



**PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE COVID-19 INQUIRY
SUBMISSION**

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Contents

BACKGROUND TO THE VICTORIAN ABORIGINAL LEGAL SERVICE	2
ACKNOWLEDGEMENTS	3
EXECUTIVE SUMMARY	4
SUMMARY OF RECOMMENDATIONS	5
DETAILED SUBMISSIONS	14
General	14
1. Funding for VALS	14
2. Extension of State of Emergency	15
Prisons and youth detention centres	16
3. Protective quarantine in prisons	16
4. Transfer Quarantine	19
5. Protective isolation powers in youth detention	20
6. Lockdowns and isolation	23
7. Other measures taken in detention	25
Decarceration strategies must form part of the government’s public health response.....	27
8. Mitigating COVID-19 risks in detention	27
9. Heightened risk for Aboriginal and/or Torres Strait Islander people.....	29
10. The risk to the community with COVID-19 outbreaks in detention.....	30
11. Expert advice to reduce the number of people in detention as a preventative measure during the pandemic	30
12. Means by which to reduce the number of people in detention.....	35
13. Conditions in detention and treatment of detained people.....	40
14. Greater transparency	42
15. Detention oversight during COVID-19	43
Criminal jurisdiction.....	45
16. Policing	45
17. Contact with clients in custody.....	50
18. Procedural issues - Court.....	50
19. Bail	52
Civil jurisdiction	55
20. VCAT	55
21. Infringements	56
22. VOCAT	58
23. Consumer law.....	58
24. Tenancy and homelessness	59



Family Law jurisdiction 63

 25. Court..... 63

 26. The impact of COVID-19 on family reunification 64

BACKGROUND TO THE VICTORIAN ABORIGINAL LEGAL SERVICE

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal community-controlled organisation (ACCO), which was established in 1973 to provide culturally safe legal and community justice services to Aboriginal and/or Torres Strait Islander people across Victorians.¹ Our vision is to ensure that Aboriginal people are treated equally before the law, our human rights are respected, and we have the choice to live a life of the quality we wish.

Legal Services

Our legal practice operates in the areas of criminal, family and civil law. We represent women, men and children who come to us for assistance, and are only hindered in doing this where there is a legal conflict of interest. If this is the case, we provide warm referrals to other suitable legal representatives. Our 24-hour criminal law service is backed up by the strong community-based role of our Client Service Officers play, who are the first point of contact when an Aboriginal person is taken into custody, through to the finalisation of legal proceedings.

Our Criminal Law Practice provides legal assistance and represent Aboriginal people in immediate court dealing such as bail applications, defending or pleading to charges and sentencing. This includes matters in both the mainstream and Koori Court.² Many of our clients come from backgrounds where they may have been exposed to family violence, poor mental health, homelessness and poverty. We try to understand the underlying reasons that have led to the offending behaviour and ensure that prosecutors, magistrates and legal officers are aware of this. We support our clients to access support that can help to address underlying reasons for offending and reduce the risk of recidivism.

Our Civil and Human Rights Practice provides advice and casework to Aboriginal people in relation to a range of civil law issues, including: infringements, tenancy, victims of crime, police complaints, discrimination and human rights, Personal Safety Intervention Orders (PSIVO) matters, Coronial Inquests including in relation to deaths in custody, prisoners’ rights, consumer law issues and Working With children Check suspension or cancellation.

¹ The term “Aboriginal” is used throughout this submission to refer to Aboriginal and/or Torres Strait Islander peoples.

² In 2017-2018, VALS provided legal services in relation to 1367 criminal law matters, and in 2018-2019, VALS provided legal services in relation to 1,253 criminal law matters.



Our Aboriginal Families Practice provides legal advice and represents families in family law and child protection matters, where we advocate for support to ensure that families can remain together, and for compliance with the Aboriginal Child Placement Principle wherever children are removed from their parents' care.

Community Justice Programs

VALS run a Custody Notification System (CNS) which requires Victoria Police to notify VALS within 1 hour every time an Aboriginal person in Victoria is taken into police custody.³ Since October 2019, this requirement is legislated under the *Crimes Act 1958*.⁴ Once a notification is received, VALS will contact the relevant police station to carry out a welfare check and provide legal advice if required.

The Community Justice Team also run the following programs:

- Family Violence Client Support Program⁵
- Community Legal Education
- Victoria Police Electronic Referral System (V-PeR)⁶
- Regional Client Service Officers
- Baggarrook Women's Transitional Housing program.⁷

Policy, Research and Advocacy

VALS operates in various strategic forums which help inform and drive initiatives to support Aboriginal people in their engagement with the legal system in Victoria. VALS works closely with the Aboriginal Justice Caucus and ACCOs in Victoria, as well as other key stakeholders within the legal sector.

VALS is also engaged in research projects, including a three-year project to pilot Aboriginal Community Justice Reports in Victoria. The project is being carried out in partnership with the University of Technology, Griffith University, the Australasian Institute of Judicial Administration (AIJA) and Five Bridges Aboriginal and Torres Strait Islander organisation (Queensland).

ACKNOWLEDGEMENTS

VALS pays our deepest respect to traditional owners across Victoria, in particular, to all Elders past, present and emerging. We also acknowledge all Aboriginal and Torres Strait Islander people in Victoria and pay respect to the knowledge, cultures and continued history of all Aboriginal and Torres Strait Islander Nations.

³ In 2017-2018, VALS received and responded to 11,104 notifications through the CNS and in 2018-2019, we received 12,293.

⁴ Ss. 464AAB and 464FA, *Crimes Act 1958* (Vic).

⁵ VALS has three Family Violence Client Support Officers (FVCSOs) who support clients throughout their family law or civil law matter, providing holistic support to limit re-traumatisation to the client and provide appropriate referrals to access local community support programs and emergency relief monies.

⁶ The Victoria Police Electronic Referral (V-PeR) program involves a partnership between VALS and Victoria Police to support Aboriginal people across Victoria to access culturally appropriate services. Individuals are referred to VALS once they are in contact with police, and VALS provides support to that person to access appropriate services, including in relation to drug and alcohol, housing and homelessness, disability support, mental health support.

⁷ The Baggarrook Women's Transitional Housing program provides post-release support and culturally safe housing for six Aboriginal women to support their transition back to the community. The program is a partnership between VALS, Aboriginal Housing Victoria and Corrections Victoria.



We also acknowledge the following staff members who collaborated to prepare this submission:

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EXECUTIVE SUMMARY

The Victorian Aboriginal Legal Service (**VALS**) welcomes the opportunity to make a submission to the Public Accounts and Estimate Committee's (**PAEC**) Inquiry into the Victorian Government's response to the COVID-19 pandemic. VALS also thanks the Committee for the invitation to appear, to give evidence on the legal needs of the Victorian Aboriginal community and how the Victorian Government's strategy has particularly impacted on Aboriginal people.

VALS appreciates that the Victorian Government is facing unprecedented challenges during this pandemic, requiring fast responses in a rapidly changing environment. This week, the State of Emergency was extended for a further 6 months, with Melbourne currently subject to extensive Stage 4 restrictions under the State of Disaster, which commenced at the beginning of August. It is uncertain for how long we will be navigating this pandemic, but there are concrete lessons that can be learned and best practices that can be adopted by considering the international, Australian and Victorian contexts. This submission addresses concerns, highlights positive practices and responses, and makes recommendations across all of VALS' legal practice areas; criminal law, civil law and family law.

Aboriginal communities are particularly at risk during the pandemic because our people are already disproportionately impacted by housing instability and homelessness, unemployment, family violence, poverty and higher rates of chronic illnesses and poor mental health. VALS is already seeing and expects to see an increase in the legal needs of communities, including in relation to tenancy, debt, family law, child protection and criminal law. Aboriginal people are also overrepresented in child protection and criminal justice systems and have been disproportionately impacted by significant changes implemented to respond to COVID-19.

In particular, VALS is concerned about the treatment of Aboriginal people in prisons and youth detention facilities, including mandatory protective quarantine for all people entering prisons and an increase in lockdowns. With the Black Lives Matter movement gaining momentum globally and in Australia, VALS emphasises the urgent need to reduce numbers of people in detention through early and temporary releases, and curbing of admissions, as part of a comprehensive and responsible public health strategy. This is essential not only to prevent Aboriginal deaths in custody, as we mark the 30 year anniversary of the Royal Commission into Aboriginal Deaths in Custody next year, but is crucial to containing the COVID-19 pandemic throughout



the rest of the community across the State. VALS is also concerned about the failure to adequately address impacts for families whose children are under a family reunification order. Court delays, reduced services and self-isolation restrictions mean that parents' capacity to work towards family reunification within the specified time frames is severely limited.

VALS has responded to the legal needs of the Aboriginal community as they have arisen, and pre-emptively responded where possible, but with the pandemic continuing and the anticipated needs during recovery, increased funding to enable VALS to deliver place-based, high quality, culturally appropriate legal services across Victoria is crucial.

SUMMARY OF RECOMMENDATIONS

Funding for VALS

Recommendation 1: The Victorian Government should provide further funding to support VALS' response to COVID-19, given that the pandemic is ongoing and the increased need for legal services continues.

Recommendation 2: The Victorian Government should fund VALS to establish a sustainable, place-based service delivery presence to enhance community access to high quality, culturally appropriate legal services across Victoria.

Recommendation 3: The Victorian Government should increase funding to VALS during the recovery phase, as restrictions ease, in anticipation of a further increase in demand for legal services.

Extension of State of Emergency

Recommendation 4: The Victorian Government should limit extensions to the State of Emergency to 6 months, with regular reviews of its necessity and proportionality.

Prisons and youth detention centres

Recommendation 5: Legislation should be amended to require that incarcerated people in quarantine and isolation are regularly observed and verbally communicated with.

Recommendation 6: No person should ever be placed in solitary confinement, particularly people with mental or physical disabilities.

Recommendation 7: Prolonged solitary confinement amounts to torture, and no people should be subjected to this.

Recommendation 8: The COVID-19 Omnibus Act should be amended to explicitly provide for the rights of people in protective quarantine, including guaranteeing meaningful contact with other people and time out of cell.

Recommendation 9: Staffing and other operational issues should be urgently addressed, to ensure no one is subjected to solitary confinement.

Recommendation 10: There should be increased transparency in relation to the operationalisation of protective quarantine under the COVID-19 Omnibus Act, and the safeguards that have been put in place.

Recommendation 11: People in protective quarantine should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled



Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.

Recommendation 12: Corrections Victoria should maintain a register of all people placed in protective quarantine.

- The register should include information such as age, gender, disabilities, medical conditions, mental health conditions and Aboriginality of people in protective quarantine.
- Information should also be provided in relation to the length and the nature of meaningful contact provided on a daily basis, how much time people spend out of cell, and the services made available to them and used by them.

Any incidents, such as attempted self-harm, should also be included.

Recommendation 13: The recommendations in relation to protective quarantine (recommendations 5-12) also apply to transfer quarantine.

Recommendation 14: As transfer quarantine is to be used when people return from hospital, VALS emphasises that the medical care provided in transfer quarantine must be equivalent to that provided to people who have been discharged from hospital in the community.

Recommendation 15: The use of both protective and transfer quarantine, and the nature of the quarantine itself, should be

- reviewed on a regular basis,
- guided by medical advice, in consultation with civil society stakeholders,
- adopting the least restrictive measure, in accordance with the Victorian Charter of Human Rights and Responsibilities.

Recommendation 16: Transfers between places of detention, and between places of detention and court, should be minimised, to in turn minimise the use of transfer quarantine.

Recommendation 17: The COVID-19 Omnibus Act should be amended to remove isolation of children as a preventive measure. Isolation should be limited to medical isolation for children who are COVID-19 positive and potentially in cases where they are symptomatic.

Recommendation 18: Any legislation in relation to isolation of children must be drafted such that staff do not have wide discretion. Legislation must be clear as to the circumstances in which isolation is permitted.

Recommendation 19: The *Children, Youth and Families Act* should be amended as follows -

- any force used to place a child in isolation must be only as a last resort;
- minimum force should be used, and only for the duration that is strictly necessary to place the child in isolation;
- any use of force should be filmed and the recording should be made available to the children and their lawyer upon their request;
- there should be a register where staff record the steps taken and alternatives pursued before making the decision to use force, which should also be made available to the children and their lawyer upon their request.

Recommendation 20: There should be additional guidance and training for staff on exercising any powers to place children in isolation, including the use of force.

Recommendation 21: No children should ever be placed in solitary confinement, particularly children with mental or physical disabilities, or histories of trauma.



Recommendation 22: Prolonged solitary confinement amounts to torture, and no children should be subjected to this.

Recommendation 23: The *Children, Youth and Families Act* should be amended to specifically prohibit the Secretary from authorising further periods of isolation of children already placed in isolation, where this would effectively extend the total period of isolation of the child for more than 14 consecutive days.

Recommendation 24: The COVID-19 Omnibus Act should be amended to explicitly provide for the rights of children in isolation, including guaranteeing meaningful contact with other people and time out of cell, in fresh air, every day.

Recommendation 25: Staffing and other operational issues should be urgently addressed, to ensure no child is subjected to solitary confinement and that all children have time out of cell while in isolation.

Recommendation 26: There should be increased transparency in relation to the operationalisation of isolation under the COVID-19 Omnibus Act, and the safeguards that have been put in place.

Recommendation 27: Children in protective quarantine should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.

Recommendation 28: A register of all children and young people placed in isolation should be maintained.

- The register should include information such as age, gender, disabilities, medical conditions, mental health conditions and Aboriginality of children and young people in protective quarantine.
- Information should also be provided in relation to the length and the nature of meaningful contact provided on a daily basis, how much time children and young people spend out of cell, and the services made available to them and used by them.
- Any incidents, such as attempted self-harm, should also be included.

Recommendation 29: VALS Custody Notification Service should be notified any time an Aboriginal child or young person in detention is placed in isolation under the *Children, Youth and Families Act*, or is in effective isolation as a result of lockdown.

Recommendation 30: There should be a legislated allowance for a reduction in sentence if a child or young person is placed into isolation in a scheme comparable to the legislated Emergency Management Days available to incarcerated adults.

Recommendation 31: In recognition of the harm of excessive and cyclical lockdowns of places of detention to people's health and wellbeing, VALS recommends that the Victorian Government instead employ a preventive strategy of releasing people from detention and curbing admissions to detention.

Recommendation 32: Facilities should not, by default, go into complete "lock down" during a COVID-19 outbreak.

Recommendation 33: Staffing and other operational issues should be urgently addressed, to ensure lockdowns do not occur as a result of inadequate staff to safely manage the facility.

Recommendation 34: No one should be in effective solitary confinement as a result of lockdown, particularly children and people with mental or physical disabilities.

Recommendation 35: If lockdowns occur, people should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.



Recommendation 36: There should be a legislated allowance for a reduction in sentence if a child or young person is subjected to lockdown, in a scheme comparable to the legislated Emergency Management Days available to incarcerated adults.

Recommendation 37: Information on how lockdowns are being operationalised should be made publicly available (particularly to families, legal services and Aboriginal Community Controlled Health Organisations), and regular updates should be shared.

Recommendation 38: The practice of having incarcerated people clean any part of prisons must cease immediately. This work should be undertaken by professional cleaning staff, with appropriate measures being put in place to prevent COVID-19 transmission between cleaning staff, people who are detained and the wider community.

Recommendation 39: All places of detention must be subject to regular, preventative cleaning that meets, at a minimum, the CDNA Guidelines on environmental cleaning and disinfection.

Recommendation 40: There should be extensive COVID-19 testing of the general prison and youth detention populations.

Recommendation 41: All people in places of detention must have easy, prompt and ongoing access to appropriate PPE (including masks and, where appropriate, eye protection), and soap and hand sanitiser (all free of charge).

Recommendation 42: Staff, including those involved in transport, should wear appropriate PPE.

Recommendation 43: VALS Custody Notification Services officers and families should be notified immediately of confirmed COVID-19 cases of detained Aboriginal people.

Decarceration strategies must form part of the Government's public health response

Recommendation 44: Aboriginal people should be among those who are prioritised for early or temporary release from places of detention.

Recommendation 45: The Victorian Government should decrease the number of people in places of detention as part of a responsible and comprehensive public health strategy.

Recommendation 46: The Victorian Government should take steps to keep survivors and victims safe, including making suitable housing available for people who are released from custody, and properly funding culturally appropriate supports and services delivered by Aboriginal Community Controlled Organisations, such as VALS' Baggarrook program.

Recommendation 47: Prison and youth detention populations should be decreased by utilising administrative leave (permits, Emergency Management Days or temporary leave).

Recommendation 48: Permits should be prioritised for people with chronic health conditions, disabilities and mental health conditions, elderly people and for Aboriginal people.

Recommendation 49: Corrections, in making decisions in relation to Emergency Management Days, should acknowledge that the pandemic has negatively impacted on all people in detention, albeit to different degrees. EMDs should be granted not only to people who have been subject to isolation or mandatory quarantine, in recognition of the additional hardships faced by everyone in detention.

Recommendation 50: Corrections policy should be amended so that people can be granted 4 Emergency Management Days for each day that the 'emergency exists', and the 14 days they could be entitled to due to 'circumstances of an unforeseen and special nature.'

