leaving custody in Victoria

Youth Justice practice guidelines describe the role of case managers in supporting children and young people to leave custody, noting that ‘[y]oung people who successfully reintegrate into communities after release from custody are less likely to reoffend’.<sup>1902</sup> Primary responsibility to provide support rests with community-based case managers, and planning

should commence as soon as the young person enters custody.<sup>1903</sup> This should include linking children and young people into appropriate housing, AOD supports, education and mental health services.<sup>1904</sup>

Of the 97 children and young people who did exit interviews with Independent Visitors (including 17 Aboriginal children and young people), only 53% of Aboriginal children and young people and 73% of non-Aboriginal children and young people had had planning meetings with a Youth Justice case manager while in custody.<sup>1905</sup>

Case managers are responsible for assessing the child or young person’s needs, through interviews and relevant screening tools, and developing a case plan to address identified needs. The plan may include family and peer relationships, education and employment, housing, drug and alcohol use, offending behaviour interventions, mental health, independent living skills, Centrelink and other administrative arrangements. The case manager must make referrals and coordinate a care team, working with key staff in custody to obtain information and ensure the child or young person is prepared and motivated to participate and achieve the goals set out in their case plan.

Aboriginal children and young people who exit custody under the supervision of Youth Justice must be offered a cultural support plan (see Chapter 7.4 ‘Connection with culture’ for a discussion of cultural support plans). Case managers must also work with ALOs to support Aboriginal families to maintain strong and positive ties while the child or young person is in custody, and to access practical and financial support. If the child or young person is under the care of Child Protection, their worker must be invited to care team meetings.

In addition, ALOs work in partnership with community-based Koori Youth Justice workers engaged through the Koori Youth Justice Program to provide culturally appropriate support for Aboriginal children and young people to transition from custody back to the community.<sup>1906</sup> Community-based Koori Youth Justice workers have access to DJCS’s case management system, which allows them to view a young person’s case plans, history and information in relation to family

<sup>1897</sup> Dawes, ‘The challenges of reintegrating Indigenous youth after their release from detention’.

<sup>1898</sup> Dawes, ‘The challenges of reintegrating Indigenous youth after their release from detention’, p 700.

<sup>1899</sup> Dawes, ‘The challenges of reintegrating Indigenous youth after their release from detention’, p 702.

<sup>1900</sup> ALRC, *Pathways to justice*, pp 30, 283.

<sup>1901</sup> ALRC, *Pathways to justice*, p 284.

<sup>1902</sup> DJCS, *Exiting custody, transition and reintegration*, p 3.

<sup>1903</sup> DJCS, *Exiting custody, transition and reintegration*, p 7.

<sup>1904</sup> DJCS, *Exiting custody, transition and reintegration*, p 9.

<sup>1905</sup> Data from the Independent Visitor Program exit survey collected from April to December 2019.

<sup>1906</sup> DJCS, *Working with Aboriginal young people and cultural support plans*, p 6.

and cultural supports (see Chapter 6.2 'Relationships with workers' for a discussion of the valuable work undertaken by Koori Youth Justice workers). ALOs are now also working in partnership with VACCA's newly established Youth Through Care program (see below).

Under *Burra Lotjpa Dungaludja*, DJCS is considering existing programs that assist young people on parole and transitioning out of the youth justice system, and examining their feasibility for expansion.<sup>1907</sup> This includes consideration of VACCA's Youth Through Care program.

### VACCA's Youth Through Care program

VACCA is currently trialling a Youth Through Care program for Aboriginal children and young people aged 10 to 17 years who are remanded or sentenced in custody. The program provides support to young people from 6 months prior to their release for up to 2 years following release. The program is Commonwealth-funded but was co-designed with the Victorian Government. The program commenced operation in December 2019 and is due to run until mid-2021. It employs 5 senior caseworkers, as well as a program manager and administrative support. The program has a dedicated female case worker position to ensure female and LGBTQI+ clients are supported and that the program is able to appropriately support both men's and women's business. By May 2020, the program had received 29 referrals for young men and 2 referrals for young women, with only 2 young people declining to participate in the program (one male and one female). The program is voluntary, and a young person is able to withdraw at any stage.

