Decriminalising mental health

Submission to the Royal Commission into Victoria's Mental Health System

5 July 2019

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Human Rights Law Centre

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1. Background to this submission

1. The Human Rights Law Centre is an independent, not-for-profit, non-government organisation. We undertake litigation, advocacy, United Nations engagement, campaigns and research work to better protect and promote human rights in Australia.

2. This submission is being made to the Royal Commission into Victoria's Mental Health System (**the Royal Commission**) and responds to specific terms of reference that focus on how to prevent harm and improve mental health outcomes for:

   1) people from Aboriginal and Torres Strait Islander backgrounds; and

   2) people who are in contact, or at greater risk of having contact, with the criminal justice system.

3. In terms of the list of questions that the Royal Commission has invited formal submissions to respond to, this submission focuses on:

   1) the role of the criminal justice system, including interactions with police and prisons in contributing to poor mental health outcomes;

   2) in particular, how the prison environment, and the practices used in prison, contribute to and compound poor mental health outcomes;

   3) acknowledging the connection between criminal justice experiences and poor mental health outcomes, the importance of the Victorian Government taking steps to divert people experiencing mental illness away from the justice system and into treatment and support in the community.

4. The terms of reference for the Royal Commission refer to "mental health" and "mental illness". Mental health conditions are psychosocial disabilities, but the terms of reference do not appear to encompass other disabilities, like cognitive disabilities. This is problematic given the extent to which people, especially young people and those entangled in the criminal legal system, experience co-occurring mental health conditions and cognitive disabilities. Given the limitations of the terms of reference, this submission focuses on identifying the drivers of poor mental health outcomes and opportunities to improve those outcomes but refers to other forms of disability, particularly cognitive disabilities (like fetal alcohol spectrum disorder), where relevant.

2. Executive summary

5. This submission seeks to highlight aspects of the criminal justice system that fail to respond appropriately to people with mental health issues and the adverse experiences caused by contact with the system. The failure to address unmet mental health needs too often leads to criminalisation and the warehousing of vulnerable people. Prisons then systemically fail, at every step along the way, to provide adequate health care to people denied community-based interventions and supports. Prisons are increasingly being used as the "catchall solutions to social problems",[1] and this is having a disproportionate impact on people with intersectional needs, including Aboriginal and Torres Strait Islander men, women, young people and children experiencing mental illness.

6. Prisons, both for children and adults, are ill-equipped to meet people's mental health needs. Certain punitive practices, including solitary confinement and routine strip searching, compound trauma and exacerbate mental illness. Despite the known prevalence of mental illness amongst people in prison, mental health services across the legal system and in prisons are under-resourced and fragmented.

7. The most recent Victorian Budget included more than $1.8 billion to build new prisons and increase prison capacity. In comparison, only $42.7 million was dedicated to programs and services focused on keeping people out of the legal system and just $22.7 million will be invested in diversion, rehabilitation and reintegration programs. This is unacceptable, given that adopting many of the recommendations made in this submission – including raising the age of criminal responsibility, providing more diversion opportunities and reforming bail laws – would reduce the prison population and make the proposal to build new prisons redundant.

8. The Victorian Government must acknowledge the very real connection between interaction with the criminal justice system and poor mental health outcomes, particularly for children and people with multiple and complex needs. It is crucial that steps are taken to identify health needs early and to provide appropriate therapeutic responses including by diverting people experiencing mental illness away from the justice system and into treatment and support.

9. The recommendations in this submission are aimed at removing aspects of the criminal justice system that trap, harm and fail people with mental health conditions. They encourage alternative responses that are culturally strengthening and best suited to addressing health needs in the community.

[1] Rachel Kushner, *Is Prison Necessary? Ruth Wilson Gilmore Might Change Your Mind*, The New York Times magazine (17 April 2019) <www.nytimes.com/2019/04/17/magazine/prison-abolition-ruth-wilson-gilmore.html>.

3. Recommendations

The Mental Health Royal Commission should recommend that:

CHILDREN SHOULD NOT BE BEHIND BARS

1) Section 344 of the *Children, Youth and Families Act 2005* be amended to raise the age of criminal responsibility to 14 years.

2) the Department of Health and Human Services, Victoria Police and other relevant stakeholders develop and enter into an inter-agency agreement to reduce the criminalisation of children in residential care.

3) the *Children, Youth and Families Act 2005* or specific youth justice legislation:

    a) create a presumption in favour of alternative measures for dealing with a child believed to have committed an offence, including a specific requirement on police to divert a child rather than charge the child with an offence either through provision of:

        i. a verbal warning;

        ii. a written warning;

        iii. convening a Youth Justice Conference involving the youth;

        iv. referring the youth to a diversion program; and

    b) in circumstances where pre-charge diversion may not be appropriate, require police, prosecutors, judicial officers and corrections officers to prioritise diversion programs at all stages of the legal process.

REDUCE CONTACT WITH POLICE AND THE LEGAL SYSTEM

4) the Victorian Government, in partnership with Aboriginal Community Controlled Organisations, develop and provide a range of culturally responsive and gender specific diversionary programs tailored to meet the intersectional needs of Aboriginal and Torres Strait Islander people, particularly women.

5) the Victorian Government provide funding security for diversion programs tailored to meet the intersectional needs of Aboriginal and Torres Strait Islander people, particularly women, designed and delivered by, or in partnership with, Aboriginal Community Controlled Organisations.

6) the Victorian Government remove the prosecution veto on referrals to diversion by:

    a) Amending s 59(2)(c) of the *Criminal Procedure Act 2009* (Vic) and s 356D(3)(a) of the *Children, Youth and Families Act 2005* (Vic) to

remove the requirement for “the prosecution” to consent to a court adjourning a criminal proceeding to enable participation in diversion.

b) Repealing s 356F of the *Children, Youth and Families Act 2005* (Vic).

7) sections 13, 14 and 15 of the *Summary Offences Act 1966* creating the offences of public drunkenness, drunk and disorderly and the arrest powers for both of those offences be abolished.

8) the Victorian Government, in partnership with Aboriginal Community Controlled Organisations and health organisations, develop and provide a range of culturally safe and gender specific alternatives for the care and treatment of intoxicated persons.

9) the Victorian Government, review and amend the Summary *Offences Act 1966* and other legislation that create low level offences that unfairly target and impact people with mental illness and people experiencing poverty and/or homelessness.

10) the Victorian Government prioritise investment in diverting people, especially Aboriginal and Torres Strait Islander children, young people and women, away from the legal system, rather than funding the constructions of facilities that are fundamentally ill-equipped to support people who experience mental illness.

PRISONS SHOULD NOT WAREHOUSE PEOPLE EXPERIENCING MENTAL ILLNESS

11) procedures be put in place to systematically screen people entering prison for all types of mental health conditions and disability upon entry and provide reasonable accommodations and access to appropriate services.

12) the Victorian Government call on the Prime Minister and the federal government to grant an exemption under section 19(2) of the Health Insurance Act 1973 to allow health care providers in prisons to claim Medicare subsidies.

13) the Victorian Government resource and support Aboriginal health organisations to deliver culturally competent health services to Aboriginal and Torres Strait Islander prisoners and to facilitate continuity of care upon release.

14) presumptions against bail and show cause provisions should be abolished, except for serious violent offences; and there should be a presumption in favour of bail for people who do not pose a demonstrable serious risk to the community, except for serious violent offences.

STOP CRUEL AND INHUMAN TREATMENT IN PRISONS

15) the Victorian Government enact laws, similar to those in the ACT, which prohibit routine strip searches and clearly articulate the circumstances in which a strip search can take place.

16) the Victorian Government amend legislation, policies and internal guidelines applicable to all detention facilities and prisons to prohibit solitary confinement and to clearly confine the circumstances for legitimate separation or confinement with appropriate safeguards, that will:

   a) ensure it is a practice of last resort when all other measures to address risk or behaviour (including de-escalation strategies) have been exhausted;

   b) require that the individual circumstances of the person be taken into account and an assessment be conducted of the likely impact a period of separation will have on a person's physical and mental health;

   c) set non-extendable timeframes for how long a person can be separated and regular review to ensure it does not extend longer than required;

   d) require that a separated person still be provided with access to family, lawyers, therapeutic professionals, appropriate peers, access to education including educational material, access to outdoor exercise or recreation at regular time intervals, and access to appropriate recreational material including reading material;

   e) a requirement that a separated person be seen by a health professional prior to their separation, or within a reasonable timeframe after separation; and

   f) a requirement that precise and transparent records (including reason for use, length of use as well as the age, Aboriginal and Torres Strait Islander status and gender of the person detained) and data be maintained and regularly published.

17) the Victorian Government adequately fund a National Preventative Mechanism (NPM) or multiple National Preventative Mechanisms (NPMs) to implement Victoria's obligations to prevent torture and cruel, inhuman or degrading treatment or punishment in prisons pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

SUPPORT PEOPLE LEAVING PRISON

18) the Adult Parole Board, the Youth Residential Board and the Youth Parole Board be subject to the rules of procedural fairness.

