



# Aboriginal cultural rights in youth justice centres



**Victorian Equal Opportunity  
& Human Rights Commission**

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### **Disclaimer**

The experiences of participants that are reflected in the report are the perspectives and experiences of individual participants as shared with VEOHRC and CCYP.

### **Acknowledgement**

CCYP and VEOHRC respectfully acknowledge and celebrate the Traditional Owners of the lands throughout Victoria and pay their respects to their Elders, children and youth of past, current and future generations.

### **Artwork**

© *Coming Home* (acrylic on canvas 2014) reproduced with permission of the artist, Eileen Harrison. Eileen Harrison is a Kurnai woman, artist and respected Elder from south-east Victoria.

“All the baby emus in this painting are coming home. The black emus depict the mothers and the larger emus depict Elders wearing their possum skin cloaks. This work represents people coming home to their ancestral lands, their place. Country is where you belong.”

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# Introduction

## Report authors

**The Victorian Equal Opportunity and Human Rights Commission (VEOHRC)** is an independent statutory body with responsibilities under the *Equal Opportunity Act 2010*, the *Racial and Religious Tolerance Act 2001* and the Charter of Human Rights and Responsibilities (the Charter). VEOHRC has a mission to engage and influence law and policy makers, institutions, communities and individuals to protect and promote human rights in Victoria.

**The Commission for Children and Young People (CCYP)** is an independent statutory body established under the *Commission for Children and Young People Act 2012* that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. CCYP has a particular focus on vulnerable children and young people.

In late 2017, VEOHRC and CCYP partnered to conduct a series of interviews with youth justice stakeholders and Aboriginal cultural knowledge holders about how young people in Victoria's youth justice centres could be better supported to maintain and develop their connections to culture and community.<sup>1</sup>

Due to the over-representation of Aboriginal young people in the Victorian youth justice system, and recognising the importance of culture as a protective and rehabilitative factor, this project aims to:

- identify practices that improve cultural connection for Koori youth in youth justice centres
- build the awareness, understanding and use of cultural rights for those involved with youth justice centres.

We interviewed people who work closely with Koori young people, including state-wide Aboriginal community controlled organisations (ACCOs), community members of the Aboriginal Justice Forum and relevant government agencies. We conducted 15 interviews with more than 35 participants, the majority being Aboriginal community members. Unless otherwise referenced, all quotes in this publication are from these interviews.

We did not speak directly with young people due to other projects underway that are engaging with young people involved in the justice system. However, we stress the importance of having young people's voices and views at the forefront of developing new policies and procedures and implementing change.

*"It's about kids and families having a voice and informing change."*

This publication draws on the advice received through our interviews and makes eight recommendations to the Department of Justice and Regulation as the agency responsible for the management of youth justice centres.

We want to acknowledge the complex nature of work done in the youth justice sector, and commend the passion and commitment of everyone who spoke to us.



# Recommendations

## Recommendation 1

The Department of Justice and Regulation prioritises the promotion of Aboriginal cultural rights and the strengthening of cultural connections in its Koori Youth Justice Strategy.

## Recommendation 2

The Department of Justice and Regulation increases the frequency, quality, and evaluation of cultural programs to better protect and promote Aboriginal cultural rights in youth justice centres.

## Recommendation 3

The Department of Justice and Regulation develops 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, and aims to support such connections.

## Recommendation 4

The Department of Justice and Regulation reviews all youth justice policies and procedures that engage the right to maintain kinship ties for Koori youth, particularly those that relate to attending funerals.

## Recommendation 5

The Department of Justice and Regulation increases the focus on culturally appropriate transitional support for young people being released from youth justice centres. This could be achieved through a new dedicated role, and through greater involvement of Aboriginal community controlled organisations.

## Recommendation 6

The Department of Justice and Regulation increases and funds more dedicated Aboriginal roles to better protect the cultural rights of Koori young people in youth justice centres.

## Recommendation 7

- 7.1 The Department of Justice and Regulation implements a standalone, requisite and tailored Aboriginal cultural awareness program for all youth justice centre staff.
- 7.2 The Department of Justice and Regulation provides all youth justice centre staff with best practice human rights training to ensure they understand their obligations under the Charter of Human Rights and Responsibilities and the *Children, Youth and Families Act 2005*.

## Recommendation 8

The Department of Justice and Regulation implements culturally appropriate design when building new or updating existing youth justice infrastructure in Victoria.