The Commission's consultation with VACCA confirmed that the program works with young people to identify their personal goals, which typically involve family, culture, rehabilitation, housing, training and employment. One senior caseworker is based at Parkville youth justice centre 3 days a week to build relationships with young people and staff. The senior caseworker works in close partnership with ALOs, Classification and Placement Unit workers and Youth Justice officers to support children and young people and undertake shared exit planning. Caseworkers work closely with Youth Justice officers as part of the care team. Where the child or young person has an allocated Youth Justice worker under a supervised

community order, Youth Justice is likely to take the lead, but where they do not, the VACCA senior caseworker may step in to make referrals and undertake case coordination.

Senior caseworkers also provide court advocacy and support. VACCA states that this can have an important impact on outcomes, due to the senior caseworker's ability to link children and young people to supports to secure bail, such as housing services (see also Chapter 12.2 'Bail and remand'). They also provide intensive outreach following a bail order being made. Caseworkers travel to regional areas to provide face-to-face support during a transitional phase; however, for ongoing support in regional areas, they work to connect the young person with the local ACCO or other relevant services.

Although the program is new, the Commission's consultation with VACCA indicates that there has been positive engagement with the service by young people, and the program has built productive relationships with Youth Justice. VACCA emphasises the flexibility of the program and responsiveness to young people's needs and goals as key strengths, as well as its emphasis on cultural learning, social and emotional wellbeing, and working with families to rebuild the young person's connections with family and community. A major gap identified is for young people aged over 18 who are not eligible for the program.

Under the same Commonwealth funding, the North Australian Aboriginal Justice Agency is currently piloting a youth throughcare program in Alice Springs and Darwin.<sup>1908</sup> The program aims to support Aboriginal children and young people and their families through the provision of healing-focused case management interventions. It works with young people 6 months prior to their release from custody and provides post-release support for as long as the young person requires. Aboriginal children and young people aged 10 to 25 years are eligible for assistance, provided that a referral is received before the young person turns 18. Each site employs a youth team coordinator, a senior Aboriginal youth justice worker and 2 intensive case managers.<sup>1909</sup> The program commenced in July 2020 and is funded for a 2-year period by the

<sup>1907</sup> Goal 2.3: State of Victoria, *Burra Lotjpa Dungaludja*.

<sup>1908</sup> Abt Associates, 'Youth through-care effective practice strategies guide', Abt Associates, unpublished, accessed 11 December 2019.

<sup>1909</sup> Abt Associates, 'Youth through-care effective practice strategies guide'.

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Commonwealth Government. It will be evaluated to inform a Commonwealth-funded national youth throughcare model for Aboriginal children and young people.<sup>1910</sup>

#### **Improving planning and support for Aboriginal children and young people leaving custody**

Aboriginal children and young people need accessible and tailored services that support them to leave youth justice custody and achieve their personal goals and aspirations for the future. Submissions from HRLC, VACCA and VALS advocated long-term support for children leaving custody. The HRLC and VALS indicated the need for the Victorian Government to invest in throughcare programs that are culturally safe, responsive and sustainable.

Aboriginal children and young people have specific needs in relation to their connections to culture, family and community, and require access to reliable and culturally responsive services. Throughcare services need to be delivered statewide and accessible to all Aboriginal children and young people who leave youth justice custody. VACCA's Youth Through Care program pilot indicates some early successes in responding to the needs and goals of children and young people leaving custody through a culturally safe and family-centred approach.

### **Recommendation 75**

That the Victorian Government work with the Commonwealth Government to ensure that all Aboriginal children and young people who leave youth justice custody have access to culturally appropriate and reliable community-based support for as long as required. This may include intensive case management, housing, employment and training, and mental health, drug and alcohol and cultural support services.

<sup>1910</sup> Abt Associates, 'Youth through-care effective practice strategies guide'.

# Appendices

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# Appendix 1

## Organisations, services and community groups consulted

The Commission sometimes consulted multiple individuals within organisations, services and community groups, and sometimes on more than one occasion.

