

Bail Reform is Urgently Needed



Victorian Aboriginal
Legal Service

Dear Attorney-General Symes, Minister Hutchins and Minister Williams,

This year we marked the **30 year anniversary of the Royal Commission into Aboriginal Deaths in Custody**. On that solemn day, the Victorian Government declared that *'too many Aboriginal Victorians are still dying in custody. Too many Aboriginal Victorians are in custody in the first place.'*¹ And yet the Government is hardly a helpless bystander to an unexpected tragedy – this Government actively and willingly contributes to this ongoing crisis.

30 years after the watershed Royal Commission report was handed down, its recommendations have only been partially implemented.² Governments across Australia have overstated the degree to which they have actioned the Royal Commission's recommendations, and this shameful and self-serving PR strategy has led to more, preventable, deaths in custody – **more than 470 Aboriginal and Torres Strait Islander people have died in custody since the Royal Commission handed down its report.**³ The Governments' failures are utterly reprehensible. And let's not forget - **your Government made commitments** under the Closing the Gap Agreement⁴ and the Aboriginal Justice Agreement⁵ to reduce incarceration rates of Aboriginal and Torres Strait Islander people.

While you wait, while you bide your time, while you look to the next election cycle, Aboriginal people continue to be locked up in Victoria at ever increasing rates, and continue to die in custody.

This is happening on your watch.

The expectation, the demand, that Governments build a more just and fair country, for everyone, not just a privileged few, is central to a democratic society. A nation built on violent dispossession, that tried to wipe out Aboriginal people and their culture; first through massacres, and then through policies of protectionism and assimilation, now continues to lock Aboriginal people up at staggering rates, and perpetrate violence and neglect on Aboriginal people in custody, seemingly without consequence.

¹ Victorian Government, 'Statement On The 30th Anniversary Of The Royal Commission Into Aboriginal Deaths In Custody' (15 April 2021), available at <https://www.premier.vic.gov.au/statement-30th-anniversary-royal-commission-aboriginal-deaths-custody>

² Anthony et al, '30 years on: Royal Commission into Aboriginal Deaths in Custody recommendations remain unimplemented' (2021), available at <https://apo.org.au/node/311817>

³ The Guardian, 'Deaths Inside: Indigenous Deaths in Custody' (2021), available at <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody>

⁴ 'National Agreement on Closing the Gap' (July 2021), pp31-33 available at <https://www.closingthegap.gov.au/sites/default/files/2021-04/ctg-national-agreement-apr-21.pdf>

⁵ 'Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4' pp30-31, available at <https://www.vals.org.au/wp-content/uploads/2021/03/Victorian-Aboriginal-Justice-Agreement-Phase-4.pdf>

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Not only have many of the Royal Commission recommendations not been implemented by successive Victorian Governments, as a State, we have gone backwards with respect to many of the recommendations, including bail. The Royal Commission recommended *‘[t]hat governments, in conjunction with Aboriginal Legal Services and Police Services, give consideration to amending bail legislation... to revise any criteria which inappropriately restrict the granting of bail to Aboriginal people⁶ and ‘[t]hat governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort.⁷*

Your bail laws inappropriately restrict the granting of bail to Aboriginal people. **Your bail laws** ensure that imprisonment is not utilised only as a sanction of last resort.

The actions recommended by the **State of Reconciliation in Australia 2021 report** included that *‘RAP organisations should speak up on, and engage with a range of issues, including those that may attract controversy, such as... over incarceration.’⁸* The Victorian Aboriginal Legal Service (VALS) has invited other organisations to give effect to their Reconciliation Action Plans during Reconciliation Week;⁹ to demonstrate their support for ending the overincarceration of Aboriginal and Torres Strait Islander people in Victoria by signing onto this letter.

We, the undersigned, demand that the Victorian Government immediately begin the process of implementing the necessary legislative reforms to undo the failed policy of its punitive bail laws, which disproportionately impact on Aboriginal people, especially women, many of whom are victim-survivors of domestic and family violence.

#BlackLivesMatter

It is well and truly past the time to turn the hashtag into a reality.

⁶ ‘Royal Commission into Aboriginal Deaths in Custody National Report’ (1991), Recommendation 91(b), available at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading19>

⁷ ‘Royal Commission into Aboriginal Deaths in Custody National Report’ (1991), Recommendation 92, available at <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading19>

⁸ ‘State of Reconciliation in Australia Report: Moving from Safe to Brave’ (2021), Chapter - Areas for action 2021 onwards – Institutional Integrity, p46, available at https://www.reconciliation.org.au/wp-content/uploads/2021/01/state-of-reconciliation-2021-full-report_web.pdf

⁹ National Reconciliation Week 2021: More than a word. Reconciliation takes action. 27 May to 3 June 2021. See <https://nrw.reconciliation.org.au/>

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In solidarity, we proudly stand with VALS to call for an equal, just and safe future for us all:



Aboriginal
Justice Caucus



VACCHO



Djirra
Sharing stories, finding solutions



DARDI
MUNWURRO
Building Strong Families and Safe Communities



THE DHADJOWA
FOUNDATION



Flemington &
Kensington
Community
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YOUNG PEOPLE'S LEGAL RIGHTS CENTRE INC.



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st kilda legal service



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VMIAC
by and for consumers



defence lawyers



CRIMINAL
LAW SPECIALISTS



ROBINSON
GILL LAWYERS



Whittlesea
Community
Connections
Making a positive difference everyday



Youth Affairs
Council Victoria



Lawyers
for the People



NATSILS

National Aboriginal and
Torres Strait Islander Legal Services



AMNESTY
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Civil Liberties Australia

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In solidarity, we proudly stand with VALS to call for an equal, just and safe future for us all:



The Indigenous Law and Justice Hub



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Melinda Walker
Accredited Criminal Law Specialist



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LAWYERS
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