19) the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009* be amended so that the Adult Parole Board, the Youth Residential Board and the Youth Parole Board are included within the definition of "public authorities" and therefore fall within the scope of the *Charter of Human Rights and Responsibilities*.

20) the Victorian Government invest in, and provide funding certainty to, culturally safe and responsive throughcare programs.

4. Children should not be behind bars

10. When a child is incarcerated they are removed from their home, family and other social supports into a foreign environment. The loss of liberty, personal identity and protective factors that may have been available in the community can place great stress on a child, impair adolescent development and compound mental illness and trauma.[2] In these circumstances children in detention are particularly vulnerable to victimisation (by adults and other children), stigmatisation by the criminal justice system and negative peer contagion.[3]

11. In particular for Aboriginal and Torres Strait Islander children, the social isolation and alienation from family, community and country can be more intense.

12. However the Victorian Government is locking up more children than ever before, even though youth offending is on the decline. In the period from 2008-09 to 2017-18 the number of children being imprisoned within Victorian youth detention facilities grew by over 28 per cent.[4] The rates of children and young people in both sentenced and unsentenced detention rose, as did the rates at which Aboriginal and Torres Strait Islander children and young people are being detained.[5] This is at a time when less young people are committing crimes.[6] Between 2012 and 2016, the number of alleged first-time young offenders fell from 5,654 to 4,414, an average decrease of 5.8% per year.[7]

13. Young people caught in the quick sand of criminal justice systems have significantly higher rates of mental health conditions and cognitive disabilities when compared with the general

[2] Royal Australian and New Zealand College of Psychiatrists submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017). Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 51.

[3] Kelly Richards, Australian Institute of Criminology, Trends & issues in crime and criminal justice No.409, What makes juvenile offenders different from adult offenders? (2011), 7.

[4] Australian Institute of Health and Welfare 2019. Youth Justice in Australia 2017-18, Cat. No. JUV 129. Canberra: AIHW, table S83b: Young people aged 10-17 in detention during the year by Indigenous status, states and territories, 2008-09 to 2017-18.

[5] Australian Institute of Health and Welfare 2018. Youth detention population in Australia 2018. Bulletin no. 145. Cat. no. JUV 128. Canberra: AIHW.

[6] There has been a significant decrease in offending by children and young people aged 10-17 years over the last nine years. From 2008-09 to 2016-17 the Victorian child offender rate decreased by 47 per cent from 2,738.3 to 1,446.9, see further Australian Bureau of Statistics, Recorded Crime-Offenders 2017-18 (2019), Table 20 YOUTH OFFENDERS, Principal offence, States and territories, 2008-09 to 2017-18.

[7] Crime Statistics Agency, Are more first-time young offenders being recorded for serious crimes than in the past? (July 2017) <www.crimestatistics.vic.gov.au/research-and-evaluation/publications/youth-crime/are-more-first-time-young-offenders-being-recorded>. In addition there has been a significant decrease in offending by children and young people aged 10-17 years over the last 9 years. From 2008-09 to 2016-17 the Victorian child offender rate decreased by 47 per cent from 2,738.3 to 1,446.9, see further Australian Bureau of Statistics, Recorded Crime-Offenders 2017-18 (2019), Table 20.

youth population.[8] They are also likely to experience co-occurring mental health disorders and/or cognitive disability. Australian research suggests that these multiple factors, when not addressed early in life, compound and interlock to create complex support needs.[9]

14. In terms of objective data on the prevalence of mental health issues and other health needs, the most recent survey of 209 boys and 17 girls held in detention in Victoria on 1 December 2017, found that:
    - 70 per cent were victims of abuse, trauma or neglect;
    - 53 per cent presented with mental health issues;
    - 30 per cent had a history of self-harm or suicidal ideation; and
    - 41 per cent presented with cognitive difficulties that affect their daily functioning.[10]

15. Imprisoned children and young people are also likely to have been exposed to multiple traumatic events, socioeconomic disadvantage, family violence and poor educational opportunities.[11]

16. However the exact number of children and young people with disabilities or mental health issues is unknown due to limited screening and assessments tools at various stage of the youth justice system.[12]

17. The failure to screen and assess children for cognitive impairments including Fetal Alcohol Spectrum Disorder (**FASD**) is also a common failing of youth justice systems across Australia. This was demonstrated by a Western Australian study of young people in detention which found that 36% met the criteria for FASD and 89% had at least one form of severe neurodevelopmental impairment.[13] Most of the young people had gone previously undiagnosed despite multiple contacts with government and other agencies, including prior engagement with child protection services and the justice system. The missed opportunities

[8] Chris Cuneen, Arguments for Raising the Minimum Age of Criminal Responsibility (Research Report, University of New South Wales, 2017).
[9] Eileen Baldry, Disability at the margins: limits of the law, 23(3) *Griffith Law Review* 370 (2014); Eileen Baldry, 'People with Multiple and Complex Support Needs, Disadvantage and Criminal Justice Systems' in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds), *Law and Poverty in Australia: 40 Years after the Sackville Report* (Sydney, 2017); Leanne Dowse, Therese Cumming, Iva Strnadova and Julian Trofimovs, Young People with Complex Needs in the Criminal Justice System, 1(2) *Research and Practice in Intellectual and Developmental Disabilities* 174 (2014); Eileen Baldry and Leanne Dowse, 'Compounding Mental and Cognitive Disability and Disadvantage: Police as Care Managers' in Duncan Chappell (ed), Policing and the Mentally Ill: International Perspectives (USA: CRC Press, 2013).
[10] Department of Health and Human Services, Youth Parole Board Annual Report 2017–18 (Melbourne: Victorian Government, 2018) 15.
[11] Department of Health and Human Services, Youth Justice in Victoria Fact Sheet (2016).
[12] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 156-160.
[13] Carol Bower, Rochelle Watkins, Raewyn Mutch, et al, Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia (Telethon Kids Institute, 2018).

for earlier diagnosis and intervention may have prevented or mitigated their involvement with justice services.[14]

18. Even if diagnosed, Victorian custodial facilities are ill-equipped to deal with the mental health needs of young people, despite having a dedicated funded health service.[15] In a recent review of Victoria's youth justice system, experts criticised the resourcing and current services model of youth detention as insufficient to meet the vast needs of the youth detention population and the lack of staff training and skills to appropriately assess and respond to mental health presentations.[16] In its current state simply funnelling children and young people into these ill-equipped youth prisons will only serve to compound experiences of trauma and exacerbate mental health challenges.

4.1 Raise the age of criminal responsibility to 14 years old

19. To support children and prevent early criminalisation, which can be a precursor, causal and aggravating factor for mental illness in children, the Royal Commission should recommend that the Victorian Government raise the age of criminal responsibility to 14 years old. Ending the early criminalisation of children is crucial to preventing exposure to practices and experiences that drive poor mental health outcomes in children.

20. The age of criminal responsibility in Victoria is currently just 10 years old.[17] This is the age at which a child can be investigated for an offence, arrested by police, charged and locked up in a youth prison. The age of criminal responsibility is legislated through a conclusive presumption that a child under the age of 10 years is incapable of committing an offence.

21. Where a child is over the age of 10 but under 14, there is an old, common law rebuttable presumption that the child lacks the capacity to be criminally responsible for his or her acts, known as *doli incapax* (incapable of crime). In order to rebut the presumption, it must be proved that at the time of an offence the child knew that his/her actions were seriously wrong in the moral sense.[18]

22. This archaic presumption routinely fails to safeguard children. It is applied inconsistently and it can be very difficult for children to access expert assessments/evidence, particularly children in regional and remote areas.[19] Importantly, the presumption does not reflect contemporary

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[14] Senate Community Affairs Reference Committee, Parliament of Australia, Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia (2016) 23.
[15] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 45-46.
[16] Ibid.
[17] *Children, Youth and Families Act 2005*, s 344.
[18] *RP v The Queen* [2016] HCA 53.
[19] See O'Brien, W. & Fitz-Gibbon, K. (2017) 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform', Youth Justice, vol. 17, no. 2.

medical knowledge of childhood brain development, social science, long term health effects or human rights law.[20]

23. The current legal minimum age of criminal responsibility is against medical evidence that children aged 10 to 14 years lack emotional, mental and intellectual maturity. Research shows that children's brains are still developing throughout these formative years where they have limited capacity for reflection before action.[21] Children in grades four, five and six are not at a cognitive level of development where they are able to fully appreciate the criminal nature of their actions or the life-long consequences of criminalisation.[22]

24. Criminalising the behaviour of young and vulnerable children creates a vicious cycle of disadvantage that can entrench children in the criminal justice system.[23] Studies show that the younger a child has their first contact with the criminal justice system, the higher the chance of future offending.[24]

25. Children who are forced into contact with the criminal justice system at a young age are less likely to complete their education and find employment and are more likely to die an early death. The current system traps children who would otherwise grow out of the behaviours and benefit from social interventions and support.