Recommendation 51: There should be greater transparency in relation to the process by which Emergency Management Days are granted. Information should also be made available in relation to the number of



people released on EMDs, how many days they were granted (broken down per month and per facility), and how many Aboriginal and non-Aboriginal people were granted EMDs.

Recommendation 52: EMD assessments should occur on a more regular basis than fortnightly, to allow adequate time to prepare for release.

Recommendation 53: No one should be denied Emergency Management Days due to a lack of housing.

Recommendation 54: There should be an increased use of temporary leave for children and young people.

Recommendation 55: Parole should be made more accessible for children, young people and adults. Parole Boards should sit more frequently to enable them to process more parole applications.

Recommendation 56: Funding should be provided to VALS to hire staff to assist people with their parole applications.

Recommendation 57: Bail should be made more accessible for children, young people and adults on remand.

Recommendation 58: The reverse-onus provisions in the Bail Act should be repealed, particularly the 'show compelling reason' and 'exceptional circumstances' provisions (sections 4AA, 4A, 4C, 4D and schedules 1 and 2 of the Bail Act).

Recommendation 59: There should be a presumption in favour of bail for all offences, except in circumstances where there is a specific and immediate risk to the physical safety of another person. This should be accompanied by an explicit requirement in the Act that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.

Recommendation 60: The offences of committing an indictable offence while on bail (s. 30B), breaching bail conditions (s. 30A) and failure to answer bail (s. 30) should be repealed.

Recommendation 61: There should be increased and mandatory guidance and oversight for police officers, to ensure that they understand and comply with the requirements of the Bail Act. It is essential that police officers are able to appropriately determine when bail should be granted by a police decision maker, and when the individual should be brought to court.

Recommendation 62: Police should exercise their powers responsibly, in order to curb further admissions to places of detention, by issuing summons, releasing people on bail, and having a moratorium on pursuing prosecution for low-level offences and breaches of bail and parole conditions.

Recommendation 63: The Government should urgently consider passing legislation (and utilising this legislation) that would allow for the early release of people detained in prisons and youth detention.

Recommendation 64: The Government should raise the age of criminal responsibility to at least 14, and the age at which children can be detained to at least 16. All youth justice legislative, strategy and policy reforms should incorporate and align with raising the age reform.

Recommendation 65: People in detention must be provided medical care that is the equivalent of that provided in the community. Medical care must be provided without discrimination.

Recommendation 66: There should be greater clarity in relation to the medical care provided to detained people who are confirmed or suspected of having COVID-19, including while they are in isolation and when they are transferred to hospitals.

Recommendation 67: Measures taken and practices adopted in places of detention in an attempt to contain COVID-19 must never amount to torture or cruel, inhuman or degrading treatment and should not form part of the Government's strategy to keep detained people and detention centre staff safe and healthy.

Recommendation 68: When restrictions are again eased in the general community, prison and youth detention restrictions should be reviewed. In particular, in-person visits should be reinstated as soon as the health advice permits.



Recommendation 69: Accurate and updated information that should be made publicly available on a regular basis includes infection prevention and control measures and contingency plans (particularly strategies, policies and data relating to use of medical isolation, quarantine and solitary confinement, staffing, testing, health provision, personal and legal visits, programs and education); information relating to COVID-19 testing and results for people in detention, staff and contractors, infection rates and number of deaths, as well as incidents such as use of force, incidents of self-harm and prison disturbances such as protests.

Recommendation 70: Data should be disaggregated and analysed, at a minimum, by Aboriginality, age, gender, health and mental health conditions, and disability.

Recommendation 71: Information should be effectively communicated both to people who are in detention and their families.

Recommendation 72: The Victorian Government must not adopt unreasonable measures that will further undermine or limit access to places of detention by existing formal and informal mechanisms of oversight and transparency.

Recommendation 73: The Victorian Government should accommodate the adapted approaches of detention oversight bodies and facilitate access to places of detention, people in detention and detention staff during the pandemic.

Recommendation 74: The *Children, Youth and Families Act 2005* should be amended to make explicit that independent oversight bodies must be guaranteed access to youth detention facilities.

Recommendation 75: The Government must urgently undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community, its representative bodies and Aboriginal Community Controlled Organisations, such as VALS, on the implementation of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in a culturally appropriate way.

Recommendation 76: The operations, policies, frameworks and governance of the designated detention oversight bodies under OPCAT (National Preventive Mechanisms) must be culturally appropriate and safe for Aboriginal and/or Torres Strait Islander people.

Criminal jurisdiction

Recommendation 77: Police must responsibly exercise their expansive powers, acknowledging that around the world, policing the pandemic through fines and arrests has disproportionately impacted on marginalised communities, including Indigenous peoples.

Recommendation 78: Police should prioritise providing public health messaging and supporting people to comply with the current restrictions.

Recommendation 79: Police should take into account the many legitimate reasons why individuals may be forced to breach COVID-19 restrictions (such as fleeing family violence), and consider cautioning individuals rather than imposing a fine.

Recommendation 80: Disaggregated data in relation to stops, fines and arrests by police (including gender, age, disability and whether people are Aboriginal and/or Torres Strait Islander) should be made publicly available.

Recommendation 81: There must be robust oversight of police conduct by independent bodies and organisations.

Recommendation 82: Homeless people should not be fined for COVID-19 related breaches.



Recommendation 83: Proactive steps should be taken to address the disproportionate impact of fines on disadvantaged communities.

Recommendation 84: Police should be provided guidance and training with regards to the regulations and the use of their discretion in issuing infringements.

Recommendation 85: VALS supports the Human Rights Law Centre position that the Victorian Government ‘withdraw increased police powers as soon as the states of emergency and disaster end. There is a risk that increased police powers could become the new normal. Any proposed, permanent increased powers must be subject to careful and proper scrutiny after the pandemic.’

Recommendation 86: Children living in residential care should not be fined for breaching social distancing rules, particularly if they have run away from their residence.

Recommendation 87: Children should not be spending extended periods of time in police custody when they have run away from residential care.

Recommendation 88: There should be greater clarity regarding the role of Protective Services Officers in enforcing the restrictions imposed to contain COVID-19.

Recommendation 89: VALS supports Liberty Victoria’s recommendation that ‘[i]f PSOs are used as defacto police, they should receive the same level of training. Further, the expansion of the definition of “designated place” under the Victoria Police Regulations 2014 should be rolled back.’

Recommendation 90: People who have been arrested should not be taken direct to court without being afforded an opportunity to participate in an interview.

Recommendation 91: Lawyers should continue to be able to speak with clients at the Melbourne Custody Centre over the phone.

Recommendation 92: Lawyers should continue to be able to speak to clients who are held in police cells, and appear via phone in bail applications and straight remand mentions.

Recommendation 93: Summary pleas on the papers should continue.

Recommendation 94: Bail variations by consent on the papers should continue.

Recommendation 95: By consent WebEx, AVL and telephone appearances should continue.

Recommendation 96: The important caveat to recommendations 92-95 is that VALS lawyers should not be required to proceed with matters via AVL and through other remote technology where the lawyers have made forensic decisions that this would jeopardise their clients’ cases.

Recommendation 97: VALS should be properly resourced to meet the anticipated demands once courts recommence operating at increased or full capacity. There should be transparency around the plan for when the courts reopen.

Recommendation 98: VALS supports steps being taken to adapt Koori Court operations, so that it can continue operating during the pandemic safely.

Recommendation 99: The Government should continue to invest in housing outcomes for Aboriginal communities in Victoria, including funding culturally appropriate justice housing projects such as VALS’ Baggarrook program, supporting women being released from prison.

Recommendation 100: Measures must be put in place to ensure that bail justices attend at police cells or conduct hearings remotely when people are arrested.

Recommendation 101: Measures must be put in place to ensure that Independent Third Persons attend at police cells when adults and young people with disability are arrested.

Recommendation 102: With people having to comply with bail conditions for longer periods of time due to impacted court operations, there should be greater flexibility in relation to any breaches of bail.



Recommendation 103: There should be flexibility and understanding in relation to reporting as per bail conditions, in recognition that many of VALS' clients do not have access to a phone or phone credit.

Civil jurisdiction

Recommendation 104: Some in-person VCAT hearings should recommence once it is safe to do so, recognising that phone hearings are not appropriate in all circumstances (due to the individuals involved, or the complexity of the matter). Any long-term changes to the conduct of hearings as a result of COVID-19, including the increased use of remote hearings (be they for interlocutory or final matters), ought to be informed by qualitative research conducted during the current period. Particular attention should be given to whether those with complex needs have been able to effectively access remotely delivered justice, and how hearings conducted remotely impact on user comprehension, participation, satisfaction and outcomes.

Recommendation 105: Some VCAT matters should proceed by way of video conference rather than via phone. Parties should be asked whether they would prefer a video conference to a telephone hearing, and VCAT should develop guidelines in relation to which matters will be given priority for video conferencing.

Recommendation 106: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector, that to prevent the significant impact of COVID-19 specific fines on children and young people, the Victorian Government should withdraw all fines issued through the COVID-19 Directions to children and young people aged 18 and under, and instead prioritise a service, education and health-based response.

Recommendation 107: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that the Victorian Government ensures that:

- enforcement agencies exercise appropriate discretion in determining when to issue COVID-specific fines, and when to educate or caution vulnerable community members to avoid them becoming unnecessarily entrenched in the infringements system;
- enforcement agencies inform people when issuing them with fines in a clear, legally correct and accessible way that they are being fined for a breach of the COVID-19 directions;
- enforcement agencies include sufficient information on the infringement notices to comply with the *Infringement Regulations 2016*, so as to enable COVID-specific fines recipients to effectively submit internal reviews;
- enforcement agencies effectively implement the Internal Review Guidelines to ensure best practice in relation to decision-making on COVID-specific fines reviews.

Recommendation 108: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that there is a stay of enforcement of existing infringements and court fines and that all infringements notices, penalty reminder notices, notices of final demand and enforcement warrants are placed on hold to avoid additional fees being imposed. Cessation of enforcement actions should be legislated.

Recommendation 109: Prisoners should be able to continue having access to the time-served scheme post-release, beyond 25 October 2020.

Recommendation 110: Fines Victoria should continue permitting filing by lawyers of draft statutory declarations, accompanied by a signed client authorisation form, for the foreseeable future.



Recommendation 111: Documents should continue to be provided to parties and the Tribunal in advance of the day of a VCAT hearing. However, Members should take a flexible approach where parties are self-represented, keeping in mind that it may be onerous to expect this of vulnerable community members.

Recommendation 112: VOCAT should continue to permit lodgement of hard copy applications and other documents by lawyers on behalf of their clients, accompanied by an email authority.

Recommendation 113: VALS supports the recommendation of the Consumer Action Law Centre that the Victorian Government introduce a public moratorium on energy disconnections until further notice.

Recommendation 114: VALS supports the recommendation of the Consumer Action Law Centre that the Essential Services Commission consider additional safeguards in relation to external debt collection practices and the sale of debts and explore the possibility of debt waivers in appropriate circumstances.

Recommendation 115: VALS supports the recommendation of the Consumer Action Law Centre that the Victorian Government increase energy concessions, particularly via the Utility Relief Grant scheme, and ensure applications for concessions are accessible and processed promptly.

Recommendation 116: All of the emergency measures implemented through the COVID-19 Omnibus Act with respect to residential tenancies should be extended to at least 31 March 2021.

Recommendation 117: Amendments that, in specified circumstances, the period of notice that must be given under a notice of intention to vacate has been reduced from 28 to 14 days should be retained. Some guidance should be given as to what will constitute “severe hardship”, perhaps in the form of considerations that may be taken into account by the Tribunal in determining whether a person’s hardship meets this standard.

Recommendation 118: The *Residential Tenancies Amendment Act 2018* should commence immediately upon the expiration of the Emergency Measures Act.

Recommendation 119: Videoconferencing, rather than phones, should be used in Residential Tenancies List hearings. There should be a presumption that videoconferencing will be used.

Recommendation 120: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that accessible information and resources should be provided to tenants around their rights and options in relation to the COVID-19 rent reduction process, including mandating that landlords provide tenants with prescribed information on the rent reduction process and where to get assistance. Information should also be provided in relation to rent relief under the DHHS grant scheme.

Recommendation 121: The Government needs to consider how it will assist the most vulnerable people in our community, who have not accessed the rent assistance grants, or have accessed it after having accumulated significant arrears.

Recommendation 122: There needs to be greater investment in public housing, particularly given the increased risk of COVID-19 transmission in overcrowded public housing estates.

Recommendation 123: Emergency re-housing for those who have been homeless represents an opportunity to redeploy support services, to ensure that those who have not previously had access to support services can have them, and that those who have moved away from their usual providers have access to same.

Recommendation 124: Any future lockdowns of public housing estates should be monitored by independent detention oversight bodies.

Recommendation 125: Audio-visual hearings, which can save resources and improve efficiency of the court, should be retained.

Recommendation 126: Audio hearings and conciliation conferences should also be retained.

Recommendation 127: Audio-visual hearings would be particularly useful in regional areas, where there are no specialist Children’s Court Magistrates.



Family Law jurisdiction

Recommendation 128: There is an urgent need to further reconsider how the COVID-19 pandemic is impacting progress towards family reunification, and taking further steps such as amendments to the *Children, Youth and Families Act*. This should include extending the timeframes for family reunification.

Recommendation 129: VALS supports the Victorian Aboriginal Child Care Agency's recommendation that Aboriginal Community Controlled Organisations and the Aboriginal community be involved in determining the local needs of Aboriginal children, young people and families involved in the Child Protection system during COVID-19.

DETAILED SUBMISSIONS

General

1. Funding for VALS

Funding for VALS' response to COVID-19


VALS welcomes the additional funding of \$877,000 provided by the Victorian Government in June, to support VALS' response to COVID-19.⁸ However, VALS notes that the pandemic is ongoing, and further funding is required to meet the increased need and demand for legal services.

Particularly, VALS notes the identified need for funding that will enable it to operate as a place-based service, as opposed to a metro-based organisation that delivers outreach services across Victoria. COVID-19 has exacerbated the challenges of operating under the current model to providing a flexible, prevention-focused service that accounts for the unique needs of different Victorian communities and that facilitates a collaborative approach. The varied stages of restrictions across Victoria in response to COVID-19 could be better navigated if VALS was funded to deliver a place-based service.

The advantages of place-based service delivery include:

- A focus on areas and communities with entrenched disadvantage;
- Local autonomy and flexibility to changing community needs (particularly important during the pandemic);
- Reduced costs through better integration of work across justice and support agencies;
- Opportunities for local innovation and co-design of services;
- Local service delivery tailored through a nuanced understanding of each community's unique needs and issues;
- Economies of scale through pooled resources (many smaller rural practices lack the economies of scale and resources to implement continuous improvement programs. VALS has developed an oversight model that emphasises continuous improvement with a dedicated quality improvement

⁸ Premier of Victoria, Media Release, Improving Aboriginal Justice Outcomes (26 June 2020), available at <https://www.premier.vic.gov.au/improving-aboriginal-justice-outcomes/>



manager that has significant expertise in legal services oversight and data management and reporting); and

- Enhanced coordination and integration of critical services.

Funding for VALS during the recovery phase

VALS anticipates a further increase in demand for its services during the recovery phase, when restrictions are eased. For example, there is an unprecedented backlog in the court system in the criminal jurisdiction, which will significantly increase the workload of VALS lawyers and support staff. In order to meet this need, VALS will need to be adequately resourced.

Recommendation 1: The Victorian Government should provide further funding to support VALS' response to COVID-19, given that the pandemic is ongoing and the increased need for legal services continues.

Recommendation 2: The Victorian Government should fund VALS to establish a sustainable, place-based service delivery presence to enhance community access to high quality, culturally appropriate legal services across Victoria.

Recommendation 3: The Victorian Government should increase funding to VALS during the recovery phase, as restrictions ease, in anticipation of a further increase in demand for legal services.

2. Extension of State of Emergency

VALS acknowledges that the Government is facing enormous challenges during the pandemic, but emphasises that under a State of Emergency, people's human rights are significantly impacted. The initial proposal of a 12 month extension of the State of Emergency (which ends in September) was not a proportionate response, and VALS is of the view that any extension of a State of Emergency should be limited to a further 3-6 months. With the decision to limit the extension to a further 6 months, VALS recommends regular reviews of the State of Emergency, to assess whether it continues to be necessary, and continues to be proportionate with respect to the limits on Victorians' human rights. VALS supports Liberty Victoria's recommendation that reviews occur every 4 weeks.⁹

Recommendation 4: The Victorian Government should limit extensions to the State of Emergency to 6 months, with regular reviews of its necessity and proportionality.

⁹ Liberty Victoria, Liberty Victoria calls for limit on State of Emergency extension (25 August 2020), available at <https://libertyvictoria.org.au/content/liberty-victoria-calls-limit-state-emergency-extension>



Prisons and youth detention centres

3. Protective quarantine in prisons

VALS is particularly concerned about the protective quarantine powers under the *Corrections Act*, which provide for mandatory isolation of all new prisoners (including young people aged 19 to 24 years) for 14 days, upon arrival at a prison. Since the policy was introduced on 28 March 2020, protective quarantine units have been established across five prisons ‘as a preventive measure to reduce the risk of coronavirus (COVID-19) coming into the prison system.’¹⁰

Whilst the *COVID-19 Omnibus Act* and associated instructions from the Deputy Commissioner¹¹ provide some safeguards for people in quarantine (e.g. before making an order ‘the safety, protection and welfare of the prisoner must be taken into consideration, including, if reasonably practicable, any vulnerability or health condition of the prisoner’¹² and there ‘must be sufficient staffing to ensure adequate observation and verbal communication with prisoners’¹³), VALS is concerned about the health and wellbeing of Aboriginal people in quarantine.