# Why conduct this project?

Aboriginal young people have a long history of over-representation in the Australian criminal justice system.<sup>2</sup> In 2015–16, 198 young people or 16 per cent of young people in the Victorian youth justice system identified as Koori.<sup>3</sup> Yet, Koori young people comprise only 1.6 per cent of the Victorian population aged 10–18 years.<sup>4</sup> In Victoria, compared to non-Koori youth, a Koori young person is approximately 13 times more likely to be in detention.<sup>5</sup>

The proportion of Aboriginal youth in detention, compared to non-Aboriginal youth, continues to increase over time.<sup>6</sup> Further, Aboriginal young people are also more likely to begin offending early, have earlier contact with the youth justice system,<sup>7</sup> and have long-term contact with the criminal justice system as adults.<sup>8</sup>

A range of factors contribute to the over-representation of Koori young people in youth justice, such as historical and ongoing political and social conditions, intergenerational trauma and loss, broken connection to culture, country and community, systemic discrimination (for example, police bias and over-policing), inadequate resourcing of Aboriginal legal services, and marginalisation from mainstream culture.<sup>9</sup> Another notable factor is the disparate access to diversion programs.<sup>10</sup> Koori youth in Victoria receive diversions at less than half the rate for non-Koori youth.<sup>11</sup>

Once Koori youth are in the youth justice system, they are likely to return as repeat offenders. Koori specific data on recidivism is not available, however, the overall rate in youth justice sits at approximately 70 per cent.<sup>12</sup>

The levels of offending, reoffending and consistently poor outcomes for Koori young people who come into contact with youth justice reveals a systemic failure to address the factors that contribute to over-representation.<sup>13</sup>

In Victoria, the youth justice system has been under considerable strain, and has recently embarked on significant reforms. In 2016–17 the first independent review of Victoria's youth justice system in more than sixteen years was undertaken by Penny Armytage<sup>14</sup> and Professor James Ogloff AM.<sup>15</sup> The resulting report, *Youth Justice Review and Strategy: Meeting needs and reducing offending* (the Armytage and Ogloff review), recommends significant changes to the youth justice system. The Victorian Government has committed to implementing all recommendations in the report, including developing a strategy to address the over-representation of Koori young people in youth justice. This work will be led by a new Manager of Koori Youth Justice Operations within the Department of Justice and Regulation.

A key recommendation of the review is to resource the Commissioner for Aboriginal Children and Young People to undertake the equivalent of a Taskforce 1000 project for every Koori young person involved in youth justice. For the original Taskforce 1000 project, CCYP collaborated with stakeholders to review the cases of approximately 1000 Aboriginal children in out of home care. While we welcome this recommendation, we believe there are changes that can be made now to improve the protection of cultural rights for Koori youth in custody.

This report found that strong cultural identity and connection to culture, country and community is a protective factor for the social and emotional wellbeing of Koori young people.<sup>16</sup> Yet, we were told that Koori youth in custody lack opportunities to connect to culture and have minimal access to cultural activities and support. We support the Armytage & Ogloff review's finding that:

Youth justice services have to be culturally safe to be effective. Proactive engagement with elders and community is required to promote access to diversion and early intervention programs, as well as to guide custodial and community supervisory models.<sup>17</sup>

VEOHRC and CCYP hope that the recommendations in this publication are given thoughtful consideration in the Department of Justice and Regulation's development of the Koori Youth Justice Strategy.

## Recommendation 1

The Department of Justice and Regulation prioritises the promotion of Aboriginal cultural rights and the strengthening of cultural connections in its Koori Youth Justice Strategy.

# The importance of culture

Maintaining a positive spiritual, physical and emotional connection to country, culture and community is inherent in many Aboriginal beliefs about mental, social and emotional wellbeing.<sup>18</sup> Research on Indigenous young people worldwide has long identified cultural affiliation as an important factor in supporting resilience and wellbeing.<sup>19</sup> A strong cultural identity has been found to 'promote resilience, enhance self-esteem, engender pro-social coping styles and has served as a protective mechanism against mental health symptoms'.<sup>20</sup> Initiatives that strengthen culture and resilience are expected to be an important contributor to reducing risk of reoffending and reoffending rates.

Engaging in traditional cultural practices and reclaiming a sense of cultural identity is the key to alleviating Aboriginal disadvantage and regaining their rightful place in broader Australian society.<sup>21</sup>

A recent study conducted in Victorian prisons suggests that Aboriginal people who are supported to engage in cultural activities while in custodial environments are less likely to reoffend upon release.<sup>22</sup> The authors of that study suggest this is due to the enhanced self-esteem, life purpose and social supports enjoyed by people with strong cultural engagement. The Armytage and Ogloff review found that:

Koori young people, elders and community identified that working with family and community is critical to breaking the cycle of offending.<sup>23</sup>

Connection to culture and kinship are intrinsic elements of Aboriginal children and young people's sense of identity. Connection to culture, land and spirituality is foundational to building resilience and can reduce the impact of stress on Aboriginal people.<sup>24</sup> Active and enduring connections have a positive impact on their social and emotional health and wellbeing, and their safety.<sup>25</sup> Damaging these connections and relationship risks undermining norms of appropriate social and cultural behaviour.<sup>26</sup>

If we experience racism and identity issues we will always have our connection to culture to fall back on.<sup>27</sup>

Detaining Aboriginal young people in youth justice centres undermines their connection to culture. We acknowledge that the highest priority must be a focus on early intervention measures that prevent young people from becoming involved in the youth justice system.<sup>28</sup> However, where Aboriginal children and young people are detained in custody, their rights to practise their culture and to remain connected to their family and community must also be protected, which is the focus of this project.<sup>29</sup>

# Aboriginal cultural rights

The Charter protects the fundamental rights and freedoms of all people in Victoria. The Charter is about the relationship between the Victorian Government and the community. It requires that all public authorities in Victoria act compatibly with human rights and give proper consideration to relevant rights when making decisions. There are cultural rights that belong specifically to Aboriginal and Torres Strait Islander people in Victoria.