1. Aboriginal Housing Victoria reference group
2. Aldara Yenara mentoring program
3. Anglicare
4. Ballarat & District Aboriginal Cooperative
5. *Barrng Moorop* program – Victorian Aboriginal Child Care Agency
6. Baroona Youth Healing Place – Njernda Aboriginal Corporation
7. Bendigo & District Aboriginal Co-operative
8. Bert Williams Aboriginal Youth Services – Victorian Aboriginal Community Services Association Ltd
9. Bunjilwarra Koori Youth Alcohol and Drug Healing Service
10. Children’s Court of Victoria
11. Dardi Munwurro
12. Dhauwurd-Wurrung Elderly & Community Health Service
13. Department of Education and Training
14. Department of Justice and Community Safety
15. Gippsland and East Gippsland Aboriginal Co-operative
16. Goolum Goolum Aboriginal Co-operative
17. Gunditjmarra Aboriginal Co-operative
18. Independent Broad-based Anti-corruption Commission
20. Kapiti Youth Support, New Zealand
21. Koorie Youth Council
22. Korin Gamadji Institute
23. Lakes Entrance Elder group
24. Mallee District Aboriginal Services
25. Mungabareena Aboriginal Corporation
26. New Zealand Ministry of Justice
27. Nungurra Youth Accommodation Services
28. Office of the Children’s Commissioner, New Zealand
29. Oranga Tamariki – Ministry for Children, New Zealand
30. Orygen (youth health services)
31. Parkville College – Department of Education and Training
32. Rumbalara Aboriginal Co-Operative
33. Regional Aboriginal Justice Advisory Committees (Chairs & Executive Officers)
34. Strong Brother Strong Sister
35. Te Au rere a te Tonga (Youth Justice residence), New Zealand
36. Te Whare Awahi (community-based remand home), New Zealand
37. The Victorian Aboriginal Children and Young People’s Alliance
38. Youth Through Care program – Victorian Aboriginal Child Care Agency
39. Victorian Aboriginal Education Association Incorporated
40. Victorian Aboriginal Legal Service
41. Victoria Police
42. Victorian Traditional Owner Land Justice Group
43. Visy Cares Hub
44. Wathaurong Aboriginal Co-operative
45. Worawa Aboriginal College
46. Wulgunggo Ngalu Learning Place
47. Youth on Track program – New South Wales Department of Justice



# Appendix 2

## Submissions

### Submissions received from organisations

Organisation	Date received
Aboriginal Housing Victoria	6 May 2020
Aboriginal Justice Caucus	25 October 2019
Human Rights Law Centre	6 November 2019
Jesuit Social Services	12 November 2019
The Victorian Aboriginal Children and Young People's Alliance	12 November 2019
Victorian Aboriginal Child Care Agency	15 November 2019
Victorian Aboriginal Legal Service	10 November 2019
Victoria Legal Aid	15 November 2019

### Submissions received from individuals

Name	Date received
Alan Guthrie BA	21 October 2019

# Appendix 3

## Regional snapshots from the Taskforce

### Barwon South West (Geelong) Regional Forum – August 2019

Strengths identified	<ul style="list-style-type: none"> <li>Local youth groups and mentoring programs</li> <li>Using Aboriginal sport programs as a means to engage young people</li> <li>Connecting young people to community and culture</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>Lack of funding and financial support</li> <li>No detox facility for Aboriginal young people to heal on Country</li> <li>Lack of Aboriginal workers, risk of burnout</li> <li>Lack of engagement in education from an early age and unclear educational pathways</li> <li>Young people without family connections are remanded because there is nowhere they can be bailed to</li> <li>Absence of youth voices in decision-making</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>Question what it means to teach Aboriginal young people – how does the region make sure that Aboriginal culture and processes are embedded in all aspects of education?</li> <li>How can the region reduce lateral violence in the community?</li> <li>How can the region increase and improve the pathways between education and employment for young people?</li> <li>How can services walk with young people to guide them, rather than telling them what to do?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>Create a local Aboriginal youth advisory board to engage with when making decisions affecting young people</li> <li>Involve Elders in youth justice policies and programs</li> <li>More cultural camps for young people</li> <li>Ensure all Youth Justice staff receive cultural awareness training specific to the region</li> </ul>

