



Our youth, our way

Summary and recommendations



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 of the full report.

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Acknowledgments

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

Note to readers

This document contains only a summary of the full report *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system* (ISBN 978-0-6487163-4-1).

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.

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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Executive summary

The 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. The 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 the 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 the 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 the 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.

Structure of the report

The 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 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.

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. – Auntie

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

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.

Executive summary

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.

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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.

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

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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

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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.

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.¹ 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.²

The findings in the 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:³ the material success of Australian society is built upon the dispossession of Aboriginal people⁴ and historically, the criminal justice system was employed as an instrument of this dispossession.⁵

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.'

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

The full 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 the 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

A reimagined system

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 the 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.

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:

- children under the age of 16 years being sentenced to, or remanded in, youth justice custody
- children under the age of 18 years being sentenced to adult imprisonment
- 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:

- to prioritise early intervention and diversionary processes at all points on the youth justice system continuum
- 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
- 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.

Findings and recommendations

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

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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.

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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

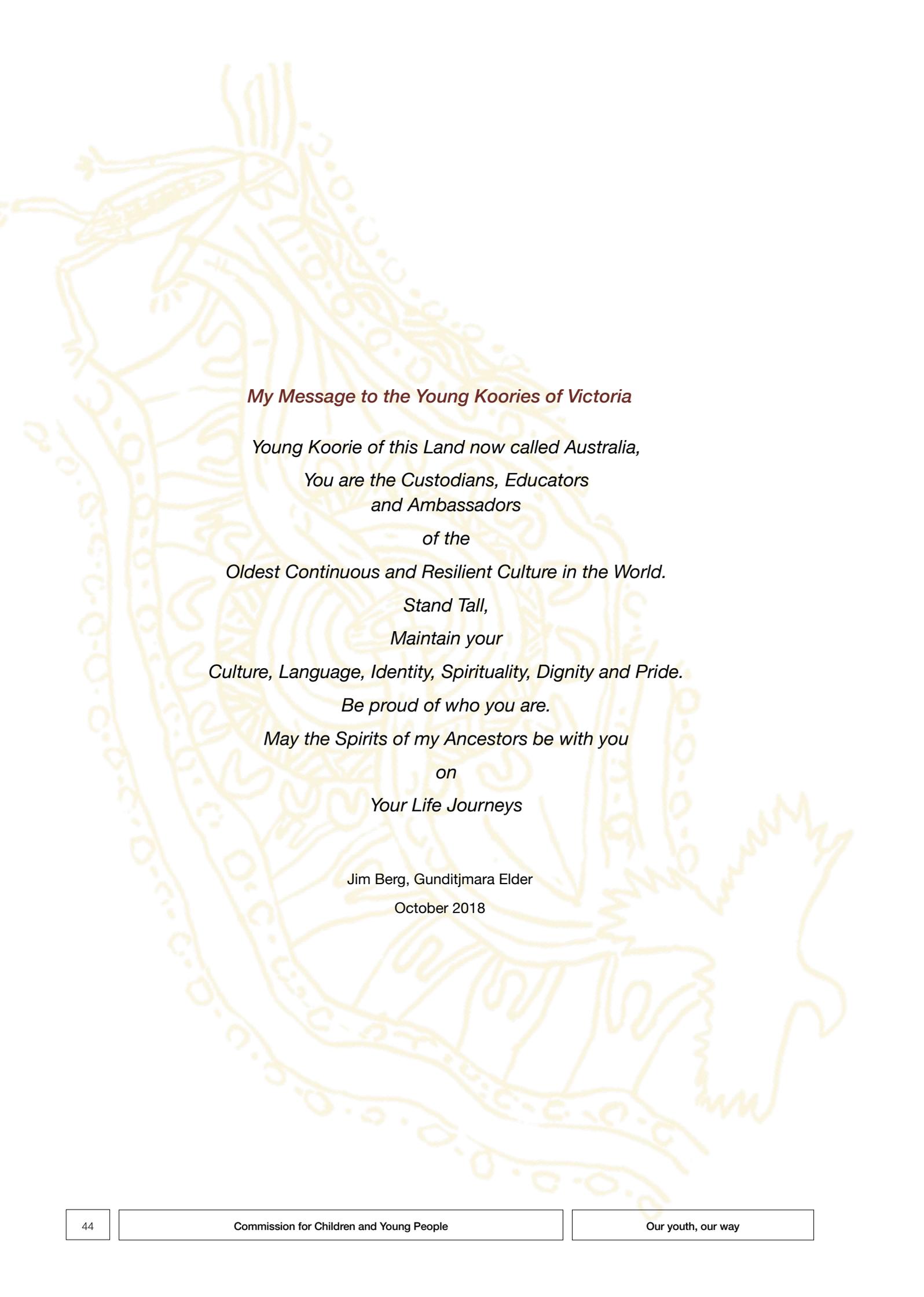
That the Victorian Government work towards having no Aboriginal child or young person in custody. As a step towards this, the Victorian Government should work with Aboriginal communities to establish 3 small, home-like facilities for Aboriginal children and young people serving custodial sentences. These 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.



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**



COMMISSION FOR CHILDREN
AND YOUNG PEOPLE