Section 19(2) of the Charter states that Aboriginal people hold distinct cultural rights and must not be denied the right, with other members of their community 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.

Under the Charter, the public sector agencies and officials have an obligation to give proper consideration to the cultural rights of Aboriginal people when making a decision. They also have an obligation to act compatibly with those rights.<sup>30</sup>

Likewise, public sector agencies and officials have obligations under the *Children, Youth and Families Act 2005* to make decisions in this best interest of a child. In determining what is in an Aboriginal child's best interest, consideration must be given to the need to protect and promote his or her cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to his or her Aboriginal family and community.<sup>31</sup>

Aboriginal cultural rights are also protected by international instruments, including the *International Covenant on Civil and Political Rights*,<sup>32</sup> and the United Nations *Declaration on the Rights of Indigenous Peoples*.<sup>33</sup>

VEOHRC's previous research has indicated that there is a general lack of awareness of cultural rights under Section 19(2) of the Charter, both in the community and within public sector agencies.<sup>34</sup> Interview participants for the current project were also of the opinion that that youth justice centre staff have, at best, nominal awareness and understanding of cultural rights.

A lack of protection of cultural rights has the ability to exacerbate emotional trauma of young people in custody. In order to protect cultural rights, Koori children and young people in custody should be afforded sufficient opportunities to connect to their culture.





# Themes arising from interviews

The information gathered through our interviews may be characterised into six broader themes, each with corresponding recommendations. These themes are:

- protecting the right to maintain identity and culture
- protecting the right to maintain kinship ties
- returning to community
- Aboriginal staff in youth justice centres
- cross-cultural and human rights training
- physical environment inside youth justice centres.

## Protecting the right to maintain identity and culture

*“Regardless of opportunity and what’s going on, culture is one thing to remind you who you are and how you belong.”*

A clear way to protect the right to identity and culture is to provide Koori youth with adequate cultural programs inside youth justice centres.

*“It is an opportune time to embed culture into their lives ... there’s nothing more rehabilitating than introducing a young person to culture and Elders.”*

Cultural programs assist with social cohesion, self-esteem, personal development, and feeling a part of something bigger than oneself. Ideally, cultural programs will instil a strong identity and allow Koori youth to know their place in their families and communities, providing a sense of pride.

Currently, there is a weekly cultural program run by the Youth Justice Service and Parkville College at Melbourne Youth Justice Centre. At Malmsbury Youth Justice Centre, Uncle Ron Murray has delivered a weekly program on the senior site, and the Richmond Football Club’s Korin Gamadji Institute is piloting a cultural mentoring program.

However, people told us that weekly cultural programs are not frequent enough, particularly as young people are not always able to attend due to conflicting obligations, including court appearances or for security considerations.

We heard from many interview participants that the consistency, duration and variety of cultural programming should be increased. Young people enter the youth justice system with various levels of cultural knowledge. However, the level is generally low, and many young people lack cultural identity and knowledge of their family history. High quality cultural programs will improve the youth justice system’s ability to uphold young people’s right to identity and culture.

*“There is a strong push for therapy – but culture is therapy – you can’t provide therapy without cultural connection.”*

Programs should aim to include role models, Elders and respected people from the areas where the young person is from. We acknowledge that Elders have a positive impact on the behaviour of young people in youth justice centres. It is promising that the Archie Roach Foundation has established a Council of Elders to support a cultural and arts program that works with Koori young people in youth detention centres.

*“We tell lived experience stories. Sitting around with young people – yarning circles – there has to be a bit of ritual about it, using a talking stick, getting them used to ritualistic practice.”*

We re-iterate a point made in the Armytage and Ogloff review, that there is ‘still very little material regarding how to work with Indigenous offenders in a culturally appropriate manner’.<sup>35</sup> In VEOHRC and CCYP’s view, programs should also be properly monitored and evaluated in consultation with the Koori community to better understand their appropriateness and effectiveness.

## Recommendation 2

The Department of Justice and Regulation increases the frequency, quality, and evaluation of cultural programs to better protect and promote Aboriginal cultural rights in youth justice centres.