### Barwon South West (Warrnambool) Regional Forum – July 2019

Strengths identified	<ul style="list-style-type: none"> <li>Positive relationships between ACCOs, who work collaboratively and share funding in the region</li> <li>ACCOs support parents and carers to support young people</li> <li>Sporting clubs and programs have a positive impact on the lives of young people</li> <li>Rich cultural knowledge of local Elders</li> <li>Local government investment for Aboriginal services and support for self-determination</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>Need for better access to VALS</li> <li>Need for better employment pathways for young people</li> <li>Lack of culturally appropriate and local rehabilitation options (for example, a healing centre)</li> <li>Schools need further training in trauma and its effects on young people and their behaviour</li> <li>Re-engagement with education requires a collective approach, not just from DET, but from all agencies</li> <li>Organisational silos and inappropriate staffing</li> </ul>

Key discussion points raised	<ul style="list-style-type: none"> <li>• The region usually has the lowest number of young people involved in Youth Justice in the state, which translates to less funding. Why is funding reactive and not proactive?</li> <li>• The region relies on a lot of volunteers. Many Elders are volunteers. People need to be paid for their time.</li> <li>• The terminology of 'mental health' diagnosis can prevent progress due to attached stigmas. Is it possible to change and reframe labels?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Create a regional youth justice action group (made up of local services and agencies)</li> <li>• Create a Koori youth advisory group – young voices involved in all community and government organisations.</li> <li>• Increase access to VALS</li> <li>• Ensure diversion plans include programs to connect to culture</li> <li>• Resource ACCOs to lead the development of cultural plans</li> <li>• Improve information-sharing in the region</li> <li>• Share cultural plans across agencies</li> </ul>

### Eastern Metropolitan Regional Forum – October 2019

Strengths identified	<ul style="list-style-type: none"> <li>• ACCOs are strong, well-connected and working together</li> <li>• Young people have access to cultural programs and camps</li> <li>• Long-term relationships with cultural mentors</li> <li>• Wraparound care for young people</li> <li>• Inter-agency partnerships through the Multi-Agency Panel</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Family support and reunification work challenging</li> <li>• Lack of family support in out-of-home care, and not involving families in decision-making</li> <li>• High turnover of Koori Youth Justice workers</li> <li>• Lack of cultural education and connection in schools</li> <li>• Need more Aboriginal staff in all agencies</li> <li>• Young people leaving care and the inability to offer appropriate, stable long-term housing for young people</li> <li>• Need more leadership programs for young people</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• How can the region make sure every young person has a trusted adult to relate to?</li> <li>• How can the region connect young people to the immediate care of welfare agencies at the point of arrest?</li> <li>• Positive and high-level collaborative relationships between agencies at an executive level don't always translate to an operational level. How can the region make sure this happens with police?</li> <li>• The region needs to work harder to engage young people with support. How can a young person be supported to 'go beyond the no' if they refuse a program?</li> <li>• When young people abscond from Child Protection, it should be understood as them not feeling safe there. The young person's behaviour needs to be reframed from 'anti-social' to a 'sign of distress'.</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Increase numbers of Aboriginal staff with a focus on recruitment, training and staff retention</li> <li>• Establish a clear referral pathway to local ACCO for health assessments</li> <li>• DET &amp; DJCS develop a protocol for collaboration when young people become disengaged from education</li> <li>• Involve local KESO at Multi-Agency Panel meetings to help further engage young people in culture</li> <li>• Case managers are trained to effectively engage with Aboriginal young people who have experienced complex trauma; explore options for a culturally trained life story worker</li> <li>• Amplify the voices of Aboriginal young people in the region</li> <li>• Improve referrals to support services at the point of arrest</li> <li>• Bring an Aboriginal voice, whether ACCO or government, into care teams and improve educational programs provided to Aboriginal young people involved with Youth Justice</li> <li>• Reduce criminalisation of Aboriginal children in care, and improve cultural safety in residential care</li> </ul>