26. The Royal Commission into the Protection and Detention of Children in the Northern Territory noted the harm caused to children by time in custody.[25] The Australian Medical Association has noted in particular the negative impacts imprisonment has on the health of Aboriginal and Torres Strait Islander peoples.[26] There is a clear link between wellbeing, mental health and youth detention, given one third of imprisoned children diagnosed with depression only

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[20] See, eg, Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Australia,* UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].
[21] Andrew Becroft, 'From Little Things, Big Things Grow' Emerging Youth Justice Themes in the South Pacific, 5 referring to Sir Peter Gluckman *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence* (Wellington, Office of the Prime Minister's Science Advisory Committee, 2011), 24. See also Kelly Richards, 'What makes juvenile offenders different from adult offenders? Trends & Issues in crime and criminal justice' (2011), 4; Laurence Steinberg 'Risk Taking in Adolescence: New Perspectives from Brain and Behavioural Science" (2007) 16 *Current Directions in Psychological Science* 55, 56.
[22] Ibid.
[23] Australian Institute of Health and Welfare 2016. Young people returning to sentenced youth justice supervision 2014–15. Juvenile justice series no. 20. Cat. no. JUV 84. Canberra: AIHW: The younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision. For those whose first supervised sentenced was community-based, 90% of those aged 10-12 at the start of this sentence returned to sentenced supervision, compared with 23% of those aged 16 and just 3% of those aged 17. More staggering were those sentenced to detention as their first supervised sentence, all (100%) those aged 10-12 at the start of his sentence returned to some type of sentenced supervision before they turned 18. This rate of return decreased with age, to around 80% of those 14 and 15, 56% of those 16 and 17% of those 17.
[24] Ibid. See also Australian Institute of Health and Welfare (2013) Young People Aged 10 – 14 in the Youth Justice System, 2011-2012, Canberra: AIHW.
[25] Royal Commission into the Protection and Detention of Children in the Northern Territory (Final Report, November 2017) chapter 27 and 28.
[26] Australian Medical Association (2012) "The justice system and public health", available at https://ama.com.au/position-statement/health-and-criminal-justice-system-2012.

experienced its onset once they were behind bars.[27] Prisons are ill-equipped to meet the mental health needs of children and young people and certain punitive practices including use of solitary confinement and routine strip searching – compound trauma and exacerbate symptoms. Youth imprisonment is associated with higher risks of suicide and depression.[28] Imprisoning children impacts on their immediate and future health and should be avoided.

27. Children and young people drawn into youth justice systems have significantly higher rates of mental health disorders and cognitive disabilities when compared with general youth populations.[29] They are also likely to experience co-occurring mental health disorders and/or cognitive disability. Australian research suggests that these multiple factors, when not addressed early in life, compound and interlock to create complex support needs.[30]

28. The current minimum age is in breach of international human rights law and is inconsistent with international standards which Australia has been urged to meet.[31] The median age of criminal responsibility worldwide is 14 years old. The United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older.[32] The Royal Commission into the Protection and Detention of Children in the Northern Territory recommended that the Northern Territory raise the age of criminal responsibility.[33]

29. The Smart Justice for Young People (SJ4YP) Coalition in Victoria – a coalition of leading Aboriginal and Torres Strait Islander, social services, health, legal and youth advocacy organisations who advocate for evidenced-based and effective responses to justice involved children and young people – is calling on the Victorian Government to raise the age of criminal responsibility to at least 14 years old. This call is supported by the Australian Medical Association, the Royal Australian College of Physicians, the Australian Indigenous Doctors'

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[27] Barry Holman and Jason Ziedenberg, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (Justice Policy Institute, 2006).

[28] Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory (Final Report, November 2017).

[29] Chris Cuneen, Arguments for Raising the Minimum Age of Criminal Responsibility (Research Report, University of New South Wales, 2017).

[30] Eileen Baldry, Disability at the margins: limits of the law, 23(3) *Griffith Law Review* 370 (2014); Eileen Baldry, 'People with Multiple and Complex Support Needs, Disadvantage and Criminal Justice Systems' in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds), *Law and Poverty in Australia: 40 Years after the Sackville Report* (Sydney, 2017); Leanne Dowse, Therese Cumming, Iva Strnadova and Julian Trofimovs, Young People with Complex Needs in the Criminal Justice System, 1(2) *Research and Practice in Intellectual and Developmental Disabilities* 174 (2014); Eileen Baldry and Leanne Dowse, 'Compounding Mental and Cognitive Disability and Disadvantage: Police as Care Managers' in Duncan Chappell (ed), Policing and the Mentally Ill: International Perspectives (USA: CRC Press, 2013).

[31] See, eg, Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Australia,* UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].

[32] Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007), [32-33].

[33] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), rec 27.1.

Association, the National Aboriginal and Torres Strait Islander Legal Services, the Lowitja Institute as well as Public Guardians and Children's Commissioners across the country.[34]

30. In 2016-17, 35 children aged 10 to 13 were locked up in Victorian prisons. Based on recent Australian Institute of Health and Welfare figures, 2 of these children were aged 10, 6 were aged 12 years and 27 were aged 13 years old.[35] As Aboriginal and Torres Strait Islander children are disproportionately represented in the youth justice system (almost 70 per cent of children trapped in youth justice systems across Australia are Aboriginal and Torres Strait Islander children),[36] they are significantly more likely to be trapped in this cohort. While we do not know the rates of mental illness or disability of these children, we expect it is high.

Recommendation 1:

The Royal Commission should recommend that section 344 of the *Children, Youth and Families Act 2005* be amended to raise the age of criminal responsibility to 14 years.

4.2 Stop the child protection to prison pipeline

31. The failure to identify health needs and understand the link between challenging behaviours and the traumatic impact of abuse and neglect can lead to children with mental health conditions being forced through the criminal justice system. There is a strong association between child protection and youth offending with research suggesting a trajectory between child protection service engagement and entry into the youth justice system. The Royal Commission into the Protection and Detention of Children in the Northern Territory (the **NT Royal Commission**) investigated the extent of this association through its crossover research which found that the level of offending increased as the level of involvement with the child protection system increased - from notification to substantiation to being placed in out of home care.[37] In Victoria, the Sentencing Advisory Council has also confirmed the over-representation of children known to the child protection system in the youth justice system and the increased likelihood of children with child protection history receiving the most severe sentence types including detention.[38]

32. As the NT Royal Commission found 'understanding the underlying characteristics and needs of children who offend is a necessary precondition to addressing their behaviour, especially in

[34] Australian Medical Association, AMA calls for the age of criminal responsibility to be raised to 14 years of age (25 March 2019) available at: ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age
[35] Australian Institute of Health and Welfare (2017) *Youth Justice Supervision in Australia 2016-17*, tables s74b, s140b and s1b.
[36] Australian Institute of Health and Welfare (2017) *Youth Justice Supervision in Australia 2015-16,* supplementary data table s78b.
[37] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 3B, Chapter 35.
[38] Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (2019).

terms of the neurobiological consequences of maltreatment and trauma, and how they affect behaviour. Screening and assessments are believed to be critical in achieving an understanding of individual needs across both the child protection and youth justice systems,'[39] and for ensuring better health outcomes. The failure to appropriately assess health needs and address the link between challenging behaviours and the traumatic impact of abuse and neglect can lead to children being further re-traumatised and pushed into detention.[40]

33. Children in out-of-home care are a particularly vulnerable group to being criminalised with children in residential care over-represented in the youth justice system.[41] Children in residential care often present with complex mental health and behavioural needs that are usually closely linked to previous trauma, mental health issues and intellectual disability.[42] Once in residential care, failure to provide appropriate therapeutic and mental health services or equipping staff with alternative strategies to manage challenging behaviours can result in an over-reliance on police and the courts.[43]

34. In contrast to parents in a non-residential care setting, there is strong evidence to suggest that carers and residential care workers are more likely to call police to manage behaviour in out of home care settings.[44]

35. Children who have suffered abuse, have experienced neglect and/or have been involved in the child protection system are over-represented among children and young people in custody.[45] In Victoria the majority of young people under youth justice supervision (60.4%) also received a child protection service over a recent 4 year period, just over 10 times the rate of child protection among the general Victorian youth population.[46] In relation to Aboriginal and Torres Strait Islander children under youth justice supervision, 69% also received child protection services.[47]

36. Recently, New South Wales and Queensland have adopted inter-agency protocols to reduce unnecessary police involvement in response to behaviour by young people living in residential care.[48] These protocols provide a clear and consistent framework for responding to

[39] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 3B, Chapter 35.
[40] Ibid and Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (2019), 77.
[41] Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (2019), 37.
[42] Victoria Legal Aid, 'Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System' (Report, 2016), 11.
[43] Ibid
[44] Ibid.
[45] Sentencing Advisory Council, Reoffending by Children and Young People in Victoria, (2016), 6.
[46] Australian Institute of Health and Welfare 2018, Young people in child protection and under youth justice supervision 1 July 2013-30 June 2017, table S4a.
[47] Ibid.
[48] See, eg, Protocol to Reduce the Criminalisation of Young People in Residential Out of Home Care (New South Wales, 2016); Joint Agency Protocol to Reduce Preventable Police Call-outs to Residential Care Services (Queensland, 2018).

behavioural incidents within residential units whilst increasing the capability of staff to positively manage behaviour, without involving police.