In a study by the Australian Institute for Health and Welfare on the health of prisoners in 2018, 40% of prison entrants reported having a mental health condition at some stage in their life and 20% reported a history of self-harm.¹⁴ 30 years ago, the Royal Commission into Aboriginal Deaths in Custody recommended that Aboriginal people should not be held alone in rooms or cells.¹⁵

The *COVID-19 Omnibus Act* states that ‘[a]n officer, *when necessary*, must observe a prisoner who is held in mandatory quarantine to ensure that the safe custody and welfare of the prisoner is maintained’ (emphasis added).¹⁶ In light of the fact that people are particularly vulnerable when they first enter prison, all detained people in quarantine should be regularly observed to ensure their safety and welfare. Similarly, there should be regular observation of incarcerated people in isolation.¹⁷

People in quarantine are accommodated in single cells, and the Deputy Commissioner’s Instructions note that prisons ‘will, *unless it is not operationally possible*, provide time out of cell for all prisoners on a

¹⁰ Corrections Victoria, Deputy Commissioner’s Instruction 1.11A Protective quarantine of new reception prisoners during the COVID-19 pandemic (28 March 2020), page 2, available at <https://www.liv.asn.au/CMSPages/GetFile.aspx?nodeguid=0a649cb9-6ae9-4222-96ad-2e0e0620203f&lang=en-AU>

¹¹ Corrections Victoria, Deputy Commissioner’s Instruction 1.11A Protective quarantine of new reception prisoners during the COVID-19 pandemic (28 March 2020), available at <https://www.liv.asn.au/CMSPages/GetFile.aspx?nodeguid=0a649cb9-6ae9-4222-96ad-2e0e0620203f&lang=en-AU>

¹² COVID-19 Omnibus (Emergency Measures) Act 2020 s112K(4)(a), available at <https://www.legislation.vic.gov.au/bills/covid-19-omnibus-emergency-measures-bill-2020>

¹³ Corrections Victoria, Deputy Commissioner’s Instruction 1.11A Protective quarantine of new reception prisoners during the COVID-19 pandemic (28 March 2020), page 2, available at <https://www.liv.asn.au/CMSPages/GetFile.aspx?nodeguid=0a649cb9-6ae9-4222-96ad-2e0e0620203f&lang=en-AU>

¹⁴ Australian Institute for Health and Welfare, The health of Australia’s prisoners 2018 (30 May 2019), available at <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/table-of-contents>

¹⁵ Royal Commission into Aboriginal Deaths in Custody (1998)

¹⁶ *COVID-19 Omnibus (Emergency Measures) Act 2020* s112N.

¹⁷ *COVID-19 Omnibus (Emergency Measures) Act 2020* s112P.



protective quarantine regime’ (emphasis added).¹⁸ If people do not have *meaningful* contact with other humans while they are in quarantine (noting that solitary confinement is defined as the ‘confinement of prisoners for 22 hours or more a day without meaningful human contact’¹⁹) for 14 consecutive days, this period is just shy of prolonged solitary confinement (‘[p]rolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days’²⁰) as defined in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). Prolonged solitary confinement amounts to torture.²¹ The Nelson Mandela Rules also state that ‘imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.’²² Without the necessary safeguards, quarantine may amount to solitary confinement of especially vulnerable Aboriginal people, noting that many imprisoned Aboriginal people having underlying medical and mental health issues. VALS seeks greater transparency in relation to how the *COVID-19 Omnibus Act* is being operationalised, and that safeguards be put in place.

VALS understands that in protective quarantine, men have only 15 minutes out of cell a day and women have only 40 minutes, with operations being impacted by staffing issues (for example due to childcare issues). With advice that protective quarantine will continue until there is no community transmission in Victoria or a vaccine is available, it is crucial that these issues are addressed urgently.

The Communicable Diseases Network Australia (**CDNA**) Guidelines state that, ‘[e]xtended periods of isolation can result in distress and deteriorating mental health. Facilities should ensure inmates continue to have access to their families and support networks through telephone and video contact. Facilities should ensure mental health and social support services are able to access and support inmates while in isolation or quarantine. Cultural support should be available for Aboriginal and Torres Strait Islander inmates.’²³ While Aboriginal prisoners have access to an Aboriginal Wellbeing Officer, we are concerned about the capacity of Aboriginal Wellbeing Officers to provide support during this time, given that they are already overstretched when prisons are functioning normally.

VALS’ Community Justice Programs (**CJP**) have been undertaking welfare checks of incarcerated Aboriginal people. In a positive development, Melbourne Custody Centre (**MCC**) staff are contacting VALS’ Custody Notification Officers when an Aboriginal person is taken into custody at MCC, enabling VALS to conduct welfare checks. However, during these welfare checks across the prison system, the main issues that have been identified are limited family contact (which is especially challenging for people with mental health

¹⁸ Corrections Victoria, Deputy Commissioner’s Instruction 1.11A Protective quarantine of new reception prisoners during the COVID-19 pandemic (28 March 2020), page 2, available at <https://www.liv.asn.au/CMSPages/GetFile.aspx?nodeguid=0a649cb9-6ae9-4222-96ad-2e0e0620203f&lang=en-AU>

¹⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) Rule 44

²⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) Rule 44

²¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) Rule 43(1)(b)

²² United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015) Rule 45(2)

²³ Communicable Diseases Network Australia, Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 30, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>



conditions and disabilities), deterioration of mental health and in some cases leading to self-harm, and people being unable to participate in cultural activities.

Recommendation 5: Legislation should be amended to require that incarcerated people in quarantine and isolation are regularly observed and verbally communicated with.

Recommendation 6: No person should ever be placed in solitary confinement, particularly people with mental or physical disabilities.

Recommendation 7: Prolonged solitary confinement amounts to torture, and no people should be subjected to this.

Recommendation 8: The *COVID-19 Omnibus Act* should be amended to explicitly provide for the rights of people in protective quarantine, including guaranteeing meaningful contact with other people and time out of cell.

Recommendation 9: Staffing and other operational issues should be urgently addressed, to ensure no one is subjected to solitary confinement.

Recommendation 10: There should be increased transparency in relation to the operationalisation of protective quarantine under the *COVID-19 Omnibus Act*, and the safeguards that have been put in place.

Recommendation 11: People in protective quarantine should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.

Recommendation 12: Corrections Victoria should maintain a register of all people placed in protective quarantine.

- The register should include information such as age, gender, disabilities, medical conditions, mental health conditions and Aboriginality of people in protective quarantine.
- Information should also be provided in relation to the length and the nature of meaningful contact provided on a daily basis, how much time people spend out of cell, and the services made available to them and used by them.

Any incidents, such as attempted self-harm, should also be included.



4. Transfer Quarantine

As of 24 August, transfer quarantine has been implemented, as a result of the transfer incident on 17 August,²⁴ on advice of the Chief Health Officer (CHO) on how to mitigate the risk of spread of asymptomatic people between places of detention. In contrast to protective quarantine, which is for 14 days, Corrections Victoria's position is that 8 days transfer quarantine is an appropriate and proportionate period of time in quarantine. Transfer quarantine will be used when people are transferred from a place of detention in a Stage 4 Area or the Geelong area, when returning from an in-court appearance, for people who are to be transferred for elective surgery at a hospital, and upon their return (although for the latter, quarantine is recommended for 14 days).

Noting that transfer quarantine is to be used when people return from hospital, VALS emphasises that the medical care provided in transfer quarantine must be equivalent to that provided to people who have been discharged from hospital in the community.

VALS supports Corrections Victoria adopting the least restrictive measure, in accordance with the Victorian Charter of Human Rights and Responsibilities,²⁵ with regard to both protective and transfer quarantine. This will require regular reviews of the use of quarantine, and the nature of the quarantine itself, on a regular basis, guided by medical advice, in consultation with civil society stakeholders. Additionally, transfers between places of detention, and places of detention and court, should be minimised, to in turn minimise the use of transfer quarantine (noting that on 1 September 2020, there had been 142 people in transfer quarantine, even though 98% of detained people are appearing in court via video, and movements have decreased 50% from the same time last year).

Recommendation 13: The recommendations in relation to protective quarantine (recommendations 5-12) also apply to transfer quarantine.


Recommendation 14: As transfer quarantine is to be used when people return from hospital, VALS emphasises that the medical care provided in transfer quarantine must be equivalent to that provided to people who have been discharged from hospital in the community.

Recommendation 15: The use of both protective and transfer quarantine, and the nature of the quarantine itself, should be

- reviewed on a regular basis,
- guided by medical advice, in consultation with civil society stakeholders,
- adopting the least restrictive measure, in accordance with the Victorian Charter of Human Rights and Responsibilities.

²⁴ Corrections Victoria, Update - 17 August 2020 (17 August 2020), available at https://www.corrections.vic.gov.au/covid19#previous_updates: 'A prisoner recently transported from Port Phillip Prison to the Malmsbury Youth Justice Centre yesterday returned an initial positive test result for coronavirus (COVID-19), but has subsequently returned a negative result.'

²⁵ *Charter of Human Rights and Responsibilities Act 2006* s7(2)(e): 'A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including... any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.'



Recommendation 16: Transfers between places of detention, and between places of detention and court, should be minimised, to in turn minimise the use of transfer quarantine.

5. Protective isolation powers in youth detention

The *COVID-19 Omnibus Act* amended the *Children, Youth and Families Act* to provide for isolation of young people in youth justice facilities for up to 14 consecutive days.²⁶ Unlike in the adult prisons, isolation is not mandatory; rather, the Act allows for isolation for the purpose of detecting, preventing or mitigating the transmission of COVID-19 or any other infectious disease.²⁷ The potential for Aboriginal children aged 10 to 17 years to be placed in isolation 14 days is especially concerning given that the Act provides that '[i]solation may be authorised... whether or not the person isolated is suspected of having, or has been diagnosed as having, COVID-19.'²⁸ Thus, under the Act, there is a broad discretion to place a young person in isolation, which may be abused. There does not appear to be additional guidance, directives or training for staff on when and how to exercise their discretion under the Act. Whilst acknowledging that there is a need to take some measures in detention facilities to address the public health risks posed by COVID-19, the Victorian Government could rely instead on increased testing as a preventive measure, as opposed to relying on isolation for prevention.

Entitlements under the Act during isolation include 'access to outdoors and to undertake outdoor recreation activities at least once each day and for a reasonable period of time on each occasion that the person is temporarily removed.'²⁹ However, the Act also provides that the 'Secretary may determine not to give effect to an entitlement... if the Secretary considers that it would not be reasonably safe to do so, or that the Secretary would not be reasonably able to do so, having regard to... the interests of the security of the remand centre, youth residential centre or youth justice centre.'³⁰ This means that children who are placed in isolation for 14 consecutive days may not be allowed time out of isolation on the basis of security concerns. In light of reported staffing issues (reports on 19 July 2020 stated that there was minimum staffing at Malmsbury, for example³¹), VALS is concerned that Aboriginal children as young as ten years old may be kept in effective solitary confinement for significant periods of time, while in isolation.

Additionally, the Act provides that the 'Secretary may authorise isolation... in respect of a person *on more than one occasion*, and may determine a further minimum period of isolation in accordance with subsection (3) for *each occasion*' (emphasis added).³² Subsection (3) is the section that limits the isolation such that it cannot exceed 14 consecutive days. However, s600M(8) does not explicitly prohibit the Secretary from authorising further isolation in instances where a child has already been isolated for 14 days, potentially effectively extending isolation beyond the 14 days by having back-to-back periods of isolation. It is thus conceivable that a child may be kept in isolation for periods longer than 14 days, and where the nature of

²⁶ *COVID-19 Omnibus (Emergency Measures) Act 2020* s600M, s600N and s600O.

²⁷ *COVID-19 Omnibus (Emergency Measures) Act 2020* s600M(1).

²⁸ *COVID-19 Omnibus (Emergency Measures) Act 2020* s600M(2).

²⁹ *COVID-19 Omnibus (Emergency Measures) Act 2020* s600N(1).

³⁰ *COVID-19 Omnibus (Emergency Measures) Act 2020* s600N(3)(d).

³¹ Tom O'Callaghan, Malmsbury Youth Justice Centre goes into COVID-19 lockdown (19 July 2020), available at <https://www.bendigoadvertiser.com.au/story/6839696/malmsbury-youth-justice-centre-goes-into-covid-19-lockdown/>

³² *COVID-19 Omnibus (Emergency Measures) Act 2020* s600M(8).



the isolation can be characterised as solitary confinement, this would amount to prolonged solitary confinement (recognised as torture under international law).

The legislation also provides that, '[i]f necessary, reasonable force may be used to place a person in isolation under this section,'³³ which also raises concerns, particularly given that safeguards have not been legislated for. Any force used to place a child in isolation should only be lawful where it is the last resort. In such a case, minimum force should be used, and applied only for the duration that is strictly necessary to place the child into isolation. Safeguards should include that any use of force should be filmed and the recording should be made available to the children and their lawyer upon their request, and that there is a register where staff record the steps taken and alternatives pursued prior to making the decision to use force (this register should also be made available to the children and their lawyer upon their request). Further complementary safeguards should include training for staff on the relevant legal obligations and on how to safely use force on a child.

While all instances of isolation must be recorded in a register,³⁴ there is no requirement to record if the young person is Aboriginal and/or Torres Strait Islander, whether they have any underlying medical or mental health conditions and their age, as well as the supports being provided to them and any incidents.

The PAEC Interim Report noted that the LIV recommended that the 'Children's Commissioner be notified of any period of isolation, including periods where entitlements are suspended.'³⁵ VALS supports this recommendation, but also recommends that the VALS Custody Notification Service be notified any time an Aboriginal child in detention is placed in isolation under the Act, or is in effective isolation as a result of lockdown.

Finally, VALS notes with concern that there are no provisions allowing for a reduction in sentence if a child is placed in isolation.

Recommendation 17: The COVID-19 Omnibus Act should be amended to remove isolation of children or young people as a preventive measure. Isolation should be limited to medical isolation for children or young people who are COVID-19 positive and potentially in cases where they are symptomatic.

Recommendation 18: Any legislation in relation to isolation of children or young people must be drafted such that staff do not have wide discretion. Legislation must be clear as to the circumstances in which isolation is permitted.


Recommendation 19: The *Children, Youth and Families Act* should be amended as follows -

- any force used to place a child or young person in isolation must be only as a last resort;
- minimum force should be used, and only for the duration that is strictly necessary to place the child in isolation;

³³ COVID-19 Omnibus (Emergency Measures) Act 2020 s600M(6).

³⁴ COVID-19 Omnibus (Emergency Measures) Act 2020 s600M(7).

³⁵ Public Accounts and Estimates Committee, Inquiry into the Victorian Government's response to the COVID-19 pandemic Interim Report (July 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf

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- any use of force should be filmed and the recording should be made available to the children and their lawyer upon their request;
 - there should be a register where staff record the steps taken and alternatives pursued before making the decision to use force, which should also be made available to the children and their lawyer upon their request.

Recommendation 20: There should be additional guidance and training for staff on exercising any powers to place children or young people in isolation, including the use of force.

Recommendation 21: No children should ever be placed in solitary confinement, particularly children or young person with mental or physical disabilities, or histories of trauma.

Recommendation 22: Prolonged solitary confinement amounts to torture, and no children or young person should be subjected to this.

Recommendation 23: The *Children, Youth and Families Act* should be amended to specifically prohibit the Secretary from authorising further periods of isolation of children and young people already placed in isolation, where this would effectively extend the total period of isolation of the child for more than 14 consecutive days.

Recommendation 24: The *COVID-19 Omnibus Act* should be amended to explicitly provide for the rights of children and young people in isolation, including guaranteeing meaningful contact with other people and time out of cell, in fresh air, every day.

Recommendation 25: Staffing and other operational issues should be urgently addressed, to ensure no child is subjected to solitary confinement and that all children and young people have time out of cell while in isolation.

Recommendation 26: There should be increased transparency in relation to the operationalisation of isolation under the *COVID-19 Omnibus Act*, and the safeguards that have been put in place.

Recommendation 27: Children and young people in protective quarantine should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.

Recommendation 28: A register of all children and young people placed in isolation should be maintained.

- The register should include information such as age, gender, disabilities, medical conditions, mental health conditions and Aboriginality of children and young people in protective quarantine.
- Information should also be provided in relation to the length and the nature of meaningful contact provided on a daily basis, how much time children and young people spend out of cell, and the services made available to them and used by them.
- Any incidents, such as attempted self-harm, should also be included.



Recommendation 29: VALS Custody Notification Service should be notified any time an Aboriginal child or young person in detention is placed in isolation under the *Children, Youth and Families Act*, or is in effective isolation as a result of lockdown.

Recommendation 30: There should be a legislated allowance for a reduction in sentence if a child or young person is placed into isolation in a scheme comparable to the legislated Emergency Management Days available to incarcerated adults.