### Benefits of cultural programs

The Royal Commission into the Protection and Detention of Children in the Northern Territory identifies the following benefits of cultural programs:

- 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>36</sup>

Suggestions from our interviews on improving cultural programming included:

- allowing past residents to return to speak with the youth, in a positive light, to tell their story of how they changed their lives
- working towards holding activities as a group with the entire Koori cohort
- developing a consistent visitation roster with the same visitors, to avoid young people needing to recount their stories too often
- ensuring that young people who miss out on programs are sufficiently catered for with alternatives
- permitting cultural artefacts to be brought into youth justice centres, and cultural programs to craft cultural items, for example, didgeridoos and basket weaving
- notifying a network of ACCOs and youth justice workers, who can assist with determining familial links when a young person enters custody
- assisting Parkville College to employ Aboriginal teachers to reflect the over-representation of Aboriginal children and young people in custody, and assist with embedding culture in the curriculum
- ensuring there is adequate space available for cultural programs and visits
- including non-Aboriginal youth in programs (when appropriate and there is capacity available) to learn more about Aboriginal culture, as Koori-specific programs have potential to create a ‘them and us’ divide among different cultural groups inside youth justice centres.

### Cultural program ideas

Interviewees provided specific suggestions for cultural programs that would be beneficial, including:

- 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' *Beyond the Bars* radio show in prisons
- an art exhibition to show and sell young people's artwork made in custody
- an Aboriginal behaviour change program, such as Dardi Munwurro<sup>37</sup>
- 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.

*"You shouldn't have to have a degree to teach culture."*

Cultural programming and cultural support plans should not be considered as one-off activities, but instead as part of a holistic model of supporting Aboriginal young people's social and emotional wellbeing. We also heard that existing programs and supports may need to be considered through a cultural lens, or use a cultural wraparound model to ensure that the services are culturally appropriate. Given the potential mental health impacts of custodial environments, priority should be given to ensuring mental health services are culturally safe.

### Recommendation 3

The Department of Justice and Regulation develops 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 and aims to support such connections.

## Protecting the right to maintain kinship ties

*"When working with young people in youth justice – we can't work without them and their whole family."*

The nature of custody means that the right to maintain kinship ties will be limited. However, there are ways that youth justice centres can adjust to better respect the right and accommodate Aboriginal cultural understandings of kinship.

For staff to understand how to protect cultural rights, it is particularly important that they understand Aboriginal concepts of family and allow for the flexibility of the kinship circle.

*"Non-Aboriginal people's idea is of a nuclear family – and a misunderstanding that if that isn't intact, the child doesn't have a family."*

*"There should be a poster in the staff room saying 'Family and kinship means something different to Aboriginal young people' and have a sea of faces: all of these people are mothers, fathers, brothers, sisters."*

Understanding kinship is central to understanding the strong connections between Aboriginal community members. We heard that this means it is likely that Aboriginal professionals visiting youth justice centres will already have a connection to the Aboriginal children and young people they are meeting.

*"Professionals visiting the centres shouldn't have to show that they have no connection to the kids – it's not realistic, they will often have family connections to many."*

*"Culturally you don't walk past another Koori and not acknowledge them, so when we go in and can only give them a wave, that's not culturally appropriate."*

We also heard of instances where Aboriginal staff in youth justice centres had been directed that they cannot continue a relationship with a young Koori person once the young person leaves custody. However, the Department of Justice and Regulation has indicated that such relationships are not against current policy.

Suggestions to protect the right to maintain kinship ties included:

- using technology, for example Skype or FaceTime, to allow more frequent opportunities to communicate with family
- using the temporary leave program to enable more visits with family members
- allowing contact with family, both during visits and over the phone, without a time limit
- providing suitable accommodation for family members to be able to stay overnight with the young person
- considering a program that involves telling and documenting a young person's story, similar to the 'my mob' program delivered by Victorian Aboriginal Community Services Association Ltd (VACSAL). It could involve things such as family and community reassuring the young person of their value, explaining who they are, their place in the community, and what they were like growing up.

The community considers it a cultural right that young people should attend the funerals of their extended kinship circle. We particularly recommend:

- a review of the criteria and procedure that concerns the attendance of funerals, to better accommodate extended Aboriginal kinship relations, and allow young people to attend funerals as a priority
- the use of minimal restraints at funerals, particularly when a young person is a pall bearer
- news of sorry business for extended family be delivered as sensitively as news of a death of immediate family.

## Recommendation 4

The Department of Justice and Regulation reviews all youth justice policies and procedures that engage the right to maintain kinship ties for Koori youth, particularly those that relate to attending funerals.

## Returning to community

*"As soon as they walk in it must be about: 'how do we get them out?'"*

During our interviews there was a significant focus on the need for culturally specific release planning for Aboriginal children and young people. We heard that often young people are released with a low level of community support. This results in a lack of awareness of, and connection to, Aboriginal service providers that could help them avoid the tendency to return to the same social situations and to reoffend. Appropriate support includes assisting with post-release living arrangements, schooling, vocational and other training and employment.

People talked about the need for planning to begin early to allow Aboriginal services enough time to build trust and relationships with young people.