Recommendation 2:

The Royal Commission should recommend that the Department of Health and Human Services, Victoria Police and other relevant stakeholders develop and enter into an inter-agency agreement to reduce the criminalisation of children in residential care.

5. Reduce contact with police and the legal system

37. Acknowledging the role interactions with police and the courts and the experience of prison play in driving poor mental health outcomes for people, especially for children and young people, it is crucial that steps are taken to divert people experiencing mental illness away from the criminal justice system.

38. In relation to children, the recent review of Victoria's youth detention system pressed the importance of diverting children from custody reporting that: "depriving a child or young person of their liberty is detrimental to adolescent development, dislocates young people from any protective factors they may have, and must only be an option of last resort. No evidence shows that a custodial order reduces offending – in fact, the Sentence Advisory Council (2016) found that more than 80 per cent of young people on a custodial order reoffended, reflecting among the highest rates of recidivism of all young offenders."[49]

39. Research confirms that once a child enters the formal criminal justice system, they are more likely to return, particularly if they are detained.[50] In contrast, diversion pathways, which operate outside the formal court system, are effective in helping children get back on track and reduce the risks of further offending.[51] Diversionary mechanisms are intended to avoid the stigmatisation associated with involvement in the formal criminal justice system and can create better opportunities to identify and respond to family, behavioural and health problems contributing to offending behaviour.

[49] Victorian Department of Justice, Penny Armytage and John Ogloff, Meeting needs and reducing offending, executive summary (2017), 15.
[50] Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016), 4, 52.
[51] Carney J, Northern Territory Government, Review of the Northern Territory Youth Justice System: Report (2011), 94-96. See further Kaye McLaren, Alternative Actions That Work: A Review of the Research on Police Warnings and Alternative Action (2011) Police Youth Services Group, New Zealand Police. Note that this report provides a review of research into NZ police warnings and diversionary practices but also international models. It identifies 23 principles, starting with overarching principles, followed by principles that relate to the various stages of the youth diversion process. These principles have then been distilled into 11 key findings, outlined in the report.

40. Diversion programs provide an opportunity to link young people with tailored community based interventions and supports whilst also reducing rates of reoffending.[52] In a recent Parliamentary inquiry into Victoria's youth justice centres it was noted that a 2011 evaluation of diversion programs in Victoria showed that:
    - More than 80 per cent of young people who complete the Youth Justice Group Conferencing program had not reoffended two years later;
    - The ROPES pre-plea diversion program had a 90 per cent rate of non-reoffending after two years ; and
    - The Right Step pre-plea diversion program had a 61 per cent rate of non-reoffending after two-years.[53]

5.1 Better and more youth diversion

41. Given the risk of harm through incarceration and the danger of exacerbating mental health conditions, there is a need for multiple opportunities for children and young people to have access to diversion programs. These opportunities need to be available:
    - prior to first contact with police;
    - during contact with police;
    - during the court process;
    - after sentencing; and
    - pre and post release from prison.[54]

42. However the current legislative scheme in Victoria and limited diversionary options do not accommodate this.

43. In addition even when diversion might be available, police and prosecutions do not always consent to children and young people being offered or referred to diversion programs. Even if consent is given, diversion programs are only available once. There has also been limited investment by the Victorian Government in diversion programs, especially those that take into account the unique mental health, cultural and gender-specific needs of children and young people.

44. The Royal Commission into the Detention and Protection of Children in the Northern Territory recognised the importance of successful diversion programs as a fundamental aspect of a good youth justice system.[55] The NT Royal Commission impressed that diversion programs

[52] Parliament of Victoria, Legal and Social Issues Committee, Inquiry into youth justice centres in Victoria (2018), 34-35.
[53] Ibid.
[54] Victorian Department of Justice & Jones R 2006. *Diversion: A model for reducing Indigenous criminal justice over representation.* Paper prepared for consideration at the Second National Indigenous Justice Forum, Melbourne.
[55] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.

'must be culturally appropriate, promote health and self-respect, foster a sense of responsibility and encourage attitudes and the development of skills that will help young people develop their potential as productive members of society'.[56] Whilst the NT Royal Commission delineated the key features for a successful diversion program, [57] the majority of Victoria's diversion programs fail to embody all these essential criteria. Aboriginal and Torres Strait Islander children are most disadvantaged by this being less likely to be referred to a diversion program[58] and, if referred, linked to a diversion program that may not be culturally appropriate, like ROPES, which are often based in mainstream or governmental agencies.[59]

45. A number of Aboriginal Community Controlled Organisations have developed programs to engage Aboriginal and Torres Strait islander children and young people and divert them away from criminal legal system at an early stage. Some examples of this include:
    - the Mildura and District Aboriginal Services, which offers Youth Justice Programs and Early School Leavers Program;
    - the Ballarat and District Aboriginal Cooperative, which offers Youth Services including after school programs and oversees the Aboriginal youth and Victoria Police teams that enter the annual Murray Marathon teams; and
    - the Dandenong and District Aboriginal Cooperative Limited, which offers youth services that meet each week to support young people in their school work, their aspirational goals and other challenges in life, as well as referrals into other supports.

46. In addition to more culturally safe diversion programs, the Victorian Government should be increasing the capacity of Aboriginal health and mental health services and Aboriginal Community Controlled Organisations to provide referrals and linkages to health and welfare services including alcohol and other drug rehabilitation. These culturally strengthening alternatives should be funded and made available at all points of interaction with the criminal legal system to effectively divert children and young people with mental health conditions. This is in line with recommendations made by the United Nations Committee on the Elimination of Racial Discrimination to "develop alternatives to detention and introduce effective diversion programmes in all states and territories".[60]

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[56] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.
[57] Ibid, 250-251. These include: Timely referral, assessment and participation; Availability without admission of guilt; Availability for repeated referrals; Inclusion of a conference with the victim or family; A diversion plan and a specialist case manager; 'Wraparound' services for the young person; Engagement with the young person's family; Built-in education, rehabilitative programs, cultural activities, employment pathways, mentoring and community service (with services such as mental health services and substance abuse services available through the diversion program); Culturally appropriate plans and programs; Community input and control of diversion programs; and Measureable and evaluated outcomes.
[58] Human Rights Law Centre and Change the Record Coalition, Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment (2017) 22.
[59] Victorian Aboriginal Legal Service, Submission No 39 to the Australian Law Reform Commission, *Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples,* September 2017, 16.
[60] Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].

Recommendation 3:

The Royal Commission should recommend that the *Children, Youth and Families Act 2005* or specific youth justice legislation:

a) create a presumption in favour of alternative measures for dealing with a child believed to have committed offence, including a specific requirement on police to divert a child rather than charge the child with an offence either through provision of:

  i. a verbal warning;

  ii. a written warning;

  iii. convening a Youth Justice Conference involving the youth;

  iv. referring the youth to a diversion program; and

b) in circumstances where pre-charge diversion may not be appropriate, require police, prosecutors, judicial officers and corrections officers to prioritise diversion programs at all stages of the legal process.

5.2 Better and more adult diversion

47. Adults with mental health are over-represented in the criminal justice system. An Australian study of adults in their 20s and 30s found that 1 in 3 of those with a psychiatric illness had been arrested during a 10-year period, and the first arrest often occurred before their first contact with mental health services.[61]

48. Adults with mental health issues are less likely to be eligible for diversion options. This is particularly the case for people who present with substance abuse issues and/or co-existing mental illness, which make their circumstances too complex to be eligible for diversion programs. This failure to intervene early and respond through appropriate diversionary options can increase the likelihood of imprisonment for adults with mental health issues.

49. There is a particular need to divert Aboriginal and Torres Strait Islander women out of the criminal legal system. 80% of Aboriginal and Torres Strait Islander women in prison have care giving responsibilities for children and separating women from their children has been shown to have negative mental health implications for both the child and the mother.

50. A number of Aboriginal Community Controlled Organisations and Aboriginal and Torres Strait Islander Legal Services are doing effective work in this space. An example of a program trying to meet the previously unmet need is the Koorie Women's Diversion program in Gippsland.

[61] Morgan et al. 2013

This program, run by the Victorian Aboriginal Child Care Agency, is aimed at preventing Koorie women from further contact with the justice system by offering:

- intensive case management and appropriate support (for their families when appropriate too);
- support to successfully complete their court orders, bail and/or community corrections orders;
- referrals to programs and services that reduce their likelihood of offending or reoffending; and
- help to navigate the justice and broader social security systems.[62]

51. Diversion programs like this, operated by Aboriginal Community Controlled Organisations, have a greater chance of engaging Aboriginal and Torres Strait Islander women through the provision of culturally appropriate services that better support their needs.