6. Lockdowns and isolation

VALS is concerned that the periods of isolation, protective and transfer quarantine and cycles of lockdown will have negative impacts on the health and wellbeing of Aboriginal people who are detained. Discussed in greater detail below, VALS recommends that the Victorian Government immediately begin releasing people from detention and curb admissions to detention as a preventive measure, rather than relying on harmful and excessive quarantine, lockdown and isolation measures.

Lockdown in youth detention facilities

On 19 July 2020, it was reported that Malmsbury Youth Justice Centre went into lockdown after an education co-ordinator tested positive to a COVID-19 test.³⁶ Media reported on 23 July 2020, the Department of Justice confirmed young people at the Malmsbury Youth Justice Centre had been locked in their bedrooms alone since Sunday, 19 July 2020.³⁷ On 20 July 2020, it was reported that a detained child tested positive at Parkville youth justice centre, and that the facility was locked down and the child placed in isolation. As at 27 July 2020, 6 cases had been linked to Parkville Youth Justice.³⁸ As of 26 August, 19 detained youth had tested positive in Victoria.³⁹

Concerns regarding the use of lockdowns and isolation in youth detention in Victoria predate the pandemic. In the Koorie Youth Council report, Ngaga-Dji, one of the participants said the following of isolation:

I get fed through a slot. Sh*t. It's f*cked. It's beyond anything. The food comes out stale and hard. It's not somewhere you want to be. It's f*cked. It's the worst experience of my life... It's definitely not a way to live. It has a massive impact on you. It's weird.⁴⁰

The Commissioner for Children and Young People, in its report on isolation, separation and lockdowns stated that '[o]ne of the most consistent observations from children and young people was how hard they found the unpredictability of lockdowns. Predictability and routine is a fundamental aspect of trauma-informed models of care. Unpredictability contributes to emotional instability in children and young people who have

³⁶ Tom O'Callaghan, Malmsbury Youth Justice Centre goes into COVID-19 lockdown (19 July 2020), available at <https://www.bendigoadvertiser.com.au/story/6839696/malmsbury-youth-justice-centre-goes-into-covid-19-lockdown/>

³⁷ Beth Gibson (ABC) on Twitter (23 July 20)

³⁸ Corrections, Prisons and Parole, Our response to coronavirus (COVID-19), available at <https://www.corrections.vic.gov.au/covid19>

³⁹ Benita Kolovos, 50 Vic inmates, staff contract COVID-19 (26 August 2020), available at <https://www.bendigoadvertiser.com.au/story/6896123/50-vic-inmates-staff-contract-covid-19/>

⁴⁰ Koorie Youth Council, Ngaga-Dji (Hear Me): young voices creating change for justice (2018) page 51, available at <https://static1.squarespace.com/static/5b7d09f775f9ee5cf0a54a07/t/5b860aff352f53267bc3486c/1535511527195/Ngaga-dji+report+August+2018.pdf>



a history of complex trauma.⁴¹ The Commission also considered ‘the extensive use of lockdowns due to staff shortages to be entirely unacceptable,’ recommending that ‘workforce planning and development be addressed as a matter of priority.’⁴²

The Victorian Ombudsman similarly highlighted concerns in its report, that practices in detention ‘had the potential to deny... children and young people access to at least one hour of fresh air per day, as required under the Mandela Rules.’⁴³

These more recent reports echoed the findings of the Royal Commission into Aboriginal Deaths in Custody:

The effects of institutionalisation on Aboriginal children is particularly destructive because Aboriginal culture and ‘institutional’ culture are virtually direct opposites, the former being permissive, egalitarian, strongly interactive, and kin based while the latter is authoritarian, punitive, hierarchical, individualistic and impersonal.⁴⁴

Lockdown in prisons

In May, there was a two-week full prison lockdown at Hopkins prison,⁴⁵ as well as partial lockdowns at Melbourne Assessment Prison (MAP), Port Phillip Prison and Melbourne Remand Centre (MRC). Corrections Victoria advised that partial lockdowns have involved half of the prisoners being locked down for half the day, and the other half being locked down for the other half of the day. However, VALS had one client who reported being locked down at Port Phillip Prison for 20 hours a day for four weeks.

On 17 July 2020, ‘a prisoner, who was in Protective Quarantine at the Metropolitan Remand Centre, returned a positive result to coronavirus (COVID-19) and has since been placed into isolation.’ On 21 July 2020, a GEO prison officer at Ravenhall Correctional Centre tested positive for COVID-19. While the officer’s contact with other staff and prisoners was being determined, Ravenhall and five prisons were placed into lockdown, including Hopkins Correctional Centre, Langi Kal Kal, Barwon Prison, Fulham and Loddon. On 22 July 2020, an ‘asymptomatic prisoner, who was in Protective Quarantine at the Metropolitan Remand Centre... returned a positive result to... COVID-19.’ On 23 July 2020, precautionary lockdown measures at Hopkins Correctional Centre, Barwon Prison, Loddon Prison and Langi Kal Kal Prison were lifted. On 24 July 2020, precautionary lockdown measures were taken at Loddon (including Middleton annex) and Tarrengower prisons ‘to assess whether the prisons have had any exposure to the community transmission case at Don KR Castlemaine and respond appropriately if any link is found’ and Fulham Correctional Centre resumed normal operations. Later that same day, Loddon (including Middleton annex) and Tarrengower prisons resumed normal operations.

⁴¹ Commissioner for Children and Young People, *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017), page 82, available at: <https://ccyp.vic.gov.au/assets/Publications-inquiries/The-Same-Four-Walls1.pdf>

⁴² Commissioner for Children and Young People, *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017), page 17, available at: <https://ccyp.vic.gov.au/assets/Publications-inquiries/The-Same-Four-Walls1.pdf>

⁴³ Victorian Ombudsman, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people* (September 2019), page 158, available at: <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/OPCAT-in-Victoria-A-thematic-investigation-of-practices-related-to-solitary--September-2019.pdf?mtime=20191216123911>

⁴⁴ J Wooten, *Royal Commission into Aboriginal Deaths in Custody, ‘Regional Report of Inquiry In New South Wales, Victoria and Tasmania’* (1991).

⁴⁵ Evidence provided by Commissioner for Corrections, Emma Casser, to the Public Accounts and Estimates Committee, *Parliamentary Inquiry into the Government’s response to COVID-19 on 19 May 2020*.



On 25 July 2020, normal operations resumed at Ravenhall Correctional Centre.⁴⁶ On 17 August 2020, Port Phillip Prison was locked down as a precautionary measure.⁴⁷

It is impossible to guarantee exclusion of COVID-19 from places of detention and that repeated cycles of lockdown are likely to continue in the future. Excessive lockdown will have a deleterious effect on the people who are detained, as well as their families and communities, which are understandably anxious and distressed about the risks to people in detention and the obstacles to maintaining contact during the pandemic due to suspension of family visits.

It should also be noted that the CDNA Guidelines state that an ‘ongoing outbreak does not mean the facility has to go into complete “lock down”’. It is preferable that new inmates are not admitted to an affected unit during an outbreak. If new admissions cannot be avoided, inform of the current outbreak. Adequate outbreak control measures must be in place for these new inmates.⁴⁸

7. Other measures taken in detention

Cleaning of prisons by incarcerated people

As previously stated in VALS’ media release,⁴⁹ although the risk of contracting COVID-19 can only be adequately mitigated by releasing people from detention and curbing admissions, to allow for physical distancing in detention, maintaining exceptional cleaning and hygiene practices is an essential component of any prevention plan. Even if deep cleaning of areas such as quarantine is being carried out by professionals, it is not appropriate for detained people to undertake the crucial, but high risk, work of cleaning any part of the prison in the midst of a pandemic, in the middle of a declared State of Disaster, and VALS is highly concerned by reports that people detained in prison are undertaking the high-risk work of cleaning common areas of prisons. VALS’ concerns regarding this inappropriate practice are compounded by reports that detained people are being paid small amounts of money to undertake this hazardous work.

This is particularly the case in light of the fact that many detained people have underlying health conditions that put them at high risk of becoming seriously ill or dying should they contract COVID-19. The Australian Institute of Health and Welfare’s 2019 paper, ‘The Health of Australia’s prisoners’, found that 30% of people entering prison had chronic physical health conditions, including arthritis, asthma, cancer, cardiovascular disease, or diabetes. Alarming in the context of COVID, asthma was the most common chronic physical health condition reported, with 22% of people having it.⁵⁰

⁴⁶ Corrections, Prisons and Parole, Our response to coronavirus (COVID-19), available at <https://www.corrections.vic.gov.au/covid19>

⁴⁷ Corrections, Prisons and Parole, Our response to coronavirus (COVID-19), available at <https://www.corrections.vic.gov.au/covid19>

⁴⁸ Communicable Diseases Network Australia, Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 30, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>

⁴⁹ Victorian Aboriginal Legal Service, Media Release: The crucial and high-risk job of cleaning prisons to prevent a COVID-19 outbreak should be undertaken by professional cleaning staff, who have access to PPE (10 August 2020)

⁵⁰ Australian Institute for Health and Welfare, The health of Australia’s prisoners 2018 (30 May 2019), available at <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/table-of-contents>



VALS is of the firm view that cleaning prisons should be undertaken by professional cleaning staff, with appropriate measures being put in place to prevent COVID-19 transmission between cleaning staff, people who are detained and the wider community.

It is expected that protection of people undertaking cleaning of any part of the prison would meet rigorous standards. The Australian Government Department of Health, with the endorsement of the Infection Control Expert Group, recommends that in health and residential care facilities, cleaning staff 'should wear impermeable disposable gloves and a surgical mask plus eye protection or a face shield while cleaning.'⁵¹ The Communicable Diseases Network Australia Guidelines recommend that detention cleaning staff 'wear appropriate PPE, including impermeable disposable gloves and a surgical mask, gown or apron, eye protection or a face shield while cleaning.'⁵² WHO Europe recommends that in places of detention, 'prison staff (including cleaning personnel) receive training on environmental prevention measures, including cleaning and disinfection.'⁵³

If incarcerated people wish to undertake this work because they are struggling due to lack of programs, family contact, meaningful contact with people generally or time out of cell, these underlying issues must be addressed. Everyone who is currently incarcerated should have the ability to contact family remotely (given the suspension of personal visits) and should have access to personal hygiene products such as soap. VALS supports people in prisons being provided training and acquiring skills that can aid in their rehabilitation and assist them to secure employment upon release. Incarcerated people should be supported to have access to relevant programs in a safe way, under the current circumstances.

If people are undertaking cleaning work because they do not have sufficient funds, the Victorian Government should ensure that people who are incarcerated have alternative, safe means of acquiring sufficient funds. This may mean that Corrections provides funds directly, as needed, rather than people being put in a position where they have to make the difficult decision of undertaking hazardous work. This would be comparable to the JobSeeker and JobKeeper measures adopted in the general community.

⁵¹ Australian Government Department of Health, Coronavirus (COVID-19) Environmental cleaning and disinfection principles for health and residential care facilities (26 March 2020), available at <https://www.health.gov.au/resources/publications/coronavirus-covid-19-environmental-cleaning-and-disinfection-principles-for-health-and-residential-care-facilities>

⁵² Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 28-29, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>

⁵³ WHO Europe, Checklist to evaluate preparedness, prevention and control of COVID-19 in prisons and other places of detention, available at https://www.euro.who.int/_data/assets/pdf_file/0020/438041/Covid19-PrisonsChecklist-eng.pdf



Recommendation 31: In recognition of the harm of excessive and cyclical lockdowns of places of detention to people’s health and wellbeing, VALS recommends that the Victorian Government instead employ a preventive strategy of releasing people from detention and curbing admissions to detention.

Recommendation 32: Facilities should not, by default, go into complete “lock down” during a COVID-19 outbreak.

Recommendation 33: Staffing and other operational issues should be urgently addressed, to ensure lockdowns do not occur as a result of inadequate staff to safely manage the facility.

Recommendation 34: No one should be in effective solitary confinement as a result of lockdown, particularly children and people with mental or physical disabilities.

Recommendation 35: If lockdowns occur, people should be provided supports and services (including mental health services and cultural supports and services provided by Aboriginal Community Controlled Organisations), and means by which to contact family, lawyers, independent oversight bodies, and Aboriginal Community Controlled Organisations, including VALS.

Recommendation 36: There should be a legislated allowance for a reduction in sentence if a child is subjected to lockdown, in a scheme comparable to the legislated Emergency Management Days available to incarcerated adults.

Recommendation 37: Information on how lockdowns are being operationalised should be made publicly available (particularly to families, legal services and Aboriginal Community Controlled Health Organisations), and regular updates should be shared.

Recommendation 38: The practice of having incarcerated people clean any part of prisons must cease immediately. This work should be undertaken by professional cleaning staff, with appropriate measures

Decarceration strategies must form part of the government’s public health response

8. Mitigating COVID-19 risks in detention

The Attorney-General gave the following evidence to the PAEC Inquiry, when questioned about early release of prisoners:

Government is confident that we can keep the virus out of the prisons and that is the policy decision that we made... It is no short order that there hasn’t been one outbreak – this is due to incredibly hard work of those running the system. We made a policy decision that this is what we will put our efforts into instead of considering decarceration measures. We felt confident we could manage it with the tools we have available.⁵⁴

⁵⁴ 19 May 2020, available at <https://www.parliament.vic.gov.au/paec/article/4494>



However, now 'more than 50 inmates and corrections staff have contracted COVID-19 in Victoria since the start of the pandemic. Attorney-General Jill Hennessy has told a parliamentary inquiry 23 adult prisoners and six staff have tested positive... Another 19 juvenile inmates... and four prison staff had also tested positive. Only one staff member worked while potentially infectious and Ms Hennessy maintains there was no "prisoner-prisoner transmission" in the youth justice system.'⁵⁵

These numbers might seem relatively low, but we have seen how quickly things have escalated in the community in Victoria, to the point where the Victorian Government declared a State of Disaster, and a tragedy has been unfolding in another type of closed environment; Aged Care facilities. The Aged Care Royal Commission was told that the Australian aged care sector was unprepared for the inevitable outbreaks of COVID-19 and that federal authorities had no plan for dealing with it.⁵⁶ The cumulative case numbers in Aged Care in Victoria had reached 1,819 (in Australia it is 1,882).⁵⁷ Prevention is key in the fight against COVID-19, and the Victorian Government must learn the lessons from the Aged Care sector and be proactive in the criminal legal system.

It should also be noted that the Communicable Disease Network Australia guidelines describe a COVID-19 outbreak as a 'single confirmed case of COVID-19 in an inmate or staff member of a correctional or detention facility.'⁵⁸ This means that there have been multiple COVID-19 outbreaks across the prison and youth detention systems in Victoria.

The Victorian Government has a responsibility to implement measures to keep everyone safe and healthy, especially the people who are in its care. People in detention are incredibly vulnerable, unable to take steps such as physical distancing to protect themselves. Physical distancing in prisons and youth detention facilities is impossible, and the risks due to overcrowding are compounded by poor sanitary conditions, making it difficult to control the spread of COVID-19. Getting control of an outbreak of COVID-19 in detention will be much more difficult than preventing an outbreak in the first place.

The CDNA Guidelines provide information on environmental cleaning and disinfection, which should, as a minimum, be followed.⁵⁹ Additionally, there should be extensive COVID-19 testing of the general prison and youth detention populations, and detained people should have easy, prompt and ongoing access to appropriate and sufficient PPE, and soap and hand sanitiser (all free of charge). When assessing what is appropriate PPE, it should be noted that, as of Monday 24 August 2020, all people entering any correctional

⁵⁵ Benita Kolovos, 50 Vic inmates, staff contract COVID-19 (26 August 2020), available at <https://www.bendigoadvertiser.com.au/story/6896123/50-vic-inmates-staff-contract-covid-19/>

⁵⁶ Rachel Mealey, Aged Care Royal Commission says sector was "underprepared" (10 August 2020), available at <https://www.abc.net.au/radio/programs/pm/aged-care-sector-was-underprepared/12543080>

⁵⁷ Australian Government Department of Health, COVID-19 cases in aged care services – residential care (31 August 2020) available at <https://www.health.gov.au/resources/covid-19-cases-in-aged-care-services-residential-care>

⁵⁸ Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 23, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>

⁵⁹ Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 28-29, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>



facility ('all metropolitan and regional public and private prisons, transition centres, post-sentence facilities and the Maribyrnong Community Residential Facility') are required to wear eye protection, 'including Corrections Victoria staff, service providers, professional visitors and contractors.'⁶⁰

- Recommendation 39:** All places of detention must be subject to regular, preventative cleaning that meets, at a minimum, the CDNA Guidelines on environmental cleaning and disinfection.
- Recommendation 40:** There should be extensive COVID-19 testing of the general prison and youth detention populations.
- Recommendation 41:** All people in places of detention must have easy, prompt and ongoing access to appropriate PPE (including masks and, where appropriate, eye protection), and soap and hand sanitiser (all free of charge).
- Recommendation 42:** Staff, including those involved in transport, should wear appropriate PPE.

9. Heightened risk for Aboriginal and/or Torres Strait Islander people

The Black Lives Matter movement has brought national and international attention to the long-standing injustice that is the mass imprisonment of Aboriginal and/or Torres Strait Islander people. The overrepresentation of Aboriginal and Torres Strait Islander people in the criminal legal system - due to colonisation, systemic racism and entrenched socioeconomic disadvantage - means that they will be disproportionately impacted by outbreaks of COVID-19 in Victoria's prisons and youth detention facilities.