## Appendix 3 Regional snapshots from the Taskforce

### Gippsland (Bairnsdale) Regional Forum – September 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Strong connection to culture in the region</li> <li>• Flexible education pathways and service models</li> <li>• Local youth group, mentoring and camps</li> <li>• Aboriginal Family Led Decision Making in Child Protection in the region has shown positive outcomes</li> <li>• All young people in scope of the Taskforce in the region lived with their parents or family</li> <li>• Cultural awareness training for police in the region is working well</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of mental health support</li> <li>• Lack of employment options for young people</li> <li>• Large distances to travel in the region can limit access to services</li> <li>• Inconsistent or fragmented services and programs</li> <li>• Low use of Children’s Court diversion</li> <li>• Low number of health, disability and psychological assessments undertaken</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• Agencies are working separately and need to work together. How can the region improve?</li> <li>• How can the region create positive outreach and consistent engagement that doesn’t place the responsibility on children and young people?</li> <li>• Does the region truly listen to and empower young people?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Create a regional youth justice action group (made up of local services and agencies). Representatives from DHHS (now DFFH), DJCS, DET, the local ACCO, Victoria Police and Headspace would attend and collaborate.</li> <li>• Improve transport for children and young people in the region</li> <li>• Develop a youth-friendly service directory</li> </ul>
Spotlight on surrounding communities	<p>Representatives from Orbost identified the best ways to support children and young people in their community:</p> <ul style="list-style-type: none"> <li>• a one stop shop in the main street for youth services (for example, art programs, playgroup, mentoring, help obtaining licences)</li> <li>• respecting young people, even after bad choices, and working through consequences together</li> <li>• increasing communication and collaboration between agencies.</li> </ul>

### Gippsland (Morwell) Regional Forum – September 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Strong youth group, mentoring, and music program for young people</li> <li>• Strong leadership from Aboriginal workers</li> <li>• Programs that invite families of young people to participate as well</li> <li>• Aboriginal Community Liaison Officer within Victoria Police has had a positive impact in changing police culture and building a bridge between police and community</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• No local ACCO to bring the community together</li> <li>• Young people on diversion need better support programs</li> <li>• Many young people have a history of trauma and family violence</li> <li>• Systems and services are complex for young people and families to navigate</li> <li>• Lack of collaboration between services</li> <li>• Many young people disengage from education at an early age and re-engagement is disjointed</li> <li>• No cultural lens in mental health</li> <li>• Housing instability is high</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• Most of the region’s programs only get funded for 6 months at a time. How to get funding for programs to ensure sustainability?</li> <li>• How to identify at-risk youth before they are in contact with Youth Justice?</li> <li>• How can the region support families better? Need to increase work with the whole family, as young people can’t be supported in isolation.</li> </ul>

Example of actions to progress	<ul style="list-style-type: none"> <li>• Ongoing funding for VACCA's Kickback program</li> <li>• Establish a panel to increase referrals to group conferences. Group conferences in the region coordinate services and improve outcomes for young people.</li> <li>• Establish a local ACCO</li> <li>• Expand diversion support programs</li> </ul>
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### Grampians (Ballarat) Regional Forum – June 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Commitment from local government, relationships between organisations</li> <li>• Investment in local programs</li> <li>• Strength of Aboriginal organisations</li> <li>• Strong families in the community</li> <li>• Success of Koori Court</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of housing, support for carers and specialist services for Aboriginal young people</li> <li>• Under-utilisation of Aboriginal government staff</li> <li>• Short-term funding that is reactive rather than proactive</li> <li>• Substance misuse and lack of a healing centre</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• How can the region invest more in proactive initiatives rather than being reactive? The community wants to focus on positive outcomes instead of the deficit model that dictates where funding goes.</li> <li>• How does the region improve self-determination? Government should transfer power and funding to the community to let them make decisions.</li> <li>• How does the region work together to break the cycle of intergenerational trauma?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Establish a healing centre in the region</li> <li>• Establish a youth hub in the region</li> <li>• Hold regular regional youth justice forums</li> <li>• Ensure that diversion plans include connection to cultural programs</li> <li>• Improve relationships with employment and training organisations</li> <li>• Increase funding for programs such as Massive Murray Paddle, Deadly Connections, Horsham Cultural Program and West Vic Eels Academy</li> </ul>
Spotlight on surrounding communities	<ul style="list-style-type: none"> <li>• Racism was identified as an overt challenge in Horsham.</li> <li>• Participants discussed the gap between Elders and the next generation and the need for developing young leaders in the Horsham community.</li> <li>• There are housing concerns for young people in Horsham. There was an idea to create a housing program where young people help to build a unit to go in the yard of their carer's residence.</li> </ul>