52. Any approach must ensure that Aboriginal and Torres Strait Islander women are at the heart of the design, implantation and evaluation process of any diversion programs.

Recommendation 4:

The Royal Commission should recommend that the Victorian Government, in partnership with Aboriginal Community Controlled Organisations, develop and provide a range of culturally responsive and gender specific diversionary programs tailored to meet the intersectional needs of Aboriginal and Torres Strait Islander people, particularly women.

Recommendation 5:

The Royal Commission should recommend that the Victorian Government provide funding security for diversion programs tailored to meet the intersectional needs of Aboriginal and Torres Strait Islander people, particularly women, designed and delivered by, or in partnership with, Aboriginal Community Controlled Organisations.

[62] See Victorian Aboriginal Child Care Agency, 'Koorie Women's Diversion' (2018).

Recommendation 6:

The Royal Commission should recommend that the Victorian Government remove the prosecution veto on referrals to diversion by:

a) Amending s 59(2)(c) of the *Criminal Procedure Act 2009* (Vic) and s 356D(3)(a) of the *Children, Youth and Families Act 2005* (Vic) to remove the requirement for “the prosecution” to consent to a court adjourning a criminal proceeding to enable participation in diversion.

b) Repealing s 356F of the *Children, Youth and Families Act 2005* (Vic).

5.3 Decriminalise public drunkenness

53. There is a clear connection between excessive alcohol consumption and poor mental health outcomes. Alcohol misuse can influence a person’s mental state and mask symptoms of an underlying mental illness. The resulting lack of inhibition and the depressant effect can also increase the risk of a person harming themselves or others and exacerbate the risk of suicide.[63]

54. In 1991, the Royal Commission into Aboriginal Deaths in Custody recommended that the offence of being drunk in a public place be abolished. Only two state governments in Australia have failed to act on that recommendation and abolish the offence of public drunkenness – Victoria is one of them. Section 13 of the *Summary Offences Act 1966* still provides that “any person found drunk in a public place shall be guilty of an offence”.

55. During the first directions hearing for the inquest into the death of Ms Tanya Day on 6 December 2018, Coroner English took the unique step of foreshadowing that, before having heard any evidence in the inquest, she would make a recommendation that the Victorian Government should abolish the offence of public drunkenness.

56. The Victorian Government must work in genuine partnership with health organisations and invest in a public health response to alcohol misuse and public drunkenness. This means not adopting the protective custody regimes embraced in other states and territories, which have seen Aboriginal and Torres Strait Islander people continue to die at disproportionately high rates in police custody.

[63] Department of Health & Human Services (Vic), *Assessment of Intoxicated Persons*, Chief Psychiatrist Guidelines: Intoxicated Persons, 2018.

Recommendation 7:

The Royal Commission should recommend that sections 13, 14 and 15 of the *Summary Offences Act 1966* (Vic), creating the offences of public drunkenness, drunk and disorderly and the arrest powers for both of those offences, be abolished.

Recommendation 8:

The Royal Commission should recommend that the Victorian Government, in partnership with Aboriginal Community Controlled Organisations and health organisations, develop and provide a range of culturally safe and gender specific alternatives for the care and treatment of intoxicated persons.

5.4 Decriminalise other low level offending

57. The *Summary Offences Act 1966* includes a number of other low level offences that are outdated, disproportionately result in people with mental illnesses having interactions with police and need to be abolished.

58. In particular, public space offences like the criminal offence of begging should be abolished. In a report published by the Homeless Persons' Legal Clinic (now Homeless Law), it was found that 73% of people begging in the Melbourne CBD were long term unemployed, over 50% were experiencing a mental illness, 23% had experienced domestic or family violence and almost 90% were sleeping rough or in squats, or lived in a men's refuge or rooming house.[64]

59. For similar reasons, other public space offences, including possessing an open container of liquor, littering, using offensive language and conduct on public transport (for example, not having a ticket, smoking on the platform or having feet on the seats) should also be abolished.

Recommendation 9:

The Royal Commission should recommend that the Victorian Government, review and amend the *Summary Offences Act 1966* and other legislation that create low level offences that unfairly target and impact people with mental illness and people experiencing poverty and/or homelessness..

[64] PILCH Homeless Person's Legal Clinic, We want change! Calling for the abolition of the criminal offence of begging (November 2010).

6. Prisons should not warehouse people experiencing mental illness

6.1 Context

60. Prisons are fundamentally ill-equipped to support people, especially young people, experiencing mental illness. The evidence is clear that Australian-style prisons overwhelmingly damage prisoners, erode their self-control, expose them to violence and intensify trauma.[65] Worse, they do this to people who are highly likely to have been victims of violence, and are imprisoned because of behaviour or circumstances driven by trauma or deep disadvantage, or simply because of their ethnicity, poverty or disability.[66]

61. The most recent Victorian Budget included more than $1.8 billion to build new prisons and prison beds.[67] In comparison, only $42.7 million was dedicated to programs and services focused on keeping people out of the legal system and just $22.7 million will be invested in diversion, rehabilitation and reintegration programs.[68] This is unacceptable, given that adopting many of the recommendations made in this submission – including raising the age of criminal responsibility, providing more diversion opportunities and reforming bail laws – would reduce the prison population and make the proposal to build any new prisons redundant.

62. Increasingly, prisons have become a place to warehouse people without providing appropriate or adequate interventions to address mental health issues and/or the underlying causes that led to a person's offending.[69] Despite the known prevalence of mental health needs amongst people in prison, mental health services across the legal system, and in particular in prisons, are under-resourced and fragmented.[70]

63. Mental health conditions, particularly severe conditions, are over-represented in the prison population.[71] Women entering prison (65%) are significantly more likely than men (36%) to report a history of a mental health condition. In the most recent report on prisoners health 61% of prisoners in Victorian prisons had reported a previous diagnosis of a mental health

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[65] Kathleen Maltzahn, Our prisons are a manifest failure. Would that be tolerated in any other public system? The Guardian online (7 June 2019) <https://www.theguardian.com/australia-news/commentisfree/2019/jun/07/our-prisons-are-a-manifest-failure-would-that-be-tolerated-in-any-other-public-system>.
[66] Kathleen Maltzahn, Our prisons are a manifest failure. Would that be tolerated in any other public system? The Guardian online (7 June 2019) <https://www.theguardian.com/australia-news/commentisfree/2019/jun/07/our-prisons-are-a-manifest-failure-would-that-be-tolerated-in-any-other-public-system>.
[67] https://www.premier.vic.gov.au/a-stronger-prison-system-to-keep-people-safe/
[68] https://www.premier.vic.gov.au/a-stronger-prison-system-to-keep-people-safe/
[69] Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria (September 2015), 61.
[70] Jesuit Social Services, Submission to the Productivity Commission Inquiry: The Social and Economic Benefits of Improving Mental Health (April 2019) 27.
[71] Australian Institute of Health and Welfare, The health of Australia's prisoners 2018, 27.

condition, including alcohol and other drug use disorders.[72] People in prison are also 10 – 15 times more likely to have a psychotic disorder than someone in the community.[73]

64. Mental health needs frequently go undetected upon entry to a prison. Flat Out – an advocacy organisation that provides support for women who have been through the prison system – has noted that full psychological and/or psychiatric assessments to assess mental health and cognitive ability are often not conducted on male or female prisoners on admission.[74] It is unacceptable that many people are processed through the legal system, sometimes multiple times, without the system understanding or accommodating their mental health needs.[75]

65. In Victoria 35 per cent of people entering prison are referred to prison mental health services after an initial screening assessment upon admission.[76] This is in circumstances where 61 per cent of people in Victorian prisons have previously reported a mental health condition.

66. Notably, this study just captured referrals to mental health services and not whether those referrals were ever acted upon and facilitated by the prison. When people are held on remand and/or are serving short prison sentences, they often have limited or no ability to access programs that seek to address the underlying causes of their offending, which may include mental health-related concerns.