*"You've got a captured audience in custody – let's get more mob together, let's connect with each other."*

It was suggested that a culturally appropriate pre-release program be developed. One suggestion is for youth justice centres to run a regular barbecue for ACCOs to meet with groups of Aboriginal young people. Through these casual gatherings, ACCOs could begin to build relationships with young people and begin to identify the types of support they might need on release. Further, the program could provide more opportunities for temporary leave in the lead up to release, for example, visiting family, and attending Aboriginal community sporting events.

It is also critical that the young person, and their family where possible, is involved in the decisions that impact their life.

## Examples of culturally strong youth services

Aboriginal young people in custody could benefit from being connected to a range of culturally based and culturally strengthening programs and services that already exist. This is by no means an exhaustive list of programs being run by ACCOs.

- **Dardi Munwurro** runs the Journeys Program for Youths, which prepares young people for adult life through one-on-one mentoring, self-empowerment and resilience workshops and team activities.
- **Bert Williams Aboriginal Youth Service** has three streams of operation. These include the Koori Youth Justice worker program which works across north and west metropolitan Melbourne; the Bert Williams Aboriginal Youth Hostel which is a six-bed facility that provide crisis accommodation for homeless youth; and the Early School Leavers program which provide support to young people at risk of disengagement from school and vocational and educational support and advocacy.
- **Djirra** runs early intervention/prevention programs for young Koori women. For example, Young Luv is designed for Aboriginal young women aged 13 to 18 and promotes healthy relationships through drawing on cultural strengths and principles. Young Luv is facilitated by Aboriginal women and engages Aboriginal teenagers in a culturally safe space where they can talk about, reflect on and better understand important issues affecting their lives.
- **Melbourne Aboriginal Youth Sport and Recreation**, in partnership with Whitelion, runs the Deadly Lions programs to empower Aboriginal young people through culturally appropriate support and advocacy and facilitating a sense of identity through spiritual, cultural and community reconnection.
- **VACSAL's Murray River Marathon**, where Aboriginal young people and police get to know each other and raise funds during a five-day camping and kayaking trip.

Further suggestions in relation to improving transition support include:

- utilising Victoria Police Aboriginal Community Liaison Officers in each region to assist with connecting young offenders with programs and services outside of custody
- providing mentors who connect to young people while they're in custody, and support them upon release
- referring young people in custody to the Victorian Aboriginal Health Service and the Bendigo District Aboriginal Cooperative to develop health care plans for release.

The temporary leave program could also be used for young people to visit family, as many will not have seen their extended family while in custody. We heard that these types of visits could be a form of restorative justice and healing for young people as it could provide an opportunity for them to apologise and to understand how their offending has affected others. Some people told us that a young person's visit to a grandparent on release will be more important to them than their first parole appointment. These types of visits, and being subject to cultural 'shame' or admonishment, is a way of making reparations with family. This would help to promote better community relations and reduce anxiety about returning to their community at the end of their sentence.

## Recommendation 5

The Department of Justice and Regulation increases the focus on culturally appropriate transitional support for young people being released from youth justice centres. This could be achieved through a new dedicated role, and through greater involvement of Aboriginal community controlled organisations.

### Positive practice – community release planning

In 2017 the Commissioner for Aboriginal Children and Young People, with the support of the Department of Justice and Regulation, facilitated a meeting at Malmsbury Youth Justice Centre to discuss the release plans for several Aboriginal young people who would soon be returning to their community.

The meeting was attended by community members who played a significant role in the young people's lives, professionals who work with the young people and the young people themselves.

The session allowed all parties to discuss their hopes and fears for the young people's return, and resulted in a clear plan for each of them to be connected to cultural supports, community and training.

## Aboriginal staff in youth justice centres

Everyone we spoke to acknowledged the critical need for more Aboriginal staff in youth justice centres. Recently the number of Aboriginal Liaison Officers has been increased to four. These roles are primarily focused on the immediate needs of young people, particularly behaviour and welfare issues. We heard that, due to a high workload, there is not time for them to also plan programs or facilitate visits.

An increase in Aboriginal staff in youth justice centres would improve the centre's ability to protect cultural rights, and would also be more reflective of the over-representation of Koori young people in custody.<sup>38</sup>

### Recommendation 6

The Department of Justice and Regulation increase and fund more dedicated Aboriginal roles to better protect the cultural rights of Koori young people in youth justice centres.

Ideally more than one role would be created, to provide both a male and a female staff member, given the challenges and cultural load of these roles.

Some suggested the priority for new roles would be for community engagement officers who could facilitate community visits within youth justice centres, and coordinate cultural programs and activities. We heard many examples of visits not occurring due to a breakdown in process and logistics. Processes should be reviewed and improved to allow more streamlined access for Elders, those running cultural programs, and community workers who are visiting clients.

*“There should be a specific person to contact who has a clear role in being able to authorise visits, with clear internal processes, to avoid any miscommunication and maintain consistency.”*

Others considered that a new role would be best used to support transition activities such as the temporary leave program and ensuring that children and young people had complete transition plans for their return to community.