## Appendix 3 Regional snapshots from the Taskforce

### Hume (Shepparton) Regional Forum – August 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Aboriginal young people are good at articulating their needs</li> <li>• Cultural programs and camps</li> <li>• The passion of the community to help young people</li> <li>• The region has seen a drop in youth crime</li> <li>• Outreach services</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Families are living in unstable housing (young people sleeping on couches, homes with no heating or cooling)</li> <li>• Lack of rehabilitation services</li> <li>• Proving Aboriginality can be a challenge for young people, limiting their access to services</li> <li>• Lack of Aboriginal mentors and role models</li> <li>• Many young people are exposed to family violence or parental substance misuse from an early age</li> <li>• Lack of counselling services for young people with trauma</li> <li>• Young people exiting custody are not provided with enough transition support to re-engage with education</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• The region is not listening to young people and their families. The region needs to support families to strengthen culture. How can services put more of a focus on the family unit?</li> <li>• Sometimes young people are unwilling to engage in programs. How can the region better support positive engagement to see fewer safe custody warrants and less reoffending?</li> <li>• How do young people make positive friends when they are not engaged in school and other services? There is a need for peer building programs.</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Establish an Aboriginal-led residential care facility</li> <li>• Create a Koori youth advisory group</li> <li>• Improve legal education for young people</li> <li>• Increase after-hours support</li> <li>• Focus on employment pathways for young people</li> <li>• Improve identification of Aboriginal children and young people in the justice system</li> </ul>

### Hume (Wodonga) Regional Forum – August 2019

Strengths identified by the region	<ul style="list-style-type: none"> <li>• Resilience and strength of young people</li> <li>• Group conferencing</li> <li>• Working to meet the needs of young people and their families</li> <li>• Sports programs and innovative activities for young people</li> <li>• Traineeships: strong connection with VAEAI and Local Aboriginal Education Consultative Group</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of housing options, leading to couch surfing and homelessness</li> <li>• Service collaboration and information-sharing</li> <li>• Health services aren't offering outreach</li> <li>• Lack of specialist services for young people (mental health, intensive cultural programs, AOD residential service)</li> <li>• Disconnection from culture and identity</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• How does the region address intergenerational trauma? The region has young people who 'don't know where they are from and don't know where they are going'.</li> <li>• How can the region create more flexible services so that support is there when young people are ready?</li> <li>• Young people are resistant to clinical psychological services. What other models can be looked at?</li> </ul>

Example of actions to progress	<ul style="list-style-type: none"> <li>• Establish an Aboriginal youth advisory group</li> <li>• Improve system processes through developing a tool for early identification of at-risk youth and provide additional referral options</li> <li>• Engage Aboriginal young people in holistic or multi-agency health assessments</li> <li>• Strengthen young people's personal and community links (for example, through intensive cultural programs) and their pathways into employment</li> <li>• Increase diversion programs and mentoring programs</li> <li>• Establish an ongoing case review panel (care teams coupled with senior decision-makers) for all Aboriginal young people involved in Youth Justice</li> <li>• Share cultural plans across agencies, build on good practice of cultural planning, create funding pool to engage Elders</li> </ul>
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### Loddon Mallee (Bendigo) Regional Forum – August 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Strong relationships between young people and ACCOs and ACCHOs</li> <li>• Committed workforce with collaborative practices</li> <li>• Strong commitment from local magistrates for a restorative justice approach</li> <li>• Holistic and community-based approaches</li> <li>• Strong cultural support plans and unique position with Aboriginal Children in Aboriginal Care program</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of service integration and information-sharing</li> <li>• Workforce development</li> <li>• Lack of after-hours services</li> <li>• Need for more Koori Youth Justice workers</li> <li>• Program constraints and lack of access to services</li> <li>• Lack of cultural competence and training for organisations that work with Aboriginal young people</li> <li>• Being able to capture and understand young people's voices</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• The media portrayal of young people with offending behaviour or substance use is damaging. How is that challenged and how can the community be properly informed?</li> <li>• How to best capture and understand the needs and voices of young people in the community?</li> <li>• How does the region best prevent recidivism? Can Victoria Police commit to a training package?</li> <li>• How to increase the number of young people who go into higher education? Through greater flexibility for young people, or more connection between schools and families?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• One cultural support plan across all organisations that a young person is involved with. DHHS (DFFH), DJCS and DET should all have the same cultural support plan to give young people consistent support.</li> <li>• Young people's participation in the Massive Murray Paddle</li> <li>• Engage young people in appropriate education</li> <li>• Help young women to have safer relationships</li> <li>• Develop life skills with a cultural lens (for example, through cultural planning)</li> <li>• Better involvement of young people in planning for their future, and a greater capacity to engage directly with young people</li> <li>• Aboriginal youth camps</li> <li>• Expand the workforce and after-hours supports</li> </ul>