67. This is felt most acutely by Aboriginal and Torres Strait Islander people in prison, who are more likely to be held on remand and be incarcerated for short periods, and are therefore more likely to be in a situation where they are denied access to culture, community, education and mental health services.[77]

68. This is in circumstances where 72 per cent of Aboriginal and Torres Strait Islander men and 92 per cent of Aboriginal and Torres Strait Islander women in prison have been diagnosed with mental illness.[78] Aboriginal and Torres Strait Islander people are increasingly being criminalised for experiencing poor health, with the Australian Medical Association (**AMA**) documenting the connection between health issues experienced by Aboriginal and Torres Strait Islander people (including poor mental health) and high imprisonment rates.[79]

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[72] Ibid, see further table S169: Prison entrants, previous diagnosis of a mental health disorder (including alcohol and other drug use disorders), state and territories, 2018.
[73] Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria (September 2015) 61.
[74] Flat Out and the Centre for the Human Rights of Imprisoned People: Submission to the Victorian Ombudsman investigation onto the rehabilitation and reintegration of prisoners in Victoria (December 2014).
[75] Ibid.
[76] Australian Institute of Health and Welfare, The health of Australia's prisoners 2018, table 193: Prison entrants, referred to prison mental health services, states and territories, 2018.
[77] VALS, ALRC – Incarceration rate enquiry – VALS general submission (September 2017).
[78] Ogloff JRP, Patterson J, Cutajar M, Adams K, Thomas S, Halacas C, 2013, Koori Prisoner Mental health and Cognitive Function Study – Final Report, Centre for Forensic Behavioural Science, Monash University, prepared for Department of Justice and Regulation, Victoria State Government.
[79] Australian Medical Association, 2015 Indigenous Health Report Card—Treating the High Rates of Imprisonment of Aboriginal and Torres Strait Islander Peoples as Symptom of the Health Gap: An Integrated Approach to Both (2015) 7.

69. Those worse off are Aboriginal and Torres Strait Islander women in prison, of whom approximately 70–90 per cent have experienced family violence, sexual abuse and trauma. It is estimated that 86 per cent of Aboriginal and Torres Strait Islander women in prison have a diagnosed mental health condition.[80] Yet prisons remain particularly unresponsive to the unique needs and experiences of Aboriginal and Torres Strait Islander women.[81]

Recommendation 10:

The Royal Commission should recommend that the Victorian Government prioritise investment in diverting people, especially Aboriginal and Torres Strait Islander children, young people and women, away from the legal system, rather than funding the constructions of facilities that are fundamentally ill-equipped to support people who experience mental illness.

6.2 Provide therapeutic services

70. While some services are provided for prisoners on remand and serving short sentences, those services are under considerable strain as a result of the increasing Victorian prison population. For example, even though there are specialised mental health beds available for prisoners requiring intensive treatment for severe conditions, the beds are limited and prisoners on waiting lists are left in mainstream units.[82] Further, very few of them provide culturally appropriate support and services to Aboriginal and Torres Strait Islander people.[83]

71. Alcohol and other drugs rehabilitation services are also limited and under strain by the increased prison population. Long wait lists to access these services mean those on remand and serving short sentences are denied appropriate treatment and supports.[84]

72. The loss of access to Medicare imposed on imprisoned people exacerbates physical and mental health issues and creates more danger and insecurity.[85]

73. The AMA has stressed the need for an approach that focuses on the underlying, undiagnosed and unaddressed health needs of Aboriginal and Torres Strait Islander people who are at high risk of entering the criminal legal system and diverts them away from prisons.[86]

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[80] PwC's Indigenous Consulting, 'Indigenous Incarceration: Unlock the Facts' (Report, May 2017) 23.
[81] The Human Rights Law Centre and the Change the Record Coalition, *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (Report, May 2017) 5.
[82] Ibid.
[83] VALS, ALRC – Incarceration rate enquiry – VALS general submission (September 2017).
[84] Ibid.
[85] Flat Out and the Centre for the Human Rights of Imprisoned People: Submission to the Victorian Ombudsman investigation onto the rehabilitation and reintegration of prisoners in Victoria (December 2014).
[86] Australian Medical Association, 2015 Indigenous Health Report Card—Treating the High Rates of Imprisonment of Aboriginal and Torres Strait Islander Peoples as Symptom of the Health Gap: An Integrated Approach to Both (2015) 7.

74. Prisoners rely on prison authorities for access to medical care inside the prison or by permission to leave the prison to access external services. The *Corrections Act* confirms prisoners' right to have access to reasonable medical care and treatment necessary for the preservation of health.[87] The Victorian Government is failing to meet its obligations under international law and its own domestic laws to ensure that prisoners' individual health needs are addressed to assist their reintegration into society; that prison health care standards are equivalent to those in the community (the "principle of equivalence"), and that prison and public health services are closely integrated to ensure continuity of care, regardless of a person's legal status.

Recommendation 11:

The Royal Commission should recommend that procedures be put in place to systematically screen people entering prison for all types of mental health conditions and disability upon entry and provide reasonable accommodations and access to appropriate services.

Recommendation 12:

The Royal Commission should recommend that the Victorian Government call on the Prime Minister and the federal government to grant an exemption under section 19(2) of the *Health Insurance Act 1973* to allow health care providers in prisons to claim Medicare subsidies.

Recommendation 13:

The Royal Commission should recommend the Victorian Government resource and support Aboriginal health organisations to deliver culturally competent health services to Aboriginal and Torres Strait Islander prisoners and to facilitate continuity of care upon release.

6.3 Urgently reform bail laws

75. Remand rates in Victoria are sky rocketing. This is particularly the case for women, with nine out of every ten women being detained behind bars not because they have been found guilty of an offence, but because punitive bail laws are trapping them in prisons.[88] This is felt more acutely for Aboriginal and Torres Strait Islander women, whose rates of entering prison on remand have increased from 13 per cent to 17 per cent between 2012 and 2017.

[87] See further the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), UN Doc E/CN.15/2015/L.6/Rev.1 rules 4(2) and 24(1) and (2); *Corrections Act (Vic),* s47(1)(f) and (g).
[88] Miki Perkins, The government is criminalising the very women it should support, *The Age*, 10 February 2019, <www.theage.com.au/national/victoria/the-government-is-criminalising-the-very-women-it-should-support-20190207-p50wf6.html>.

76. Most of these women do not pose a serious risk to the community, with the Australian Law Reform Commission confirming that many Aboriginal and Torres Strait Islander people in prison are held on remand for otherwise low-level offending.[89]

77. Yet people, particularly Aboriginal and Torres Strait Islander women, with complex needs are being refused bail. This sees a significant number of people trapped serving relatively short sentences in prison. This disrupts a person's life on the outside while confining them in circumstances where they have limited access to services to address the underlying causes of offending.

78. The introduction of section 3A of the *Bail Act* has not had the impact of reducing the number of Aboriginal and Torres Strait Islander people being detained on remand. This section, which requires a bail decision maker to consider a person's "Aboriginality" including their cultural background, ties to extended family or place and other relevant cultural issues or obligations has been largely ineffective. Since the introduction of the provision in 2010 the percentage and number of Aboriginal people on remand has continued to rise.

79. This is due to a lack of suitable accommodation for people with complex mental health needs, the tightening of bail laws and poor interpretation of section 3A by decision makers.[90] This was confirmed by the Victorian Equal Opportunity and Human Rights Commission, which found that Aboriginal and Torres Strait Islander women are often denied bail due to "a lack of safe, stable and secure accommodation to which they could be bailed, particularly in regional locations" and the under-utilisation of section 3A in bail hearings.[91]

80. In order for the potential of section 3A to be realised, there needs to be guidance and training developed for, and delivered to, Victoria Police, court registrars, magistrates, bail justices and legal practitioners by the Victorian Aboriginal Legal Service in partnership with the Law Institute of Victoria and the Victorian Equal Opportunity and Human Rights Commission.

81. In their current form, Victoria's bail laws are overly punitive and are trapping women who do not pose a serious risk to the community.

[89] Australian Law Reform Commission, Pathways to Justice – an Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Report No 133 (2017), 27.
[90] VALS submission to ALRC – Incarceration rate enquiry – VALS general submission.
[91] Victorian Equal Opportunity and Human Rights Commission, 'Unfinished Business: Koori Women and the Justice System' (Report, 2013).

Recommendation 14:

The Royal Commission should recommend that:

a) presumptions against bail and show cause provisions should be abolished, except for serious violent offences; and

b) there should be a presumption in favour of bail for people who do not pose a demonstrable serious risk to the community, except for serious violent offences.

7. Stop cruel and inhuman treatment in prisons

82. As the Victorian Government continues to lock people up in prison with complex mental health needs, they need to offer adequate and culturally safe services that meet the needs of people in prison and prevent the use of practices within prisons that are cruel and risk exacerbating mental health symptoms.

7.1 Stop routine strip searching

83. Strip searches are conducted routinely and frequently in Victorian prisons. They require people to remove every item of clothing in front of two guards. They are unwarranted and cause unnecessary harm to people in prison, especially women and young people.

84. This is especially the case given that a significant number of Aboriginal and Torres Strait Islander women and girls in prison have experienced trauma and many are survivors of family violence and/or sexual abuse. Subjecting Aboriginal and Torres Strait Islander women and girls to this humiliating practice can compound trauma and seriously undermine trust, recovery and ultimately a woman's ability to heal and move on with her life.