Recently, the Sentencing Advisory Council released statistics, 'Victoria's Indigenous Imprisonment Rates',⁶¹ which showed that '[b]etween 2009 and 2019, the imprisonment rate for Aboriginal and Torres Strait Islander Victorians was consistently higher than the imprisonment rate for the total Victorian population' and that in 2019 'the imprisonment rate for Aboriginal and Torres Strait Islander Victorians was 2,267.7 per 100,000 adults, but the imprisonment rate for all Victorians was 157.1 per 100,000 adults.' The statistics also showed that 'Victoria's Aboriginal and Torres Strait Islander imprisonment rate *more than doubled between 2009 and 2019*, from 839.4 to 2,267.7 per 100,000 adults. Overall, Victoria's imprisonment rate also grew, albeit to a smaller extent, from 104.9 in 2009 to 157.1 in 2019' (emphasis added).⁶²

The UN Office of the High Commissioner for Human Rights has stated that 'ethnic minority and socioeconomically disadvantaged individuals are differentially affected by both the criminal justice system

⁶⁰ DJCS, Mandatory wearing of eye protection Information for staff, visitors and contractors at all Victorian correctional facilities (20 August 2020)

⁶¹ Sentencing Advisory Council, Victoria's Indigenous Imprisonment Rates, available at <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/victoria-indigenous-imprisonment-rate>

⁶² Sentencing Advisory Council, Victoria's Indigenous Imprisonment Rates, available at <https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/victoria-indigenous-imprisonment-rate>



and COVID-19'.⁶³ It also highlighted that 'widespread community transmission of COVID-19 within a correctional institution is likely to result in a disproportionately high COVID-19 mortality rate.'⁶⁴

Aboriginal and/or Torres Strait Islander people in custody are also particularly vulnerable to becoming seriously ill or dying due to COVID-19, with many people having underlying medical conditions. Due to this heightened risk, Aboriginal people should be among those who are prioritised for release from detention.

Recommendation 43: VALS Custody Notification Services officers and families should be notified immediately of confirmed COVID-19 cases of detained Aboriginal people.

Recommendation 44: Aboriginal people should be among those who are prioritised for early or temporary release from places of detention.

10. The risk to the community with COVID-19 outbreaks in detention

Places of detention are not insulated from the rest of the community; people enter and exit places of detention on a daily basis, including people who are released back into the community (on bail, parole and on sentence completion) and people who enter places of detention upon arrest or sentencing, as well as staff and contractors. The porous nature of detention facilities makes it highly likely that any COVID-19 outbreaks in detention will spread to the community. The health of the people in custody is inextricably linked to the health of all Victorians during this pandemic.

The devastation that follows the spread of COVID-19 in detention has been demonstrated in countries such as the USA. In fact, an American Civil Liberties Union study concluded that 'COVID-19 could claim the lives of approximately 100,000 more people than current projections stipulate if jail populations are not dramatically and immediately reduced, according to a new epidemiological model.'⁶⁵ In the US, 'of the top 100, only 11 were not a jail or prison,'⁶⁶ and as of 25 August, more than 108 thousand people in prison had tested positive for COVID-19, and 928 people had died. Among prison staff, there have been more than 24 thousand cases and 72 deaths.⁶⁷ The US-based Sentencing Project has been tracking COVID-19's rapid spread among children in youth detention. As of 28 August, 1,674 youth and 2,230 staff had been confirmed positive for COVID-19.⁶⁸

11. Expert advice to reduce the number of people in detention as a preventative measure during the pandemic

⁶³ Office of the High Commissioner for Human Rights, *Human Rights Dispatches: human rights issues within the context of the coronavirus pandemic* - Human Rights Dispatch No. 2: COVID-19 and the protection of the right to life in places of detention, available at <https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

⁶⁴ Office of the High Commissioner for Human Rights, *Human Rights Dispatches: human rights issues within the context of the coronavirus pandemic* - Human Rights Dispatch No. 2: COVID-19 and the protection of the right to life in places of detention, available at <https://www.ohchr.org/EN/Issues/Executions/Pages/HumanRightsDispatches.aspx>

⁶⁵ American Civil Liberties Union, *Flattening the curve: Why reducing jail populations is key to beating COVID-19*, available at <https://www.aclu.org/report/flattening-curve-why-reducing-jail-populations-key-beating-covid-19>

⁶⁶ Stacy Weiner, *Prison should not be a COVID-19 death sentence* (27 August 2020), available at <https://www.aamc.org/news-insights/prison-should-not-be-covid-19-death-sentence>

⁶⁷ The Marshall Project, *A State-by-State Look at Coronavirus in Prisons*, available at <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons>

⁶⁸ The Sentencing Project, *COVID-19 in Juvenile Facilities*, available at <https://www.sentencingproject.org/publications/covid-19-in-juvenile-facilities/>



Decarceration is an essential component of a comprehensive and responsible COVID-19 public health strategy.

For months, international experts have urged governments to take preventive measures by releasing people who are detained and curbing admissions, in anticipation of COVID-19 entering places of detention. These experts have included:

- Inter-Agency Standing Committee - Office of the High Commissioner for Human Rights & World Health Organization;⁶⁹
- UN;⁷⁰
- UN High Commissioner for Human Rights;⁷¹
- UN Office on Drugs and Crime;⁷²
- Joint UN Programme on HIV/AIDS;⁷³
- UN Committee on the Rights of Persons with Disabilities;⁷⁴
- UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;⁷⁵
- UNODC, World Health Organization, UNAIDS and Office of the High Commissioner for Human Rights Joint statement;⁷⁶
- International Committee of the Red Cross;⁷⁷

⁶⁹ Inter-Agency Standing Committee (IASC - Office of the High Commissioner for Human Rights & World Health Organization), Interim guidance on COVID-19 - Focus on persons deprived of their liberty, (27 March 2020), available at https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf?fbclid=IwAR15OxMsEUy95mbNsNixIMB5XcpSIS5_HEOeCyzj5X75SZx4VYiPZ195Aes

⁷⁰ United Nations, COVID-19 and Human Rights: We are all in this together (April 2020) available at https://www.un.org/sites/un2.un.org/files/un_policy_brief_on_human_rights_and_covid_23_april_2020.pdf?fbclid=IwAR0eQuoQ_XPGPu29GpFFdv3K1luCsUr51HobiS-vG8pPoYpeVxC2rLzBfeio

⁷¹ Office of the High Commissioner for Human Rights, Urgent action needed to prevent COVID-19 “rampaging through places of detention” dated (25 March 2020), available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25745&LangID=E&fbclid=IwAR1MrRIJ3J3LdKub1w3GUx2WXB4AlvpXZHoWbjCRRpY70EB_E_X4vZMgcvA

⁷² United Nations Office on Drugs and Crime, Position Paper, “COVID-19 preparedness and responses in prisons” (31 March 2020), available at https://www.unodc.org/documents/Advocacy-Section/UNODC_Position_paper_COVID-19_in_prisons.pdf?fbclid=IwAR1KI_OvlaXp2yL3pn0i4J5lCrSna84l6rSmEUtd5zN57ilnd7UBt5Adr1c; United Nations Office on Drugs and Crime, Position Paper, “COVID-19 preparedness and responses in prisons”, (31 March 2020), available at https://www.unodc.org/documents/Advocacy-Section/UNODC_Position_paper_COVID-19_in_prisons.pdf?fbclid=IwAR1KI_OvlaXp2yL3pn0i4J5lCrSna84l6rSmEUtd5zN57ilnd7UBt5Adr1c

⁷³ UNAIDS, Rights in the time of COVID-19: Lessons from HIV for an effective, community-led response, available at https://www.unaids.org/sites/default/files/media_asset/human-rights-and-covid-19_en.pdf

⁷⁴ The Chair of the United Nations Committee on the Rights of Persons with Disabilities, on behalf of the Committee on the Rights of Persons with Disabilities and the Special Envoy of the United Nations Secretary-General on Disability and Accessibility, Joint Statement: Persons with Disabilities and COVID-19 available at https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDStatements.aspx?fbclid=IwAR10gfvevIvb_drrGXGHVBOUJZCi2PgeW8FYKrBlm9U4MQOObT1nYeRRRMO

⁷⁵ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (25 March 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf?fbclid=IwAR1gRVb3AegXqmqYHolrF_ADExsM9M3aYYdGenVJBKcOj-ERHflbe1CTb_8

⁷⁶ UNODC, World Health Organization, UNAIDS and Office of the High Commissioner for Human Rights, Joint statement on COVID-19 in prisons and other closed settings (13 May 2020), available at <https://www.who.int/news-room/detail/13-05-2020-unodc-who-unaid-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>

⁷⁷ International Committee of the Red Cross, COVID-19: Authorities must protect health of detainees, staff and ultimately surrounding communities, (7 April 2020), available at <https://www.icrc.org/en/document/covid-19-places-detention-must-protect-health-detainees-staff-and-ultimately-surrounding>

- Council of Europe⁷⁸ and World Health Organization (Europe).⁷⁹

In Australia there have similarly been calls for releasing people from detention. The Australian Medical Association's submission to the Commonwealth Government's Senate Select Committee supported 'actions that reduce the number of people held in places of detention,' recognising that Aboriginal and Torres Strait Islander people are 'at higher risk of contracting COVID-19.'⁸⁰ The Australian Indigenous Doctors Association President, Dr Kris Rallah-Baker, shared their concerns with regards to the conditions in prisons during the COVID-19 pandemic and supported NATSILS' calls to Governments to make every effort to prevent Aboriginal and Torres Strait Islander deaths in custody due to COVID-19, noting that Aboriginal and Torres Strait Islander people already have compromised health conditions and that they must be protected from virus. They also noted the importance of preventing the spread of COVID-19 to Aboriginal communities.⁸¹ Professor Stuart Kinner (Chair of the World Health Organization's Health in Prisons Programme) has similarly highlighted that detention is a very high risk setting for COVID-19, that people have limited capacity to physically distance, and the borders between prisons and community are very porous because people move in and out of prisons all the time and staff return home to the community every day after work. He noted that there was a strong argument for finding community-based solutions for people during the pandemic, and returning them to the community.⁸²

NATSILS has called for the release of Aboriginal and Torres Strait Islander people who are on remand, imprisoned for a term of six months or less, and the early release of those who have six months or less left to serve.⁸³

A joint letter, signed by more than 400 experts calling for release of people from detention was drafted in April,⁸⁴ followed up by another two letters, including the most recent one in August.⁸⁵ A joint submission to the Commonwealth Government's Senate Select Committee on COVID-19, endorsed by 40 organisations, including NATSILS, Change the Record, Amnesty International and Australian Lawyers Alliance, as well as 94

⁷⁸ Commissioner for human rights, Council of Europe, COVID-19 pandemic: urgent steps are needed to protect the rights of prisoners in Europe, (6 April 2020) available at https://www.coe.int/en/web/commissioner/-/covid-19-pandemic-urgent-steps-are-needed-to-protect-the-rights-of-prisoners-in-europe?fbclid=IwAR12qkhKv_YPN4IM5GeFUUSAMBDGVjlsZXuSCyvNtBcQjIMwLU9oP2WSw48

⁷⁹ World Health Organization (Europe), Preparedness, prevention and control of COVID-19 in prisons and other places of detention (15 March 2020), available at <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>

⁸⁰ Australian Medical Association's submission to the Senate Select Committee (May 2020), available at <https://t.co/P8FDpmjtHZ?amp=1>

⁸¹ NATSILS and the Australian Indigenous Doctors Association back calls for the early release of prisoners to prevent the spread of COVID-19 (01 May 2020), available at <http://www.natsils.org.au/portals/natsils/Media%20Releases/Media%20Release%201%20May%202020%20AIDA%20and%20NATSILS%20Joint%20Endorsement.pdf?ver=2020-05-01-102715-463>

⁸² Prisons in lockdown to block spread of COVID-19 (22 July 2020), available at <https://www.abc.net.au/radio/adelaide/programs/worldtoday/prisons-in-lockdown-to-block-spread-of-covid19/12480918>

⁸³ NATSILS Policy Statement on COVID-19 (8 April 2020), available at <http://www.natsils.org.au/portals/natsils/08042020%20NATSILS%20COVID-19%20Policy%20Statement.pdf?ver=2020-04-08-201212-553>

⁸⁴ Hundreds of experts sign open letter calling for release of prisoners to avoid coronavirus deaths (7 April 2020), available at https://amp.sbs.com.au/v1/article/hundreds-of-experts-sign-open-letter-calling-for-release-of-prisoners-to-avoid-coronavirus-deaths/386db915-766c-4391-ad77-9a1d2741c899?amp=1&_twitter_impression=true

⁸⁵ Legal sector sign on to open letter calling for urgent release of people from adult and youth prisons as COVID-19 spread rapidly in prisons, available at <http://www.natsils.org.au/portals/natsils/Media%20Releases/3rd%20Letter%20Media%20Release%201308203%20final.pdf?ver=2020-08-13-142116-177>



experts (including academics) recommended that ‘Federal, State and Territory Governments must take immediate action to reduce the number of people held in places of detention. This should include responsibly releasing people who are at higher risk of significant harm should they contract COVID-19, including Aboriginal and Torres Strait Islander people, elderly people, people with chronic health conditions, people living with disability, people with mental health conditions, children, young people, pregnant women, primary caregivers for young children.’⁸⁶ These recommendations were echoed in a joint submission to the Special Rapporteur on the rights of Indigenous peoples, that was endorsed by 22 Australian civil society organisations, 4 university centres across 2 universities and 75 experts.⁸⁷

Recently, the Law Institute Victoria and Federation of Community Legal Centres released their decarceration strategy, a ‘nine-point plan to reduce the number of people in Victoria’s prison system to protect Victorians from further outbreaks of COVID-19.’⁸⁸

Also of note, recommendation 15 of the PAEC Interim Report was that ‘Corrections Victoria confirm all Victorian prisons and youth justice centres comply with the Communicable Disease Network Australia Guidelines for the prevention, control and public health management of COVID-19 outbreaks in correctional and detention facilities in Australia and confirm an infection control program has been formalised and is being fully implemented at each site.’⁸⁹ This should be considered in light of the fact that the CDNA Guidelines have been updated, and advise to ‘[c]onsider other measures to protect vulnerable inmates including early release or alternative accommodation. This particularly applies to inmates considered suitable for early release and youth.’⁹⁰

VALS has repeatedly called for a reduction in the number of people in places of detention:

- The Victorian government must do more for Aboriginal people impacted by COVID-19 (24 April 2020);⁹¹
- VALS calls for a human rights compliant, health driven government response to confirmed COVID-19 case in Melbourne prison (17 June 2020);⁹²

⁸⁶ OPCAT, places of detention and COVID-19: Joint submission to the Select Committee on COVID-19: Pre-Committee Version (27 May 2020), available at <https://www.hrlc.org.au/s/COVID-19-OPCAT-places-of-detention-and-COVID-19-Pre-Committee-Version.pdf>

⁸⁷ National Aboriginal and Torres Strait Islander Legal Services, Danila Dilba Health Service, Aboriginal Peak Organisations of the Northern Territory, Andreea Lachs, Joint Submission for the Report of the Special Rapporteur on the Rights of Indigenous Peoples to the General Assembly – Impact of COVID-19 on Indigenous Peoples, available at https://www.ohchr.org/Documents/Issues/IPeoples/SR/COVID-19/IndigenousCSOs/Australia_National_Aboriginal_Torres_Strait_Islander.docx

⁸⁸ Law Institute Victoria and Federation of Community Legal Centres, Pathway to Decarceration: A Justice System Response to COVID-19 (26 August 2020), available at https://www.fclc.org.au/pathway_to_decarceration_protecting_victorians_from_covid_19_outbreaks

⁸⁹ Public Accounts and Estimates Committee, Inquiry into the Victorian Government’s response to the COVID-19 pandemic Interim Report (July 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf

⁹⁰ Communicable Diseases Network Australia, Coronavirus Disease 2019 (COVID-19) Outbreaks in Correctional and Detention Facilities: CDNA National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia (version 3, updated 24 July 2020) page 30, available at <https://www.health.gov.au/sites/default/files/documents/2020/07/cdna-guidelines-for-the-prevention-control-and-public-health-management-of-covid-19-outbreaks-in-correctional-and-detention-facilities-in-australia.pdf>

⁹¹ Available at <https://www.vals.org.au/wp-content/uploads/2020/06/VALS-press-release-The-Victorian-government-must-do-more-for-Aboriginal-people-impacted-by-COVID-19.pdf>

⁹² Available at <https://www.vals.org.au/vals-calls-for-human-rights-compliant-response-to-covid-19-case-in-melbourne-prison/>

- The Government’s decisions over the next few days and weeks are critical to containing the spread of COVID-19 in prisons, youth detention centres and across Victoria (21 June 2020);⁹³
- In a joint media release with the Human Rights Law Centre, Fitzroy Legal Service, Inner Melbourne Community Legal and Flemington & Kensington Community Legal Centre (20 July 2020).⁹⁴

Additional considerations: victims’ and survivors’ and general community safety

VALS notes that we are living in exceptional times, that require exceptional responses. Releasing people from custody is crucial to keeping all Victorians safe from this pandemic, including survivors and victims. For a long time, there has been an overreliance on prison as a solution to myriad social and economic issues, including the ongoing impacts of colonisation, the entrenched socioeconomic disadvantages facing Aboriginal people today, and systemic racism. For years, VALS has been calling for reform of a criminal legal system that is not culturally appropriate for Aboriginal people, and does not achieve improved community safety outcomes. The pandemic is a crisis that has highlighted the many failings in our social safety net, and VALS encourages the Victorian Government to see this moment of crisis as an opportunity to address some of the persistent issues and shortcomings of the criminal legal system, especially when the health and livelihoods of Victorians can be protected through criminal justice reforms.