More dedicated employees could fulfil roles such as:

- fostering relationships with Elders, Aboriginal services and community workers, and those delivering cultural programs that wish to visit Koori youth in youth justice centres
- providing a central contact point for arranging visits in youth justice centres, with authority to approve and facilitate visits from ACCOs who have Koori clients, and those delivering cultural programs
- connecting with and facilitating access to culturally appropriate services in transitioning to release
- assisting with cultural programming, such as developing cultural education sessions for both Koori youth and also youth justice centre staff.

*“There needs to be continuity in relations to contact people, appropriate times for access to visit custodial clients. Increased resources will enable diverse cultural activities to be delivered by Koori Youth justice workers.”*

It was suggested that the Youth Justice Service considers employees from community organisations to fulfil additional roles, as it may be easier for these staff to build rapport with Koori young people. On the other hand, basing these roles within the youth justice centres could assist them to understand the system and build connections across community and custody. Further, all Aboriginal roles should be allowed to wear uniforms with Aboriginal artwork that would better identify them to Koori young people.

## Cross-cultural and human rights training

People are central to the operation of youth justice facilities. Day-to-day decisions made by staff are dependent on their level of skills and knowledge. Throughout our interviews there was a strong sense that Aboriginal cultural awareness training needs to be improved for staff at all levels in youth justice centres. This training should be immersive and ongoing, and should be delivered by an external facilitator with expert knowledge of Aboriginal history and culture.<sup>39</sup> This education should not focus on ‘deficits’ but also be balanced with positive stories.

We heard that new youth justice centre secure services staff receive only a half-hour cultural competency session that primarily deals with the procedural knowledge necessary in their roles.<sup>40</sup>

*“A lot of staff interacting with the kids don’t have cultural rights on their mind.”*

What we heard is that an understanding of Aboriginal culture and history is critical to the protection of cultural rights in youth justice centres. To respond effectively to the issues that affect young Aboriginal people, a dedicated training package should be developed. This training should be at least a day in length. It should offer contextualised topics on how to engage Aboriginal families, young people, and community in a culturally safe way.

*“Staff need to understand the [children] are losing identity and culture and there is historical trauma.”*

In addition, VEOHRC and CCYP believe it is important that youth justice staff have an understanding of their obligations under the Charter, including the content and application of cultural rights and the importance of cultural connection.

### Recommendation 7

7.1 The Department of Justice and Regulation implements a stand-alone, requisite and tailored Aboriginal cultural awareness program for all youth justice centre staff.

7.2 The Department of Justice and Regulation provides all youth justice centre staff with best practice human rights training to ensure they understand their obligations under the Charter of Human Rights and Responsibilities and the *Children, Youth and Families Act 2005*.

# Physical environment inside youth justice centres

*“Building the centres like prisons – metal and steel houses – it impacts on me as a visitor, let alone a child who has to live there.”*

Buildings and spaces can have an impact on the psychological state of the young people in youth justice centres and their prospects of rehabilitation. Children and young people should be provided with a physical environment and accommodations which are in keeping with the aim of rehabilitation.<sup>41</sup>

The Juvenile Justice Standards produced by the Australasian Juvenile Justice Administrators state that effective youth justice facilities should:

- support safe and positive environments for staff and children and young people
- provide a physical environment that is safe and secure and promotes rehabilitation
- be maintained properly and kept in working order
- provide a safe and healthy work environment.<sup>42</sup>

We heard that the physical infrastructure of Victoria’s youth justice centres is not culturally appropriate for Aboriginal children and young people, and that it would be preferable to provide a home-like and therapeutic environment with staff that are not in uniform. These are key considerations given that the Victorian Government has committed to building a new youth justice centre with 224 beds at Cherry Creek.

The reality is that young people in detention are deprived of their cultural right to maintain a relationship with their lands and waters. However, there are measures that can be taken to help promote a spiritual connection, and help remind them where they are from and whose country they belong. Dr Grant, who conducted the first empirical studies of Indigenous prison environments says:

In terms of design, key principles must be applied in attempts to incorporate Aboriginality into the design of custodial environments. 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>43</sup>

## Best Practice

The Royal Commission into the Protection and Detention of Children in the Northern Territory concluded that new secure accommodation facilities should be built based on four propositions:

- ‘the best results are achieved in small, home-like facilities that focus on delivering therapeutic and educational services, and keeping young people busy
- staff members at all levels must be trained in, and understand and appreciate that the purpose of secure accommodation facilities is to turn around the lives of troubled young people and make them productive members of a safe society
- the design, philosophy and operating principles must be developed in consultation with the community. The Aboriginal population ... needs to be considered in the reform planning process
- a new, secure, residential model should be developed alongside reforms to minimise the number of young people who need to be detained at all. Building new facilities should not distract decision-makers from the real goal of keeping young people out of detention.’<sup>44</sup>

Some interview participants told us that it is difficult to find space to meet with Koori young people in youth justice centres, either because of a lack of culturally appropriate options, or because all spaces are in demand for other meetings and programs.

In addition to displaying Koori artwork and murals, people urged the Youth Justice Service to be creative about finding culturally appropriate and therapeutic design solutions.