85. The practice of routine strip searching has been described as cruel and degrading treatment by the European Court of Human Rights.[92] Concerns about this practice in Australia have been raised by the Victorian Ombudsman, the United Nations Special Rapporteur on Violence against Women and the Special Rapporteur on the Rights of Indigenous Peoples.[93]

86. In just over a six month period, 6,200 strip searches were performed on women (over a six month period in 2015 in Victoria). This resulted in only 6 items of "contraband" being located (an effectiveness rate of 0.097%). This data formed the basis of the Human Rights Law

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[92] Frerot v France (European Court of Human Rights, Chamber, Application No 70204/01, 12 September 2007); Wieser v Austria (European Court of Human Rights, Chamber, Application No 2293/03, 22 February 2007).
[93] Dubravka Šimonović, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences on Her Mission to Australia, UN Doc A/HRC/35/30 (17 April 2018); Victoria Tauli-Corpuz, Report of the Special Rapporteur on the Rights of Indigenous Peoples on Her Visit to Australia, UN Doc A/HRC/36/46/Add.2 (8 August 2017).

Centre's *Total Control: Ending the routine strip searching of women in Victoria's prisons* report, which led to the establishment of a pilot project at the Dame Phyllis Frost Centre. We understand that the pilot project significantly reduced the number of strip searches being performed on women from approximately 20,000 a year to about 1,000 a year.

87. The Human Rights Law Centre also obtained data showing that 1,798 strip searches were performed on children in youth detention (over a six month period in 2015 in Victoria). This resulted in only 14 items of "contraband" being located (an effectiveness rate of 0.779%). This "contraband" located included medication, cigarettes, rolling paper, small amount of tea, lighter, toilet roll holder, wire, crystal balls, wood, watches, sunglasses and some unidentified items.

88. While there is a clear need to stop contraband from entering prisons, the data and evidence shows that strip searching is not an effective way to stop contraband entering prisons. People in prison are being subjected to an excessive number of strip searches, with minimal, dangerous items being located as a result of the humiliating and degrading practice.

89. People in prison should only be strip searched as a last resort, in circumstances where there is reasonable intelligence which indicates that they are carrying dangerous contraband.

90. If it is determined that a strip search is required, it should only be undertaken after all other less intrusive search alternatives have been exhausted (such as pat down searches and use of safe-scanning technologies like scanners and wands).

91. The reasons for undertaking the strip search, and the basis of the reasonable intelligence, must be documented, to ensure transparency and accountability.

92. In recognition of the harm caused by strip searching, the ACT changed its laws in 2008 to only permit strip searching on the basis of a reasonable suspicion, rather than on a routine basis.[94]

Recommendation 15:

The Royal Commission should recommend that the Victorian Government enact laws, similar to those in the ACT, which prohibit routine strip searches and clearly articulate the circumstances in which a strip search can take place.

[94] See sections 113A-C of the *Corrections Management Act 2007* (ACT) in relation to adults in prison and sections 254-263 of the *Children and Young People Act 2008* (ACT) in relation to children in prison.

7.2 End solitary confinement

93. The term “solitary confinement” refers to the “confinement of prisoners for 22 hours or more a day without meaningful human contact”.[95] Solitary confinement poses a significant risk to the emotional, psychological and physical health and wellbeing of people in prison, particularly those with psychosocial or cognitive disabilities. Proven negative health effects include anxiety, depression, anger, obsessive thoughts, paranoia and psychosis.[96]

94. The Royal Commission into Aboriginal Deaths in Custody noted the particularly detrimental impact of solitary confinement on Aboriginal and Torres Strait Islander people in prison.[97]

Excessive use of solitary confinement on children and young people

95. The use of isolation on children and young people (which can, in effect, be the same as solitary confinement) is regulated by section 488 of the *Children, Youth and Families Act*. The law is currently too broad and allows for the use of solitary confinement on children when international human rights law clearly prohibits it.

96. The Victorian Children’s Commissioner’s report, *The Same Four Walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, found that children in Victoria’s youth justice centres are subjected to unacceptable levels of isolation. No matter what the purpose or intention behind the isolation, the Commissioner said that “the result was usually the same: children and young people enclosed alone between four walls with limited access to fresh air, human interaction, stimulation, psychological support and, in some circumstances, basic sanitation”.[98]

97. Aboriginal and Torres Strait Islander children interviewed by the Koori Youth Council as part of the *Ngaga-dji* project reported incidents where they had been isolated in “the slot”. Children reported being left in the slot for hours and days and being fed through a hole in the door. Being held in the slot was described as being the worst experience of their life.[99]

98. On 6 December 2018, the Victorian Ombudsman announced that she would investigate the use of 'solitary confinement' involving young people, using the United Nations’ Optional Protocol to the Convention against Torture (OPCAT).[100]

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[95] United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, 70th sess, Agenda Item 106, UN Doc A/RES/70/175 (8 January 2016) (‘Nelson Mandela Rules’).
[96] Human Rights Watch, ‘Abuse and Neglect of Prisoners with Disabilities in Australia’ (Report, 6 February 2018).
[97] Royal Commission into Aboriginal Deaths in Custody, [25.7.12].
[98] Commission for Children and Young People, The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system (Melbourne: Commission for Children and Young People, 2017), 5.
[99] Koori Youth Council, Ngaga-dji (hear me): young voices creating change for justice (2018), 33.
[100] Victorian Ombudsman, Ombudsman to investigate the use of 'solitary confinement' and young people (6 December 2018) <www.ombudsman.vic.gov.au/News/Media-Releases/Ombudsman-to-investigate-the-use-of-solitary-confi>.

99. In a submission to the Victorian Ombudsman's investigation, Victoria Legal Aid recently published a report highlighting how solitary confinement is harming children, particularly how solitary confinement is used to "manage" people living with mental health conditions.[101]

100. International human rights law strictly prohibits the use of solitary confinement on children, with evidence showing that this practice can have severe, long-term and irreversible effects on a child's health and wellbeing.[102] Proven negative health effects include insomnia, confusion, compounded trauma, hallucinations and psychosis.[103] Children are particularly vulnerable because they are undergoing crucial stages of development - socially, psychologically and neurologically and these developmental processes can be interrupted or damaged as a result of isolation.[104] Approximately two thirds are victims of childhood abuse, trauma or neglect and may have a disability or mental health issue, which are exacerbated by being placed in solitary confinement.[105] Where children are at risk of suicide or self-harm, isolation is likely to increase their distress and suicidal ideation and rumination.[106]

Excessive use of solitary confinement on adults

101. Adults in prison with psychosocial disabilities – mental health conditions – or cognitive disabilities are also subjected to excessive use of solitary confinement. Women, especially Aboriginal and Torres Strait Islander women with disabilities are particularly affected by solitary confinement practices. Women are often overrepresented in punishment units and often discriminated against by being viewed as a management issue. Being isolated often exacerbates the symptoms of mental health conditions, especially those associated with the trauma. As documented by Human Rights Watch:

> *The stress of a closed and heavily monitored environment, absence of meaningful social contact, and lack of activity can exacerbate mental health conditions and have long-term adverse effects on the mental well-being of people with psychosocial or cognitive disabilities. All too frequently, people with psychosocial or cognitive disabilities can decompensate in solitary confinement, attempting suicide or requiring emergency psychosocial support or psychiatric hospitalization.*[107]

[101] Victoria Legal Aid, I just want someone to talk to: A submission to the Victorian Ombudsman on the use of solitary confinement and young people (May 2019).
[102] United Nations Standard Minimum Rules for the Treatment of Prisoners ('*Mandela Rules*') UN Doc E/CN.15/2015/L.6/Rev, Rule 45(2) and Havana Rules, para 67. See also Committee on the Rights of the Child, *General comment no. 10*, UN Doc CRC/C/GC/10 (25 April 2007); Juan E. Mendez, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', UN Doc A/HRC/28/68 (5 March 2015), para 86(f).
[103] 'The Istanbul Statement on the use and effects of solitary confinement' (9 December 2007) *International Psychological Trauma Symposium, Istanbul*.
[104] Australian Children's Commissioners and Guardians, Statement on conditions and treatment in youth justice detention (November 2017), 20.
[105] Royal Commission into the Protection and Detention of Children in the Northern Territory, Interim Report, (31 March 2017), 38.
[106] Australian Children's Commissioners and Guardians, Statement on conditions and treatment in youth justice detention (November 2017), 20.
[107] Human Rights Watch, 'Abuse and Neglect of Prisoners with Disabilities in Australia' (Report, 6 February 2018).

Recommendation 16:

The Victorian Government amend legislation, policies and internal guidelines applicable to all detention facilities and prisons to prohibit solitary confinement and to clearly confine the circumstances for legitimate separation or confinement with appropriate safeguards, which will:

a) ensure it is a practice of last resort when all other measures to address risk or behaviour (including de-escalation strategies) have been exhausted;

b) require that the individual circumstances of the person be taken into account and an assessment be conducted of the likely impact a period of separation will have on a person's physical and mental health;

c) set non-extendable timeframes for how long a person can be separated and regular review to ensure it does not extend longer than required;

d) require that a separated person still be provided with access to family, lawyers, therapeutic professionals, appropriate peers, access to education including educational material, access to outdoor exercise or recreation at regular time intervals, and access to appropriate recreational material including reading material;

e) a requirement that a separated person be seen by a health professional prior to their separation, or within a reasonable timeframe after separation; and

f) a requirement that precise and transparent records (including reason for use, length of use as well as the age, Aboriginal and Torres Strait Islander status and gender of the person detained) and data be maintained and regularly published.