Of course, measures can, and should, be put in place to protect victims and survivors. In fact, many of the safeguards for victims and survivors are directly related to supporting people transitioning out of prison. People leaving prison should be provided wrap-around services to ensure they have access to the essentials, such as access to housing, food and medical care, as well as specialist services such as counselling. For example, the Australian Institute of Health and Welfare released a paper in 2019, ‘The Health of Australia’s prisoners’, that reported more than half (54%) of people leaving prison expected to be homeless upon release.⁹⁵ It is essential that people transitioning out of prison have somewhere safe to stay, especially during this pandemic.

It is also important to take into account the fact that around half (46.2%) of Aboriginal and Torres Strait Islander people (and 61.4% of Aboriginal and Torres Strait Islander women) in prison in Victoria are on remand, not having been found guilty of an offence.⁹⁶

Recommendation 45: The Victorian Government should decrease the number of people in places of detention as part of a responsible and comprehensive public health strategy.

Recommendation 46: The Victorian Government should take steps to keep survivors and victims safe, including making suitable housing available for people who are released from custody, and properly funding culturally appropriate supports and services delivered by Aboriginal Community Controlled Organisations, such as VALS’ Baggarrook program.

⁹³ Available at <https://www.vals.org.au/the-governments-decisions-are-critical-to-containing-the-spread-of-covid-19-in-prisons-youth-detention-centres/>

⁹⁴ Available at <https://www.hrlc.org.au/news/2020/7/20/andrews-govt-must-reduce-number-of-people-in-prisons-covid-19>

⁹⁵ The health of Australia’s prisoners 2018 (30 May 2019), available at <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/table-of-contents>

⁹⁶ Annual Prisoner Statistical Profile 2006-07 to 2018-19, available at <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2006-07-to-2018-19>



12. Means by which to reduce the number of people in detention

In a joint media release on 20 July 2020, VALS, Human Rights Law Centre, Fitzroy Legal Service, Inner Melbourne Community Legal and Flemington & Kensington Community Legal Centre recommended that the number of people in detention be reduced by:

- ‘Granting administrative leave on health grounds to those most at risk of COVID-19 and most impacted by restrictive measures - like increased use of solitary confinement - being used to try to contain the virus. Priority in this process should be given to elderly people, people with chronic health conditions, people with disability and mental health conditions, children, young people and Aboriginal and Torres Strait Islander people;
- Using existing legal powers to grant 14 days early release to people in prison who are close to the end of their sentence;
- Granting parole or leave to people in prison who pose a low risk to the community if released;
- Granting parole or leave to children and young people, so that they can be with, and be supported by, their families and community during this ongoing public health emergency; and
- Making bail more accessible for children, young people and adults on remand, who are yet to be found guilty of any criminal offending and who pose a low risk to the community if released.’⁹⁷

Administrative leave

Given that 25.5% of men and 40.9% of women serve terms of imprisonment that are less than one month,⁹⁸ prioritising releasing people from prison is the only responsible approach.

The Secretary can issue permits for a period longer than 3 days ‘if the permit is to be issued... for a purpose related to the health of the prisoner.’⁹⁹ Given the high risk of contracting COVID-19 in detention and becoming seriously ill or dying, permits could be issued as a protective measure, and administrative leave should be prioritised for people with chronic health conditions, disabilities and mental health conditions, elderly people and for Aboriginal people.

Additionally, due to the ‘unforeseen and special nature’ of the current circumstances, being the pandemic, people should be released under Emergency Management Days (**EMDs**).¹⁰⁰ VALS encourages Corrections to acknowledge that the pandemic has negatively impacted on all people in detention, albeit to differing degrees. In addition to restrictive regimes of lockdowns, quarantine and isolation, everyone in detention has been impacted by the suspension of programs and personal visits, the anxiety in relation to contracting COVID-19 in the high-risk environment of prison, and the distress of not being able to support and be with their families during this difficult time.

⁹⁷ Victorian Aboriginal Legal Service, Human Rights Law Centre, Fitzroy Legal Service, Inner Melbourne Community Legal and Flemington & Kensington Community Legal Centre (20 July 2020), available at <https://www.hrlc.org.au/news/2020/7/20/andrews-govt-must-reduce-number-of-people-in-prisons-covid-19>

⁹⁸ Annual Prisoner Statistical Profile 2006-07 to 2018-19, available at <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2006-07-to-2018-19>

⁹⁹ *Corrections Act 1986* s57A

¹⁰⁰ *Corrections Act 1986* s58E



VALS is concerned that although the under the *Corrections Act 1986*, up to four EMDs can be granted ‘for each day or part of a day on which the industrial dispute or emergency exists’ and ‘up to 14 days in other circumstances of an unforeseen and special nature,’ ‘the Commissioner has determined that during the COVID-19 emergency, the number of EMDs granted will be close to equivalent to the number of days of disruption or deprivation. The approach is in line with community expectations and the current level of disruption occurring in the broader community, with most individuals not leaving their place of residence except for essential reasons.’¹⁰¹ Although the rest of the community is experiencing restrictions, any comparisons drawn must take into account that people in prison have not had personal visits for a significantly longer period of time than the rest of the community has been subjected to the more extensive lockdowns (such as those under stage 4), that communication via phone and other remote mechanisms is not as readily available for people in prison, and that experiencing restrictions in a prison is more onerous than experiencing restrictions in the community. As such, VALS recommends that Corrections policy be amended so that people can be granted 4 EMDs for each day that the ‘emergency exists’, and the 14 days they could be entitled to due to ‘circumstances of an unforeseen and special nature.’ This would allow, for example, people with 14 days or less left on their sentence to be released

VALS also highlights the lack of transparency and the apparent inconsistent and unfair application of s58E(1) of the *Corrections Act* and Regulation 100 of the *Corrections Regulations 2019*, relating to EMDs. On 2 April 2020, Corrections Victoria announced that prisoners who are of “good behaviour” whilst subjected to protective quarantine or other disruption or deprivation resulting from the COVID-19 pandemic will be eligible for EMDs. Since then, there has been both a lack of information and inconsistent information for both detained people and their advocates regarding when and how EMDs will be applied.

VALS understands that individual EMDs are currently being assessed once every two weeks. One of VALS’ clients, serving a 28 day sentence (having spent 14 days in quarantine), did not receive any reduction in the sentence, despite submitting an EMD application on the first day of sentence and following up multiple times. When VALS followed up to request the reasons for the denial of the EMD, we were advised (on the day before the expiry of the sentence) that the reason for denying the application was because his release was imminent and Corrections needed time to prepare the release. EMD assessments should occur on a more regular basis than fortnightly, to allow adequate time to prepare for release.

VALS also encourages the increased use of temporary leave for children and young people so that they can live with family or in alternative accommodation, as per the *Children, Youth and Families Act 2005* s485. The PAEC, however, was advised of the ‘suspension of most temporary leave arrangements for young people except for medical and compassionate purposes on a case by case basis.’¹⁰²

Recommendation 47: Prison and youth detention populations should be decreased by utilising administrative leave (permits, Emergency Management Days or temporary leave).

¹⁰¹ DJCS, Emergency Management Days – COVID-19 Fact sheet for prisoners (20 April 2020)

¹⁰² Public Accounts and Estimates Committee, Inquiry into the Victorian Government’s response to the COVID-19 pandemic Interim Report (July 2020), available at [https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19 Inquiry/Report/PAEC 59-07 Vic Gov response COVID-19 Interim report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19%20Inquiry/Report/PAEC%2059-07%20Vic%20Gov%20response%20COVID-19%20Interim%20report.pdf)



Recommendation 48: Permits should be prioritised for people with chronic health conditions, disabilities and mental health conditions, elderly people and for Aboriginal people.

Recommendation 49: Corrections, in making decisions in relation to Emergency Management Days, should acknowledge that the pandemic has negatively impacted on all people in detention, albeit to different degrees. EMDs should be granted not only to people who have been subject to isolation or mandatory quarantine, in recognition of the additional hardships faced by everyone in detention.

Recommendation 50: Corrections policy should be amended so that people can be granted 4 Emergency Management Days for each day that the 'emergency exists', and the 14 days they could be entitled to due to 'circumstances of an unforeseen and special nature.'

Recommendation 51: There should be greater transparency in relation to the process by which Emergency Management Days are granted. Information should also be made available in relation to the number of people released on EMDs, how many days they were granted (broken down per month and per facility), and how many Aboriginal and non-Aboriginal people were granted EMDs.

Recommendation 52: EMD assessments should occur on a more regular basis than fortnightly, to allow adequate time to prepare for release.

Recommendation 53: No one should be denied Emergency Management Days due to a lack of housing.

Recommendation 54: There should be an increased use of temporary leave for children and young people.

Parole

Children and young people should be granted parole by the Youth Parole Board under the *Children, Youth and Families Act 2005 s458*). Noting that the Parole Board meets on a fortnightly basis, the frequency of its sittings should be increased.¹⁰³ Parole should also be granted to people in prison, who pose a low risk to the community if released.

Recommendation 55: Parole should be made more accessible for children, young people and adults. Parole Boards should sit more frequently to enable them to process more parole applications.

Recommendation 56: Funding should be provided to VALS to hire staff to assist people with their parole applications.

¹⁰³ Youth Parole Board of Victoria, available at <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-parole-board-of-victoria>



Bail

Around half (46.2%) of Aboriginal and/or Torres Strait Islander people in prison (and 61.4% of Aboriginal women) are in prison on remand and may be released never having been sentenced to imprisonment.¹⁰⁴ VALS reiterates recommendations it has made on previous occasions in relation to the need for bail reform. The pandemic only makes the issue of bail reform more urgent, and the Government should not wait until after the pandemic to address this needed reform. The Government's passing of the *COVID-19 Omnibus Act* demonstrates that the Government is both capable and willing to respond quickly to the pandemic, and bail reform will advance the decarceration strategies crucial to keeping all Victorians safe.

Recommendation 57: Bail should be made more accessible for children, young people and adults on remand.

Recommendation 58: The reverse-onus provisions in the Bail Act should be repealed, particularly the 'show compelling reason' and 'exceptional circumstances' provisions (sections 4AA, 4A, 4C, 4D and schedules 1 and 2 of the Bail Act).

Recommendation 59: There should be a presumption in favour of bail for all offences, except in circumstances where there is a specific and immediate risk to the physical safety of another person. This should be accompanied by an explicit requirement in the Act that a person may not be remanded for an offence that is unlikely to result in a sentence of imprisonment.

Recommendation 60: The offences of committing an indictable offence while on bail (s. 30B), breaching bail conditions (s. 30A) and failure to answer bail (s. 30) should be repealed.

Recommendation 61: There should be increased and mandatory guidance and oversight for police officers, to ensure that they understand and comply with the requirements of the Bail Act. It is essential that police officers are able to appropriately determine when bail should be granted by a police decision maker, and when the individual should be brought to court.

Police

VALS strongly urges police to exercise their powers responsibly, in order to curb further admissions to places of detention, including police vehicles, police cells, court cells, prisons and youth detention facilities. This can be achieved by police issuing summons, releasing people on bail, and having a moratorium on pursuing prosecution for low-level offences and breaches of bail and parole conditions.

Recommendation 62: Police should exercise their powers responsibly, in order to curb further admissions to places of detention, by issuing summons, releasing people on bail, and having a moratorium on pursuing prosecution for low-level offences and breaches of bail and parole conditions.

¹⁰⁴ Annual Prisoner Statistical Profile 2006-07 to 2018-19, available at <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2006-07-to-2018-19>



Other legislative changes

VALS encourages the Government to also urgently consider passing legislation that would allow for the release of people detained in prisons and youth detention, such as the legislation that has already been passed in NSW and the ACT. This must be coupled with a commitment by the Government to utilise this legislation.

Raising the age of criminal responsibility to 14 is another means by which the Government can keep children out of detention, not only during the pandemic, but beyond. Although the Council of Attorneys-General on 27 July 2020 deferred making a decision in relation to raising the age, VALS urges the Victorian Government to proceed with raising the age of criminal responsibility, and that the Government ensures that its other youth justice legislative, strategy and policy reforms incorporate and align with raising the age.

The Closing the Gap Agreement justice targets include reducing the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent by 2031. VALS is calling on the Victorian Government to set more ambitious goals for itself than these minimum targets, to aim for parity being achieved in this generation's lifetimes, and to commit to the important work that needs to be done to address systemic racism. There are immediate actions the Victorian Government could take to demonstrate its commitment to not only meet, but exceed, the Agreement's proposed minimum justice targets. With the finalising of the Closing the Gap agreement, it should be noted that raising the age could have reduced the over incarceration of Aboriginal children by at least 17% nationally.¹⁰⁵

As the Victorian Government moves forward with its raft of legislative and strategic reforms in the youth justice space, VALS urges it to take heed of the position of the UN Committee on the Rights of the Child.¹⁰⁶ The Committee has asked Governments to acknowledge the scientific findings and increase the minimum age to at least 14 years, as well as fixing an age limit below which kids may not be detained, such as 16 years. The Committee noted that over 50 States parties have raised the minimum age following ratification of the Convention on the Rights of the Child, and that the most common minimum age of criminal responsibility internationally is 14.

VALS also draws the Government's attention to the research from the Australia Institute and Change the Record that shows that most Australians agree children as young as 10 years old do not belong in prison, and that Australia's age of criminal responsibility should be increased from 10 years old to the global median of 14 years old, or higher.¹⁰⁷

¹⁰⁵ NATSILS, "We must see change in our lifetimes": Historic Closing the Gap Agreement is missed opportunity for ambitious national justice targets (30 July 2020), available at <http://www.natsils.org.au/portals/natsils/Media%20Releases/300720%20Media%20Release%20Closing%20the%20Gap%20Agreement.pdf?ver=2020-07-30-100903-650>

¹⁰⁶ UN Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system (18 September 2019), available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f24&Lang=en

¹⁰⁷ Australia Institute and Change the Record, Raising the age of criminal responsibility (July 2020), available at <https://www.tai.org.au/sites/default/files/P952%20Raising%20the%20age%20of%20criminal%20responsibility%20%5BWeb%5D.pdf>



The need to raise the age is highlighted during the pandemic, with children in both the Parkville and Malmsbury Youth Detention Facilities having been diagnosed with COVID-19 and subjected to lockdowns. This is concerning given that many children in detention have pre-existing health and mental health conditions. This is relevant to both the consequences of them contracting COVID-19 and the deleterious impact the restrictions will have on children, compounding the trauma so many of them have already experienced. It is also essential to note that we do not yet know what the long-term effects of COVID-19 are, and we need to prioritise protecting children. The vast majority of children start their incarceration journey with minor offending such as criminal damage and shoplifting, and raising the age is crucial to preventing Aboriginal children entering the detention system during the pandemic, and beyond.

Recommendation 63: The Government should urgently consider passing legislation (and utilising this legislation) that would allow for the early release of people detained in prisons and youth detention.

Recommendation 64: The Government should raise the age of criminal responsibility to at least 14, and the age at which children can be detained to at least 16. All youth justice legislative, strategy and policy reforms should incorporate and align with raising the age reform.

13. Conditions in detention and treatment of detained people

Equivalency of medical care in detention

The Government has an obligation to provide equivalency of medical care to people in detention. VALS strongly supports the UN Chair of the Committee against Torture’s comments that people who are deprived of their liberty ‘should enjoy the same standards of healthcare that are available in the community at large, including access to virus testing and medical treatment.’¹⁰⁸ The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) make clear that ‘prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.’¹⁰⁹ The obligation to provide equivalency of medical care to people deprived of their liberty is echoed in the International Covenant on Economic, Social and Cultural Rights, which emphasises ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’¹¹⁰

VALS seeks further clarification in relation to the medical care provided to people who are confirmed or suspected of having COVID-19, including while they are in isolation and when they are transferred to hospitals.

Recommendation 65: People in detention must be provided medical care that is the equivalent of that provided in the community. Medical care must be provided without discrimination.

¹⁰⁸ COVID-19 exacerbates the risk of ill-treatment and torture worldwide – UN experts (26 June 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/26June_statement_UN_Torture_Prevention_Experts.pdf

¹⁰⁹ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015)

¹¹⁰ International Covenant on Economic, Social and Cultural Rights, Article 12



Recommendation 66: There should be greater clarity in relation to the medical care provided to detained people who are confirmed or suspected of having COVID-19, including while they are in isolation and when they are transferred to hospitals.

Measures adopted in detention

Measures taken and practices adopted in places of detention in an attempt to contain COVID-19 must never amount to torture or cruel, inhuman or degrading treatment, and such measures must not form part of the Government’s strategy to keep detained people and detention centre staff safe and healthy. The Government’s strategy must be a human rights compliant, health driven one.