## Appendix 3 Regional snapshots from the Taskforce

### Loddon Mallee (Mildura) Regional Forum – August 2019

Strengths identified	<ul style="list-style-type: none"> <li>• HomeBase youth centre</li> <li>• Integration of services</li> <li>• Wrapping supports around families, and having on-Country healing</li> <li>• Working with court diversion</li> <li>• Young people's engagement with education</li> <li>• Youth mentoring programs</li> <li>• Strong Aunties in the community showing leadership and innovation</li> <li>• Well-connected and collaborative care teams</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of referrals to mental health and cultural services</li> <li>• Stakeholders not listening to community</li> <li>• Lack of cultural training and understanding</li> <li>• Substance misuse</li> <li>• Lack of communication between services</li> <li>• Lack of housing</li> <li>• Wait times for access to health services, particularly specialists</li> <li>• Family and community aren't involved in the development of cultural support plans</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• There is a lack of understanding of Aboriginal culture from services and culture awareness training is a 'tick the box' attitude. How can organisations better prove they are culturally safe?</li> <li>• How can the region help interstate agencies to better share information and operate borderless on a regional border?</li> <li>• How can the region ensure that care teams focus on a young person's strengths and build on those, rather than focusing on their issues or on finishing their youth justice order?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Map services and improve cross-border service integration</li> <li>• To reduce the number of young people in residential care, the Mildura community will explore a long-term, flexible family model that provides a broader range of supports to kinship carers</li> <li>• Explore appropriate housing models for youth (including creating a working group with regular meetings, and advocating for a lead tenant model)</li> <li>• Identify 20 at-risk families, with a focus on engaging them to increase health outcomes and family healing</li> <li>• Increase cultural safety in the region (including delivery of cultural awareness training to all staff and agencies involved in youth service delivery, helping build understanding through yarning circles)</li> <li>• Create a youth advisory panel to inform service delivery</li> <li>• Create sustainable leaders, by increasing the number of youth programs (mentoring, male support groups, training young leaders)</li> <li>• Improve mental health services for Aboriginal young people</li> </ul>



### Northern Metropolitan Regional Forum – October 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Strong cultural programs and Elders</li> <li>• The strengths focus of the Koori Court</li> <li>• Programs that place the young person at the centre</li> <li>• Multi-disciplinary care teams and holistic practice relationships</li> <li>• Return to Country visits</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of planning or last-minute planning for young people leaving care, making plans culturally unsafe</li> <li>• Barriers to having in-reach to young people in custody</li> <li>• Lack of funding for homelessness</li> <li>• Education levels of young people and low educational engagement</li> <li>• Unrealistic bail and sentencing expectations</li> <li>• Early exposure to family violence is a common experience for young people</li> <li>• Entry into the youth justice system was often early (under the age of 14 years) and usually involved multiple remand admissions</li> <li>• Agencies working in silos, for example, a lack of support for crossover children</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• NDIS assessments and plans are needed for Aboriginal young people. How to ensure that disabilities are seen as everyone's core business?</li> <li>• If workers don't know how to deliver culturally responsive practice, what practical strategies can be learned to integrate cultural concepts?</li> <li>• How can the region get both departments working better together for crossover children involved with Child Protection and Youth Justice?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• Improve educational engagement and outcomes – this could include cultural audits of all schools in the region with regular inter-agency meetings to discuss high-risk young people with many absences</li> <li>• A quarterly forum to discuss service delivery; empowering police/CAHABPS/early contact points to provide service information and referral to support early intervention</li> <li>• Community legal education for young people and schools</li> <li>• Work towards a youth hub or drop-in centre for young people, available after hours</li> <li>• Establish an Aboriginal 'young people and families' panel, attended by senior decision-makers, to fill the gap of care teams who don't have authority to make some decisions</li> <li>• Support for a return to Country program</li> <li>• Strategies to support underlying issues such as grief and loss</li> </ul>