Recommendation 17:

The Royal Commission should recommend that the Victorian Government adequately fund a National Preventative Mechanism (**NPM**) or multiple National Preventative Mechanisms (**NPMs**) to implement Victoria's obligations to prevent torture and cruel, inhuman or degrading treatment or punishment in prisons pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (**OPCAT**).

8. Support people leaving prison

8.1 Reform parole procedures

102. Victoria currently has a parole system that is overly stringent and punitive. If a person commits a further offence while on parole, or fails to comply with their parole conditions, the parole board may decide to cancel parole. People experiencing mental illness can find it difficult to transition from prison back into community given the lack of 'throughcare' supports currently available. This is particularly the case if people are released straight from solitary confinement.

103. It is now a criminal offence to breach a term or condition of a parole order. Breach of parole carries a penalty of up to three months' imprisonment, a fine of up to thirty penalty units, or both. This means that people on parole can be doubly punished for parole breaches, as a breach of parole not only results in cancellation of parole and return to prison but also results in liability for a separate criminal offence punishable by jail time.

104. From 20 May 2013, new laws have required the Adult Parole Board to automatically consider cancelling a person's parole in particular circumstances, such as when people are:
    - charged with further offences; or
    - convicted of further offences.

105. Between 2017 and 2018, the Adult Parole Board made 1,509 decisions to grant or deny parole. 53 per cent of those decisions granted parole and 47 per cent denied parole. If a person applies for parole, but then withdraws their application before it is finalised, the application is recorded as having been denied. In 2017-2018, 34 per cent of all denied decisions were a result of the prisoner advising they no longer wanted parole.[108]

106. Of the remaining cases in which parole was denied, the most prevalent factor was an absence of suitable accommodation (one of the factors 64 per cent of denials). The Adult Parole Board notes that:

> *As precarious or unsuitable accommodation can be a major risk factor for reoffending, the Board's requirement to treat the safety and protection of the community as its paramount consideration means that the Board cannot grant parole in such cases*.[109]

107. It is well-documented that there is a high correlation between people experiencing mental illness and people experiencing homelessness. It is therefore highly likely that a significant number of people are not applying for parole, or are having their applications for parole rejected, on the basis that are experiencing mental illness and homelessness.

[108] Adult Parole Board Victoria, Annual Report 2017-2018 (2018) 27.
[109] Ibid.

108. Since 2013, the Victorian Aboriginal Legal Service has reported a sharp increase in prisoners “maxing out” their sentences to avoid parole. This has contributed to the increase in the prison population and to increased recidivism as people are leaving prison with no support services.[110]

109. The Adult Parole Board is not bound by the rules of “procedural fairness”. This means that people cannot have legal representation at hearings. The Board does not provide people with access to the information on which its decisions are based and it does not publish written reasons. There is no right of appeal from a Board decision, although a person can request that the Board review its decision. Further, Community Correctional Services have substantial discretion in assessing breaches of parole. There are no opportunities for people that have allegedly breached parole to seek legal advice, judicial oversight or review of the decision.

110. The parole process should be subject to the rules of procedural fairness. Procedurally fair rules promote high-quality decisions, because they increase the likelihood that decisions are based on accurate and relevant information and are made through a logical reasoning process less likely to be affected by bias or prejudice. The rules also promote fair decisions and ensure that people affected by the decision consider that they have been treated fairly, regardless of the outcome of the decision.[111]

111. Pursuant to the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009*, the Adult Parole Board, the Youth Residential Board and the Youth Parole Board (**the Parole Boards**) are not “public authorities” for the purposes of the *Charter of Human Rights and Responsibilities*. This is problematic and means that decisions of the Parole Boards are not subject to scrutiny pursuant to the Charter. Requiring the Parole Boards to comply with the Victorian Charter would:
    - improve the decision making processes of the Boards;
    - enhance the confidence in the Boards’ decision making and thereby lead to an improved parole system; and
    - ultimately, result in improved outcomes and better opportunities for the rehabilitation of people being released from prison and their reintegration into society.

Recommendation 18:

The Royal Commission should recommend that the Adult Parole Board, the Youth Residential Board and the Youth Parole Board be subject to the rules of procedural fairness.

[110] VALS, ALRC – Incarceration rate enquiry – VALS general submission (September 2017).
[111] Sentencing Advisory Council, Review of the Victorian Adult Parole System (Report, March 2012).

Recommendation 19:

The Royal Commission should recommend that the *Charter of Human Rights and Responsibilities (Public Authorities) Regulations 2009* be amended so that the Adult Parole Board, the Youth Residential Board and the Youth Parole Board are included within the definition of "public authorities" and therefore fall within the scope of the *Charter of Human Rights and Responsibilities*.

8.2 Adopt a 'throughcare' model of support

112. The Victorian Government needs to adopt a 'throughcare' model to help people detained in prison transition back into the post-prison world. The throughcare model provides for the coordinated provision of support and services to a person, during their time in prison and continuing for a substantial time as they reintegrate back into the community. This model is critically important for people experiencing mental illness, with research showing that mental health can deteriorate in the year following release from prison.[112] Throughcare models are more likely to be successful for Aboriginal and Torres Strait Islander people if they are culturally competent, strength based, and utilise Aboriginal and Torres Strait Islander controlled organisations and/or ex-prisoner organisations.[113]

113. From 2015-2018, the Victorian Aboriginal Legal Service ran the Re-Connect pilot program, which saw two full time Aboriginal and Torres Strait Islander staff members provide intensive and culturally competent social work support across the state for prisoners approaching release from custody. The workers would meet with the client at least twice in the 10-week period prior to release from prison, establish rapport, determine key objectives and needs, link in with relevant services to ensure appointments for housing, Centrelink and their health needs were in place, and then transport the client to each of these appointments to make introductions. The workers would remain involved until all the necessary connections had been made and the person was in the best possible position to successfully re-integrate back into the community. We understand that this program was defunded in 2018.

114. The Re-Connect pilot program is similar to North Australian Aboriginal Justice Agency's (NAAJA) Throughcare Program in the Northern Territory.[114] The NAAJA Throughcare program aims to reduce repeat offending by providing strength-based case management and referral services to help people access the support and services they need to help them stay out of prison. For example, Throughcare can help people connect with mental health professionals, get to medical appointments, support ongoing rehabilitation and help find safe

[112] D. Baker, The Australia Institute, Unlocking care: Continuing mental health care for prisoners and their families, December 2014.
[113] Australian Law Reform Commission, Pathways to Justice – an Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Report No 133 (2017), 315.
[114] North Australian Aboriginal Justice Agency, <www.naaja.org.au/our-programs/throughcare/>.

accommodation. Since the NAAJA Throughcare Program commenced in February 2010, the team has case managed 218 clients. Only 30, or approximately 13.7% of clients, returned to prison while under the supervision of Throughcare workers. This compares favourably to the recidivism rate for people who have been in prison in the Northern Territory which is 57.1% (the highest in the country).[115]

115. These supports are particularly important for women leaving prison, who are disproportionately affected by post-release homelessness. Imprisonment exacerbates multiple challenges they face – including mental health instability, inaccessible secure long-term accommodation and a limited likelihood of post-release employment – that affect women and their children.[116]

116. In terms of addressing the specific needs of Aboriginal and Torres Strait Islander women, the Victorian Government can look to the Kunga Stopping Violence program, also run by NAAJA. This program is an example of a gender specific and culturally relevant program that focuses on community reintegration for Aboriginal and Torres Strait Islander women who have been imprisoned for violent offending and who have disclosed histories of some form of domestic, family, sexual or community violence. The program supports women for up to 12 months post release and helps develop strategies in relation to: drug and alcohol dependencies, intergenerational trauma, family violence and accommodation.[117]

117. Along with increasing culturally relevant programs and services, funding is needed to support Aboriginal and Torres Strait Islander people meaningfully engage with the legal system and access these programs and services throughout various stages of the criminal justice system including during and post-incarceration. Adequately funded Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services that provide holistic case management are essential.

Recommendation 20:

The Royal Commission should recommend that the Victorian Government invest in, and provide funding certainty to, culturally safe and responsive throughcare programs.

[115] Northern Territory Correctional Services and Youth Justice Annual Statistics, 2016-17, 12.
[116] M. Segrave, A. Eriksson and E. Russell, State of Imprisonment: Victoria is leading the nation backwards, The Conversation, 13 April 2015.
[117] North Australian Aboriginal Justice Agency, <www.naaja.org.au/our-programs/throughcare/>.