The UN Human Rights Committee has affirmed that Governments cannot derogate from the absolute prohibition of torture during the pandemic,¹¹¹ as has the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.¹¹² The Inter-Agency Standing Committee’s (WHO and OHCHR) guidance states that ‘isolation or quarantine measures in places of detention must be legal, proportional and necessary, time-bound, subject to review and should not result in de facto solitary confinement.’¹¹³

Of note, even when restrictions were eased for other Victorians, prisons remained subject to the strictest restrictions, with personal visits not reinstated.

Recommendation 67: Measures taken and practices adopted in places of detention in an attempt to contain COVID-19 must never amount to torture or cruel, inhuman or degrading treatment and should not form part of the Government’s strategy to keep detained people and detention centre staff safe and healthy.

Recommendation 68: When restrictions are again eased in the general community, prison and youth detention restrictions should be reviewed. In particular, in-person visits should be reinstated as soon as the health advice permits.

¹¹¹ United Nations Human Rights Committee, Covenant on Civil and Political Rights, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic (Advance Unedited Version)*, CCPR/C/128/ (24 April 2020), available at <https://www.ohchr.org/Documents/HRBodies/CCPR/COVIDstatement.docx?fbclid=IwAR1KFgN-NH1OFqm-wO38CPTxsFNnuqa7k-Sks9R-flUG3cjhX5lco261UM>

¹¹² Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (25 March 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf?fbclid=IwAR1gRVb3AegXqmqYHoIrF_ADExsM9M3aYYdGeNVJBKcOj-ERHflbe1CTb_8.

¹¹³ Inter-Agency Standing Committee (IASC - Office of the High Commissioner for Human Rights & World Health Organization), *Interim guidance on COVID-19 - Focus on persons deprived of their liberty* (27 March 2020), available at https://interagencystandingcommittee.org/system/files/2020-03/IASC%20Interim%20Guidance%20on%20COVID-19%20-%20Focus%20on%20Persons%20Deprived%20of%20Their%20Liberty.pdf?fbclid=IwAR15OxMsEUy95mbNsNixIMB5XcpSIS5_HEOeCyzj5X75SZx4VYiPZ195Aes.

14. Greater transparency

Information that should be made publicly available

A number of UN bodies and the WHO have recommended that there be increased transparency in relation to places of detention.¹¹⁴ VALS supports the recommendation of a joint submission to the Commonwealth Government's Senate Select Committee that information provided by detaining authorities should include '[i]nformation relating to infection prevention and control measures and contingency plans (particularly strategies, policies and data relating to use of medical isolation, quarantine and solitary confinement, staffing, testing, health provision, personal and legal visits, programs and education); information relating to COVID-19 testing and results for people in detention, staff and contractors, infection rates and number of deaths, as well as incidents such as use of force, incidents of self-harm and prison disturbances such as protests.'¹¹⁵

VALS particularly notes that the OHCHR has stated that '[c]ollection, disaggregation and analysis of data by ethnicity or race, as well as gender, are essential to identify and address inequalities and structural discrimination that contributes to poor health outcomes, including for COVID-19.'¹¹⁶

Recommendation 69: Accurate and updated information that should be made publicly available on a regular basis includes infection prevention and control measures and contingency plans (particularly strategies, policies and data relating to use of medical isolation, quarantine and solitary confinement, staffing, testing, health provision, personal and legal visits, programs and education); information relating to COVID-19 testing and results for people in detention, staff and contractors, infection rates and number of deaths, as well as incidents such as use of force, incidents of self-harm and prison disturbances such as protests.

Recommendation 70: Data should be disaggregated and analysed, at a minimum, by Aboriginality, age, gender, health and mental health conditions, and disability.

Communication with people who are in detention and their families

¹¹⁴ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (25 March 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf?fbclid=IwAR1gRVb3AegXqmqYHoIrF_ADExsM9M3aYYdGeNVJBKcOj-ERHflbe1CTb_8; UNODC, World Health Organization, UNAIDS and Office of the High Commissioner for Human Rights, *Joint statement on COVID-19 in prisons and other closed settings* (13 May 2020), available at <https://www.who.int/news-room/detail/13-05-2020-unodc-who-un aids-and-ohchr-joint-statement-on-covid-19-in-prisons-and-other-closed-settings>; World Health Organization (Europe), *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (15 May 2020), available at <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention,-15-march-2020>.

¹¹⁵ OPCAT, places of detention and COVID-19: Joint submission to the Select Committee on COVID-19: Pre-Committee Version (27 May 2020), available at <https://www.hrlc.org.au/s/COVID-19-OPCAT-places-of-detention-and-COVID-19-Pre-Committee-Version.pdf>

¹¹⁶ OHCHR - Disproportionate impact of COVID-19 on racial and ethnic minorities needs to be urgently addressed – Bachelet (2 June 2020), available at https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E&mc_cid=dbd15841a9&mc_eid=491e0ba29c



The CDNA Guidelines states that '[f]acilities will need effective ways to communicate with inmates, staff, and regular visitors including inmates' families. This is in order to meet their needs for information but reduce demands on staff. A communications plan should be developed.'

Recommendation 71: Information should be effectively communicated both to people who are in detention and their families.

15. Detention oversight during COVID-19

Risk of torture or ill-treatment should be mitigated by detention oversight

The UN Anti-Torture mechanisms recently unanimously warned that 'the COVID-19 pandemic is leading to an escalation of torture and ill-treatment worldwide.'¹¹⁷ In the same statement, the UN Chair of the Subcommittee on Prevention of Torture highlighted that '[m]onitoring places of deprivation of liberty by independent bodies... remains a fundamental safeguard against torture and ill-treatment.'¹¹⁸

A joint submission to the Special Rapporteur on Indigenous Rights (the National Aboriginal and Torres Strait Islander Legal Services was a co-author), endorsed by 22 civil society organisations and representative bodies, four university centres across two universities and 75 experts and academics, stated the following:

WHO and numerous UN bodies have recommended that independent oversight of places of detention continues throughout the pandemic, as has the ICRC, Council of Europe, civil society internationally and civil society in Australia. WHO and UN bodies have also emphasised that access of oversight bodies to places of detention must be guaranteed during the pandemic, and although National Preventive Mechanisms (NPMs) in other countries have adapted their inspection methodology to enable continued oversight in compliance with the SPT's advice to continue visits while observing the 'do no harm principle', most Australian oversight bodies have suspended inspections at a time when Aboriginal and Torres Strait Islander people are at an increased risk of torture and ill-treatment. This has impacted on Aboriginal Community Controlled Organisations' ability to access information. For example, Change the Record has noted that it has been difficult to 'get up to date information about the conditions in adult and youth correction facilities due to restrictions on legal and family visits and the withdrawal of independent oversight bodies and external scrutiny in many states and territories.'¹¹⁹

¹¹⁷ COVID-19 exacerbates the risk of ill-treatment and torture worldwide – UN experts (26 June 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/26June_statement_UN_Torture_Prevention_Experts.pdf

¹¹⁸ COVID-19 exacerbates the risk of ill-treatment and torture worldwide – UN experts (26 June 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/26June_statement_UN_Torture_Prevention_Experts.pdf

¹¹⁹ National Aboriginal and Torres Strait Islander Legal Services, Danila Dilba Health Service, Aboriginal Peak Organisations of the Northern Territory, Andreea Lachs, Joint Submission for the Report of the Special Rapporteur on the Rights of Indigenous Peoples to the General Assembly – Impact of COVID-19 on Indigenous Peoples, available at https://www.ohchr.org/Documents/Issues/IPeoples/SR/COVID-19/IndigenousCSOs/Australia_National_Aboriginal_Torres_Strait_Islander.docx



Particularly of concern, in Victoria, the *COVID-19 Omnibus (Emergency Measures) Act 2020* introduced amendments that could restrict the ability of independent oversight bodies' ability to enter youth detention facilities,¹²⁰ including independent visitors from the Commission for Children and Young People.¹²¹

Recommendation 72: The Victorian Government must not adopt unreasonable measures that will further undermine or limit access to places of detention by existing formal and informal mechanisms of oversight and transparency.¹²²

Recommendation 73: The Victorian Government should accommodate the adapted approaches of detention oversight bodies and facilitate access to places of detention, people in detention and detention staff during the pandemic.¹²³

Recommendation 74: The *Children, Youth and Families Act 2005* should be amended to make explicit that independent oversight bodies must be guaranteed access to youth detention facilities.

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)

Australia made a commitment to implement the OPCAT (a UN human rights instrument which aims to prevent torture and ill-treatment in places of detention) in 2017, but the Victorian Government is yet to undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community, its representative bodies under the Aboriginal Justice Agreement and Aboriginal Community Controlled Organisations, such as VALS, on its implementation.

OPCAT requires the Victorian Government to set up detention oversight bodies (National Preventive Mechanisms or **NPMs**) to mitigate the risks of torture and ill-treatment of people who are detained in police vehicles and cells, prisons and youth detention facilities and other places where people may be deprived of their liberty. Aboriginal people are grossly overrepresented in the criminal legal system and in places of detention. OPCAT is an opportunity to prevent torture and ill-treatment, but it will only achieve real outcomes for Aboriginal people if the operations, policies, frameworks and governance of the designated detention oversight bodies are always culturally appropriate and safe for Aboriginal people. Culturally appropriate implementation of OPCAT simply cannot be realised without the participation of Aboriginal people.

¹²⁰ It amended the *Children, Youth and Families Act 2005*, so that a 'person who is required under this Act or the regulations to attend a youth justice unit may attend the youth justice unit in any manner directed by the Secretary including, but not limited to, attending by means of audio link or audio visual link'(s600S(1) (Requirements relating to attendance at a youth justice unit)); s600S(2) states that '[t]his section applies to attendance at any time while this section is in force, irrespective of when the requirement to attend was imposed.' Under s482A of the *Children, Youth and Families Act 2005* a visitor is defined as 'any person, other than a detainee or an officer, who enters, leaves or remains in a youth justice facility.'

¹²¹ Commission for Children and Young People, Independent Visitor Program, available at <https://ccyp.vic.gov.au/upholding-childrens-rights/independent-visitor-program/>.

¹²² OPCAT, places of detention and COVID-19: Joint submission to the Select Committee on COVID-19: Pre-Committee Version (27 May 2020), available at <https://www.hrlc.org.au/s/COVID-19-OPCAT-places-of-detention-and-COVID-19-Pre-Committee-Version.pdf>

¹²³ OPCAT, places of detention and COVID-19: Joint submission to the Select Committee on COVID-19: Pre-Committee Version (27 May 2020), available at <https://www.hrlc.org.au/s/COVID-19-OPCAT-places-of-detention-and-COVID-19-Pre-Committee-Version.pdf>



The recently released Australian Human Rights Commission report, 'Implementing OPCAT in Australia' stated that Aboriginal people

are affected by conditions of detention in distinct ways due to numerous factors including ongoing social and historical marginalisation and disadvantage, over-policing and experience of police bias, and intergenerational trauma. Aboriginal and Torres Strait Islander peoples in places of detention also have specific cultural requirements that differ from other people deprived of their liberty, such as the need to maintain strong cultural identity and connection to culture, country and community.¹²⁴

The joint submission to the Special Rapporteur on the rights of Indigenous People similarly stated that '[d]etention oversight is an integral aspect of achieving a truly just criminal legal system for Aboriginal and Torres Strait Islander people, particularly during the pandemic. Australia must commit to establishing and/or designating NPMs that are culturally appropriate for detained Aboriginal and Torres Strait Islander people.'¹²⁵

Recommendation 75: The Government must urgently undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community, its representative bodies and Aboriginal Community Controlled Organisations, such as VALS, on the implementation of Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in a culturally appropriate way.

Recommendation 76: The operations, policies, frameworks and governance of the designated detention oversight bodies under OPCAT (National Preventive Mechanisms) must be culturally appropriate and safe for Aboriginal and/or Torres Strait Islander people.¹²⁶

Criminal jurisdiction

16. Policing

Responsible exercise of police powers during the pandemic – fines and arrests

VALS has previously highlighted that:

- 'Police must responsibly exercise their expansive powers, acknowledging that around the world, policing the pandemic through fines and arrests has disproportionately impacted on marginalised communities, including Aboriginal people;

¹²⁴ Australian Human Rights Commission, Implementing OPCAT in Australia (2020), available at <https://humanrights.gov.au/our-work/rights-and-freedoms/publications/implementing-opcat-australia-2020>

¹²⁵ National Aboriginal and Torres Strait Islander Legal Services, Danila Dilba Health Service, Aboriginal Peak Organisations of the Northern Territory, Andreea Lachsz, Joint Submission for the Report of the Special Rapporteur on the Rights of Indigenous Peoples to the General Assembly – Impact of COVID-19 on Indigenous Peoples, available at https://www.ohchr.org/Documents/Issues/IPeoples/SR/COVID-19/IndigenousCSOs/Australia_National_Aboriginal_Torres_Strait_Islander.docx; See also Andreea Lachsz, Culturally appropriate oversight of conditions of detention and treatment of detained Aboriginal and Torres Strait Islander people in the Northern Territory's criminal justice system – in compliance with the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (December 2019), available at <https://www.churchilltrust.com.au/fellows/detail/4318/Andreea+Lachsz>

¹²⁶ NATSILS, Black Lives Matter: always have, always will (July 2020), available at <http://www.natsils.org.au/portals/natsils/Policy%20statement%20on%20Black%20Lives%20Matter.pdf?ver=2020-07-09-171028-630>

- Police should prioritise providing public health messaging and supporting people to comply with the current restrictions;
- Arresting people will not achieve positive outcomes for the Victorian community, and such an approach would be at odds with expert advice that we need to curb admissions to detention to prevent further outbreaks of COVID-19 in detention and in the community;
- Abuses of power must be prevented through a government commitment to transparency - including making publicly available disaggregated data on stops, fines and arrests - and accountability for any discriminatory policing practices, to be complemented by robust oversight by independent bodies and organisations.¹²⁷

VALS notes that public messaging by police has included that they ‘have the power to arrest people who choose not to wear face coverings and subsequently fail to comply with a police directive to provide proof of identity.’¹²⁸ Policing the pandemic disproportionately impacts on marginalised communities, is not an effective means of delivering public health messaging and does not align with the experts’ advice that we need to curb admissions to places of detention. This approach also raises concerns with regards to vulnerable people who would have difficulty obtaining identity documents, such as homeless and transient communities and those exiting prison.

There is no publicly available data in relation to the number of fines issued to Aboriginal people, nor is there data in relation to the stops of Aboriginal people by police. There is a need for publicly available, disaggregated data (including by gender, age, disability etc). VALS is also concerned about fines being issued to homeless people, such as the incident in which an Aboriginal man was jailed for weeks due to a court error and was fined for sleeping on a park bench.¹²⁹

Of note, The PAEC Interim Report found that the ‘most disadvantaged LGAs in Victoria were receiving a proportionately higher number of fines than LGAs with the highest levels of advantage, which were issued with only 10% of fines.’¹³⁰

The report also found that there was confusion among police with regard to the regulations and use of their discretion:

The Chief Commissioner advised the Committee that there had been confusion for both the police and public around the COVID 19 regulations and that while police had to adapt to enforcing new laws, there had been a lack of clarity among members around using discretion when issuing infringements.

The Chief Commissioner added that Victoria Police had to contact the Chief Health Officer multiple times to clarify the health regulations in different situations.¹³¹

¹²⁷ Nerita Waight, Joint Media Release, Increased police powers must not be free kick for discrimination (11 August 2020), available at <https://www.hrlc.org.au/news/2020/8/11/police-powers-must-not-be-free-kick-for-discrimination>

¹²⁸ Statement Rick Nugent, Deputy Commissioner Regional Operations (27 July 2020), available on Victoria Police Twitter account

¹²⁹ Vulnerable Indigenous man locked up by police in 'string of errors' during coronavirus pandemic (22 April 2020) available at <https://www.abc.net.au/news/2020-04-22/vulnerable-indigenous-man-jailed-over-police-errors-coronavirus/12165342>

¹³⁰ Public Accounts and Estimates Committee, Inquiry into the Victorian Government’s response to the COVID-19 pandemic Interim Report (July 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf

¹³¹ Public Accounts and Estimates Committee, Inquiry into the Victorian Government’s response to the COVID-19 pandemic Interim Report (July 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf



VALS supports the HRLC position that the Victorian Government ‘withdraw increased police powers as soon as the states of emergency and disaster end. There is a risk that increased police powers could become the new normal. Any proposed, permanent increased powers must be subject to careful and proper scrutiny after the pandemic.’¹³²

Children running away from residential care

VALS is also particularly concerned about children being picked up by police after running away from residential care. Victoria Police received 190 reports of children missing from out-of-home care during April, a 30 per cent increase on the same month last year. The Commissioner for Children and Young People has said that she was aware of instances of children from residential care being fined \$1,652 by Victoria Police for breaching social distancing rules.¹³³

Children in care being left at police stations for significant periods of time

COVID-19 restrictions and changes to child protection workforce practices have resulted in an increase Aboriginal young people in the care of the State being left at police stations for long periods of time. VALS data from 23 March to 11 May 2020 indicates that non-attendance or delayed attendance by DHHS staff occurred in 31 of 59 instances (53%). Out of 59 cases, 14 cases (24%) involved the young person staying at the police station for more than 4 hours due to DHHS not attending or being delayed in attending. In 14 of the 31 non-attendances (45%), DHHS provided accommodation directions that police were to return the child. In 5 of the 14 police transports, police were required to transport the child for more than 2hrs.