### Southern Metropolitan Regional Forum– October 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Strong Elders and community mentors</li> <li>• Doveton Gathering Place and youth group</li> <li>• After-hours services and cross-agency service delivery</li> <li>• Aboriginal Family Led Decision Making (Child Protection) in the region is working well and making a difference to families</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Limited access to safe and affordable housing in the community</li> <li>• No culturally appropriate outreach mental health services</li> <li>• Limited information-sharing to support young people with wraparound services</li> <li>• Lack of information-sharing between departments</li> <li>• Cultural knowledge gaps in services</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• How will the region support young people and families who are struggling in the community without involving a statutory authority?</li> <li>• How to best integrate young people back into education after being in the youth justice system?</li> <li>• How to create more opportunities for Aboriginal young people to be mentored by other Aboriginal young people?</li> </ul>

## Appendix 3 Regional snapshots from the Taskforce

Example of actions to progress	<ul style="list-style-type: none"> <li>• Link residential care with Elders and respected people</li> <li>• Improve information-sharing between departments to provide wraparound care for young people</li> <li>• Increase the number of cultural identified roles in Youth Justice to work with Aboriginal young people</li> <li>• Establish a regular panel review of Aboriginal children and young people's files, and promote coordination to enable early intervention</li> <li>• Provide trauma training to local police</li> <li>• Improve collaboration between departments/services</li> <li>• Place review of cultural plan on the agenda for every care team meeting</li> <li>• Targeted outreach mental health service for Aboriginal young people linked to an ACCO and backed by a clinical health service with priority access</li> </ul>
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### Western Metropolitan Regional Forum – October 2019

Strengths identified	<ul style="list-style-type: none"> <li>• Successful community programs, youth hubs and youth groups</li> <li>• Young people in the region demonstrate strength, courage and hope in the face of severe adversity</li> <li>• Strong connections between community and services</li> </ul>
Challenges identified	<ul style="list-style-type: none"> <li>• Lack of support transitioning out of custody</li> <li>• Programs not designed by Aboriginal community</li> <li>• Lack of Aboriginal mentors for young people</li> <li>• Lack of local Aboriginal health service for mental health and substance use</li> <li>• Lack of sufficient collaboration between agencies, including in case coordination</li> </ul>
Key discussion points raised	<ul style="list-style-type: none"> <li>• How can the region better support young people proactively with education and employment?</li> <li>• Trauma in early childhood is common to many young people, yet specialist treatment is often delayed or not provided.</li> <li>• Some young people are exiting care into unsuitable and unsustainable housing, like caravan parks. How can the region create more appropriate housing options for young people?</li> <li>• How can the region ensure that assessments are completed for young people to inform interventions and plans aligned with current needs?</li> </ul>
Example of actions to progress	<ul style="list-style-type: none"> <li>• All young people have a transition plan for exiting Youth Justice that includes their voice and is specific and relevant to them</li> <li>• Cross-agency cultural support plans for all Aboriginal youth engaged with government services</li> <li>• Improve information-sharing between agencies</li> <li>• Develop an Aboriginal youth hub or drop-in centre</li> <li>• Secure ongoing funding for existing BWAYS youth group</li> <li>• Aboriginal-specific dedicated mental health inpatient beds</li> </ul>

# References and legislation

<b>References</b>	<b>570</b>
<b>Legislation</b>	<b>587</b>

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***My Message to the Young Koories of Victoria***

*Young Koorie of this Land now called Australia,*

*You are the Custodians, Educators  
and Ambassadors*

*of the*

*Oldest Continuous and Resilient Culture in the World.*

*Stand Tall,*

*Maintain your*

*Culture, Language, Identity, Spirituality, Dignity and Pride.*

*Be proud of who you are.*

*May the Spirits of my Ancestors be with you*

*on*

*Your Life Journeys*

Jim Berg, Gunditjmara Elder

October 2018



NO SPACE  
FOR SHAME

OUR YOUTH  
OUR WAY

WE ARE  
THE CHANGE



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COMMISSION FOR CHILDREN  
AND YOUNG PEOPLE

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