*“There must be use of earthy tones, circular rooms and spaces that reflect the environment, things that offer some means to connect to country.”*



Preferably, visits and programs would be held outside or in more expansive spaces. The development and use of Koori gardens inside youth justice centres is particularly encouraged. While the Koori Garden at the Melbourne Youth Justice Centre was given as an example of good cultural design, there was a sentiment that the space is under-utilised.

*“In the garden young people can spend time together, build connections, spirituality, and connect to the land.”*

## Recommendation 8

The Department of Justice and Regulation implements culturally appropriate design when building new or updating existing youth justice infrastructure in Victoria.

### Wulgunggo Ngalu Learning Place

The Wulgunggo Ngalu Learning Place was initiated as part of the Victorian Government’s response to the findings of the Royal Commission into Aboriginal Deaths in Custody (1991). Opened in September 2008 at the former Won Wron Prison site in Gippsland, it is a culturally appropriate ‘learning place’ for Koori men undertaking Community Correction Orders.

Wulgunggo Ngalu provides a culturally appropriate space where the focus is on developing life skills to improve overall health and reduce substance abuse if needed, improve job prospects and reduce the likelihood of reoffending in the future.

The live-in program can accommodate up to 18 men at any one time. Residents can volunteer to attend or may be directed there by the courts.

An Aboriginal architect designed the layout in reference to the blue wren and to mirror traditional protocols. It has been described as ‘not only peaceful, but also culturally significant.’<sup>45</sup>

Elders provide leadership and share traditional cultural values. This is in keeping with the name ‘Wulgunggo Ngalu’. Taken from the local Aboriginal language (Gunai/Kurnai), Wulgunggo means ‘which way’ and Ngalu means ‘together’.



*Artwork and statues around the grounds depict totem animals and local dreaming stories.  
Picture: Courtesy of Wulgunggo Ngalu Learning Place.*

# A final note

This report has highlighted ways the Department of Justice and Regulation could improve cultural connection and protect Aboriginal cultural rights in youth justice centres. VEOHRC and CCYP hope that this contribution will help inform the development of a robust Koori Youth Justice Strategy. We encourage readers to support the recommendations in their advocacy efforts in this sector.

Thank you to everyone who contributed their advice and ideas to this work, including Jim Berg, Gunditjmarra Elder, and representatives from:

- Aboriginal Victoria
- Archie Roach Foundation Ltd
- Department of Education and Training – Koori Outcomes Division
- Department of Education and Training – Parkville College
- Department of Justice and Regulation
- Department of Premier and Cabinet
- Djirra (*formerly the Aboriginal Family Violence Prevention and Legal Service*)
- Koorie Youth Council
- Regional Aboriginal Justice Advisory Committees
- Victorian Aboriginal Community Services Association Ltd (VACSAL) – Bert Williams Aboriginal Youth Support
- Victorian Aboriginal Health Service (VAHS)
- Victorian Aboriginal Legal Service (VALS)



## Endnotes

- 1 A note on terminology: this publication uses the term 'Aboriginal' to encompass all Aboriginal and/or Torres Strait Islander people in Australia, acknowledging that these groups have a great diversity of cultures, histories and values. Given that the majority of Aboriginal young people in youth justice centres are from Victoria and southern New South Wales, this publication uses the term 'Koori' when referring to young people in custody.
- 2 Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time - Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) 1.
- 3 Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending – Part 1* (Victorian Government, 2017) 172.
- 4 Australian Bureau of Statistics, 'Estimated resident Aboriginal and Torres Strait Islander and Non-Indigenous population, States and Territories, Single year of age, (30 June 2011). < <http://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>
- 5 Australian Institute of Health and Welfare, *Youth Justice in Australia 2016-2017*, Cat. no. JUV 116, May 2018, 8.
- 6 Ibid, 30.
- 7 Ibid, 25.
- 8 Michael Livingstone et al, 'Understanding Juvenile Offending Trajectories' (2008) 41(3) *The Australian Journal of Criminology* 345.
- 9 Armytage and Ogloff, above n 3, 174; Kelly Richards, Lisa Rosevear and Robyn Gilbert, 'Promising Interventions for Reducing Indigenous Juvenile Offending' (Brief No 10, Standing Committee of Attorneys-General, Parliament of Australia, (2011) 2. Note: these are additional to traditional risk factors
- 10 Kelly Richards, Lisa Rosevear and Robyn Gilbert, 'Promising Interventions for Reducing Indigenous Juvenile Offending' (Brief No 10, Standing Committee of Attorneys-General, Parliament of Australia (2011) 2.
- 11 Armytage and Ogloff, above n 3, 124.
- 12 Ibid, 152.
- 13 Ibid, 132.
- 14 Penny Armytage is a Partner at KPMG and former Secretary of the Department of Justice and Regulation.
- 15 James Ogloff is Director of the Centre for Forensic Behavioural Science at Swinburne University.
- 16 See, Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, *Final Report* (2017) 184–5; Muriel Bamblett, 'Self-determination and Culture as protective Factors for Aboriginal Children' (2006) 16 *Developing Practice: The Child, Youth and Family Work Journal* 9, 14.
- 17 Armytage and Ogloff, above n 3, 175.
- 18 See, Royal Commission above n 16, 180; Stephen R. Zubrick et al, 'Social Determinants of Social and Emotional Wellbeing' in Nola Purdie, Pat Dudgeon and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Well-Being Principles and Practices* (Department of Health and Ageing, 2010); See also, Social Health Reference Group for National Aboriginal and Torres Strait Islander Health Council and National Mental Health Working Group, *Social and Emotional Well Being Framework: A National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Well Being 2004–2009* (2004).

- 19 Lisa Wexler, 'The Importance of Identity, History, and Culture in the Wellbeing of Indigenous Youth' (2009) 2:2 *Journal of the History of Childhood and Youth* 267, 267.
- 20 Stephane M Shephard et al, 'The Impact of Indigenous Cultural identity and Cultural Engagement on Violent Offending' (2017) 18(50) *BMC Public Health* 1. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5525355>>
- 21 Shaun Lohoar, Nick Butera and Edita Kennedy, 'Strengths of Australian Aboriginal Cultural Practices in Family Life and Child Rearing' (Research Paper No 25 Australian Institute of Family Studies: Child Family Community Exchange, Parliament of Australia, 2014) 2.
- 22 Shephard et al, above n 20, 4.
- 23 Armytage and Ogloff, above n 3, 174.
- 24 Kerrie Kelly et al, '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) 22.
- 25 Michael Chandler and Travis Proulx, 'Changing Selves in Changing Worlds: Youth Suicide on the Fault-Lines of Colliding Cultures' (2006) 10(2) *Archives of Suicide Research* 125; Adele Cox et al 'Using Participatory Action Research to Prevent Suicide in Aboriginal and Torres Strait Islander Communities' (2014) 20(4) *Australian Journal of Primary Health* 345, 347.
- 26 Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time – Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) 49.
- 27 Koorie Youth Council, Submission No 22 to Standing Committee on Legal and Social Issues, Parliament of Victoria, *Inquiry into Youth Justice Centres in Victoria*, 17 March 2017, 9.
- 28 We reiterate the remarks in the Armytage & Ogloff Report that 'whole-of-continuum programs and responses are required to address the issue of over-representation from early intervention through to post-release'. Penny Armytage and James Ogloff, *Youth Justice Review and Strategy: Meeting Needs and Reducing Offending – Part 2* (Victorian Government, 2017) 96.
- 29 Indigenous cultural rights are recognised and protected internationally under the *United Nations Declaration on the Rights of Indigenous Peoples*, which states that 'Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures...' *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007) art 11(1); *Charter of Human Rights and Responsibilities Act 2006* (Vic) s19(2).
- 30 See *Charter of Human Rights and Responsibilities Act 2006* (Vic) ss19(2), 38.
- 31 *Children, Youth and Families Act 2005* (Vic) s10(3)(c).
- 32 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) art 27.
- 33 *Declaration on the Rights of Indigenous Peoples*, above n 29, art 17.
- 34 VEOHRC's 2015 consultation with public authorities and Aboriginal community controlled organisations and online survey. <<http://www.humanrightscommission.vic.gov.au/human-rights/projects-initiatives#preliminary-findings>>
- 35 Armytage and Ogloff, above n 28, 124.
- 36 See, Royal Commission, above n 16, 463.
- 37 Dardi Munwurro runs the Journeys Program for Youths, which prepares young people for adult life through one-on-one mentoring, self-empowerment and resilience workshops and team activities. <<http://dardimunwurro.com.au>>
- 38 Further, the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (The Beijing Rules), rule 22, states that 'Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.' *United Nations Standard Minimum Rules for the Administration of Juvenile Justice*, GA Res 40/33, UN GAOR, Supp no 53, UN Doc A/40/53 (29 November 1985) rule 22.
- 39 Bronwyn L Lumby and Terri Farrelly, 'A Best Practice Approach to Cultural Competence' (2009) 33(5) *Aboriginal and Islander Health Worker Journal* 14, 20.
- 40 At the time of publishing the report the Department of Justice and Regulation advised that, since December 2017, five hours of additional Aboriginal cultural awareness training has been provided to new youth justice secure staff.

- 41 Committee on the Rights of the Child, *Convention on the Rights of the Child General Comment No. 10: Children's Rights in Juvenile Justice*, UN GAOR, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007) [23].
- 42 Australasian Juvenile Justice Administrators, *Juvenile Justice Standards* 2009.
- 43 Elizabeth 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' (2013) 17(1) *Australian Indigenous Law Review* 47, 50.
- 44 Royal Commission, above n 16, 24.
- 45 'Wulgunggo Ngalu Learning Place' (Final Evaluation Report Prepared for the Department of Justice, Clear Horizon Consulting, May 2013) 16.







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