Protective Services Officers (PSOs)

The PAEC interim report states that ‘[d]uring Operation Shielding approximately one third of Protective Services Officers were redeployed to assist with policing the pandemic.’¹³⁴ There is, however, a lack of clarity in relation to the role of the PSOs (for example, a media release stated that operations have been ‘[b]olstered by the addition of Protective Services Officers normally stationed on the Night Network supporting compliance efforts following the introduction of a curfew and the reduction in trains running at night.’¹³⁵

Liberty Victoria’s PAEC submission states the following:


Since 2011, Protective Services Officers (“PSOs”) have been employed by Victoria Police primarily to maintain a visible presence on and around metropolitan and regional trains and train stations, to engage with the community and foster a sense of safety. They receive less training than police officers but carry firearms and are given some of the powers of a police constable, including to arrest, to obtain personal information, to

¹³² Human Rights Law Centre, *Explainer: Increased police powers and COVID-19* (11 August) available at <https://www.hrlc.org.au/factsheets/2020/8/11/explainer-increased-police-powers-and-covid-19>

¹³³ *Why are so many Victorian kids running away from residential care during COVID-19?* (11 May 2020) available at <https://www.abc.net.au/news/2020-05-11/kids-running-away-from-residential-care-during-covid-19/12233442>

¹³⁴ Public Accounts and Estimates Committee, *Inquiry into the Victorian Government’s response to the COVID-19 pandemic Interim Report* (July 2020), page 121, available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf

¹³⁵ *Stay Home: New Crackdown On Isolation Breaches* (Premier’s Media Release 4 August 2020), available at <https://www.premier.vic.gov.au/stay-home-new-crackdown-isolation-breaches>



search and seize and to issue infringement notices. They wear similar clothing as police officers, and it is not always readily apparent to members of the community that they are not dealing with a police officer.

The Government has announced expanded deployment of PSOs to shopping centres, sporting precincts and other “highly populated” places across the state, as well as their deployment in other emergencies. In fact, the expansion is much larger than what might be considered ‘highly populated’ places and covers the entire “Melbourne metropolitan area” and nine major regional cities and surrounding areas. The increased reliance on, and deployment of, PSOs increases the risks of harmful interactions with members of the community as identified in the Independent Broad-based Anti-Corruption Commission report, Transit Protective Services Officers – An exploration of corruption and misconduct risks. If PSOs are used as defacto police, they should receive the same level of training. Further, the expansion of the definition of “designated place” under the Victoria Police Regulations 2014 should be rolled back.

One of the top reasons PSOs arrested members of the community during the initial months of the pandemic was for public drunkenness, an offence the government has committed to abolishing due to its disproportionate impact on the vulnerable. The system of accountability and complaint management in response to issues relating to PSOs in Victoria is lacking. Liberty Victoria is concerned that with increased use of PSOs, there may be an increased risk in overpolicing of vulnerable and marginalised neighbourhoods and communities.¹³⁶

People in custody going direct to court without being offered an opportunity to interview

VALS is concerned by the reports it has received through our custody notification service that informants at a number of police stations are choosing take arrested people direct to court for remand applications, without interview, where the Informant is of the view there is sufficient evidence to proceed without interview. VALS understands that there is no directive that has been issued within police in relation to taking arrested people direct to court without any interview, but is concerned about the reports it has received of this practice of a number of police stations.

While VALS appreciates the need for social distancing, public safety and occupational health and safety obligations, there are a number of rights and benefits afforded to a person taken into custody that can flow from a police interview, particularly for the Aboriginal and Torres Strait Islander community.

Rights and benefits are as follows:

- Under s464C of the *Crimes Act 1958*, a person has a legislative right to personally communicate with a legal practitioner. Practically we have found this right is enlivened within the caution given at the commencement of an interview, not during a field interview or during processing at the police station. The decision by police to not interview a suspect impacts on a person exercising this right. The effect is that a person has not been afforded the opportunity to speak to a legal practitioner before being taken to court.
- Under s 464AAB of the *Crimes Act 1958*, an investigating official must ask if a person is an Aboriginal person, as soon as practicable after being taken into custody, and in any event, before questioning or investigation. The act of interviewing and therefore the requirement to caution, ensures this question is asked.

¹³⁶ Liberty Victoria, PAEC submission, page 11-12, available at https://libertyvictoria.org.au/sites/default/files/Liberty%20Victoria%27s%20subm_0.pdf



- Complementary to the above legal obligation, the requirement to call VALS (s464FA) is further ensured through the process of caution and interview. By alerting us to a person's presence in custody we can monitor their welfare while in custody, notify family and support services, facilitate the opportunity for the person to speak to one of our community workers and a lawyer if requested.
- As a matter of fairness an investigating official should inform a person of the allegations against them. Even in the event a person exercises their right to silence, these allegations should still be put to the person. Fairness is not accorded to a person when the first they hear the details of the allegations made about them are during a remand at court.
- When an informant removes the opportunity for a person to be interviewed, they deny the ability for a person, if they elect to, make a comment, admission, denial or alternate set of facts. The ramifications of this lost opportunity can negatively affect a person's defence, access to diversion or demonstrate early remorse to a court during sentencing.

Recommendation 77: Police must responsibly exercise their expansive powers, acknowledging that around the world, policing the pandemic through fines and arrests has disproportionately impacted on marginalised communities, including Indigenous peoples.

Recommendation 78: Police should prioritise providing public health messaging and supporting people to comply with the current restrictions.

Recommendation 79: Police should take into account the many legitimate reasons why individuals may be forced to breach COVID-19 restrictions (such as fleeing family violence), and consider cautioning individuals rather than imposing a fine.

Recommendation 80: Disaggregated data in relation to stops, fines and arrests by police (including gender, age, disability and whether people are Aboriginal and/or Torres Strait Islander) should be made publicly available.

Recommendation 81: There must be robust oversight of police conduct by independent bodies and organisations.

Recommendation 82: Homeless people should not be fined for COVID-19 related breaches.

Recommendation 83: Proactive steps should be taken to address the disproportionate impact of fines on disadvantaged communities.

Recommendation 84: Police should be provided guidance and training with regards to the regulations and the use of their discretion in issuing infringements.

Recommendation 85: VALS supports the Human Rights Law Centre position that the Victorian Government 'withdraw increased police powers as soon as the states of emergency and disaster end. There is a risk that increased police powers could become the new normal. Any proposed, permanent increased powers must be subject to careful and proper scrutiny after the pandemic.'



Recommendation 86: Children living in residential care should not be fined for breaching social distancing rules, particularly if they have run away from their residence.

Recommendation 87: Children should not be spending extended periods of time in police custody when they have run away from residential care.

Recommendation 88: There should be greater clarity regarding the role of Protective Services Officers in enforcing the restrictions imposed to contain COVID-19.

Recommendation 89: VALS supports Liberty Victoria’s recommendation that ‘[i]f PSOs are used as defacto police, they should receive the same level of training. Further, the expansion of the definition of “designated place” under the Victoria Police Regulations 2014 should be rolled back.’

Recommendation 90: People who have been arrested should not be taken direct to court without being afforded an opportunity to participate in an interview.

17. Contact with clients in custody

Although there were initial challenges in accessing clients via AVL or telephone, this has improved considerably for clients in prisons (although some challenges in accessing clients in police custody persist). For example, a positive development is lawyers being able to speak to clients at the Melbourne Custody Centre (MCC) over the phone. Previously, lawyers had to attend MCC in person, as this was the only means by which to obtain instructions and give advice. Similarly, lawyers being able to speak to clients on the phone when they are in police cells and being able to complete bail applications (or appear in straight remand matters) over the phone have improved access to justice.

Recommendation 91: Lawyers should continue to be able to speak with clients at the Melbourne Custody Centre over the phone.

Recommendation 92: Lawyers should continue to be able to speak to clients who are held in police cells, and appear via phone in bail applications and straight remand mentions.

18. Procedural issues - Court

Positive practices

During the pandemic, there have been a number of adjustments to procedures which have been positive, and which should continue throughout and beyond the pandemic. Summary pleas on the papers are less stressful for VALS’ clients, as they do not have to attend court, and are also less resource-intensive. Bail variations by consent on the papers is less resource and time intensive, while also allowing VALS lawyers to appear in more matters, meaning there are fewer Aboriginal people unrepresented before the court. By consent WebEx, AVL and telephone appearances have been particularly beneficial for clients in custody, and



are useful where VALS is unable to organise a lawyer to be physically present when they are called in at the last minute.

The important caveat to all of the above is that VALS should not be required to proceed with matters via AVL or other remote platforms where the lawyers have made forensic decisions that it would jeopardise their clients' cases.

Concerns

On the other hand, VALS notes that the lack of AVL facilities at the Melbourne Custody Centre means that there have been circumstances where matters have had to be heard in the client's absence, when they may be in isolation as a result of COVID-19 procedures.

Delayed court matters

VALS is concerned about the impact of court matters being delayed, and the anticipated unprecedented demand on VALS when courts resume operating at full capacity. For example, on 31 August 2020, the County Court advised that it would vacate Term 4 jury trials, with a limited exception, after having already vacated jury trials from March of this year.¹³⁷

VALS is also concerned about the impact on clients, primarily not in custody, having their matters adjourned until next year. This has significant impacts on people's ability to move forward with their lives, including finding employment and attaining economic stability.

Koori Courts

Due to significant risks for Elders and Respected Persons, Koori Courts initially suspended all proceedings, meaning that Aboriginal people had not been able to access culturally safe court during this time, and were faced with the choice of waiting or transferring to generalist court. This is an ongoing issue; at the beginning of August, all matters listed 'listed In Koori Court on the nominal date of 14 August 2020, any part-heard matters and any new matters' were 'adjourned to the nominal date of 9 October 2020, pending resumption of Koori Court hearings... Matters where an accused is in custody and other urgent matters will be prioritised for hearing in the OMC as soon as Koori Court is able to resume, and in consultation with our Elders and Respected persons.'¹³⁸

VALS understands that steps had been taken to proceed with Koori County Court remotely, and is supportive of such an approach.

¹³⁷ Victorian County Court, Term 4 Melbourne criminal jury trials (31 August 2020), available at <https://www.countycourt.vic.gov.au/news-and-media/news-listing/2020-08-31-term-4-melbourne-criminal-jury-trials>

¹³⁸ Magistrates' Court of Victoria Practice Direction: State of Disaster Declaration 2 August to 13 September 2020, No. 20 of 2020 (4 August 2020) page 3



Recommendation 93: Summary pleas on the papers should continue.

Recommendation 94: Bail variations by consent on the papers should continue.

Recommendation 95: By consent WebEx, AVL and telephone appearances should continue.

Recommendation 96: The important caveat to recommendations 92-95 is that VALS lawyers should not be required to proceed with matters via AVL and through other remote technology where the lawyers have made forensic decisions that this would jeopardise their clients' cases.

Recommendation 97: VALS should be properly resourced to meet the anticipated demands once courts recommence operating at increased or full capacity. There should be transparency around the plan for when the courts reopen.

Recommendation 98: VALS supports steps being taken to adapt Koori Court operations, so that it can continue operating during the pandemic safely.

19. Bail

The need for bail reform

The COVID-19 pandemic has exacerbated many issues for Aboriginal communities that existed prior to the pandemic. Despite the raft of legislative amendments in response to COVID-19, there have been no amendments to the Bail Act. VALS has repeatedly called for bail reforms, and the need for reform is acute in the current circumstances, given the importance of implementing effective decarceration strategies. It is also essential given that people are spending more time on remand due to court operations being impacted by COVID-19, and given that the conditions in detention are causing additional hardship (for example, the suspension of personal visits). It is clear that the pandemic will continue for some time, and there is a critical need to be prepared for future outbreaks. In this regard, VALS continues to advocate for bail reform, on the basis that the punitive bail system in Victoria disproportionality impacts Aboriginal communities and will continue to do so.

Culturally appropriate justice housing should be properly funded

One of the most significant barriers in accessing bail is stable housing (housing instability and homelessness are also key factors contributing to low-level criminal offending). Aboriginal Housing Victoria's 2020 report noted that 'Aboriginal people are often detained within the custodial justice system unable to access bail, parole or a corrections order due to their inability to demonstrate access to secure housing.'¹³⁹ The report highlighted 'secure affordable housing as the foundation for breaking cycles of disadvantage and homelessness,' and that those who are high risk such as people in 'contact with and leaving the justice

¹³⁹ Aboriginal Housing Victoria, Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework (2020), page 22, available at <https://www.vahhf.org.au/cms/uploads/docs/victorian-aboriginal-housing-and-homelessness-framework-complete-26-02-20.pdf>



system' should have '[i]ntensive, culturally appropriate structured case managed approaches... intensive housing, community support and pathways.'¹⁴⁰

As such, VALS welcomed the Government's commitment to invest \$500 million in social housing, including an investment in Aboriginal housing.¹⁴¹ VALS encourages the Government to continue to invest in housing outcomes for Aboriginal communities in Victoria, including for justice housing projects such as VALS' culturally appropriate Baggarrook program, supporting women being released from prison. This would accord with the principle of Aboriginal self-determination, whereby 'housing responses are designed for and delivered by Aboriginal people [and] Aboriginal people are the arbiters of good practice.'¹⁴² Funding VALS and other ACCOs to provide justice housing would be preferable to housing such as the Maribyrnong Community Residential Facility, which is a highly institutionalised environment.¹⁴³

Bail justices and Independent Third Persons

VALS is concerned about the non-attendance of bail justices at police stations. Since the commencement of the COVID-19 social movement restrictions, VALS Custody Notification Officers began reporting increased occurrences of Bail Justices not being available to attend Victorian Police Station to undertake remand application hearings.

From 22 March 2020 to 28 May 2020, a total of 1,231 matters relating to Aboriginal and Torres Strait Islander were completed by VALS Custody Notification Officers, and 20% of the custody notifications required a Bail Justice. There was a 17% non-attendance rate of Bail Justices. Given that a great number of VALS' clients live in rural and regional areas, the bail justice system is essential to ensuring that our clients have the ability to apply for and be considered for bail. If a bail justice is not able to attend, this may mean that rural clients are remanded overnight, over the weekend and over long weekends until a Magistrate becomes available. This is extremely concerning for vulnerable applicants and young people. When the bail application does occur, it is then at times held in a different location to where the individual is initially remanded. This means that the individual may not be accompanied by family or community supports (whereas, if a Bail Justice attends the police station, the individual will usually benefit from a family member or support person who can assist the applicant's case for bail before a bail justice). For example, VALS is aware of one instance in which a detained child had to be transported to another police station, as a Bail Justice was unable to attend the police station where the child was detained and interviewed.

VALS understands that steps are being taken to address the additional costs of operating due to the coronavirus pandemic, for Bail Justices to begin remotely undertaking hearings and to address particular needs currently not met in certain locations. Bail Justices are permitted under the *COVID-19 Omnibus Act* to conduct hearings remotely, and VALS has been advised that a trial commenced on 28 August 2020 that will

¹⁴⁰ Aboriginal Housing Victoria, Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework (2020), page 15, available at https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf

¹⁴¹ DHHS, Almost \$500 million social housing boost to strengthen our economy and provide stability for Victorians (18 May 2020), available at <https://www.dhhs.vic.gov.au/news/social-housing-boost-to-strengthen-our-economy>

¹⁴² Aboriginal Housing Victoria, Mana-na woorn-tyeen maar-takoort, Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework (2020), page 12, available at https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf

¹⁴³ Maribyrnong Community Residential Facility: Information for Residents (30 June 2020)



operate for at least three weeks at a number of Police Stations (Heidelberg, Sunshine, St Kilda, Werribee, Bendigo), with the view to increase availability of Bail Justices and efficiency.

Independent Third Person

VALS also holds concerns in relation to Independent Third Persons (ITPs) not attending police stations, due to COVID-related concerns. ITPs 'attend police interviews for adults and young people with disability to ensure that they are not disadvantaged during the interview process' and 'are trained to support and assist the person with disability through the interview process by facilitating communication between the person and police; providing assistance to contact a lawyer, relative or friend if requested; helping the person understand their rights and any legal advice given; informing police if they observe that the person does not fully understand their rights or circumstances at any stage of the process; ensuring the person understands the questions asked by police, which may involve requesting the police to rephrase a question; requesting a break during an interview if the person is becoming distressed or is unable to concentrate.'¹⁴⁴

ITPs are independent of the police process

From 22 March 2020 to 24 May 2020 VALS received 2,139 notifications. Out of the 2,139 notifications 145 required services. 83 of these matters concerned children and 62 were for adults. Of the 145 notifications requiring ITP services, 64 clients missed out on an ITP service (although on 14 occasions, the ITP service was available via telephone only).

Complying with bail conditions for extended periods of time

With courts being impacted by COVID-19, matters have been adjourned, meaning that VALS clients have to comply with bail conditions for a longer period of time, which is in itself burdensome.

Since the start of the pandemic, VALS has been concerned about health risks and impacts of COVID-19 self-isolation restrictions for clients on bail and on community-based orders who are required to report and/or comply with other conditions. We are particularly concerned given that breaching bail conditions is an offence under the Bail Act. For clients on bail, there was initially a lack of flexibility, although changes implemented on 24 April 2020 allowed individuals to report via telephone. Whilst this has been a step in the right direction, there continue to be challenges, particularly for many of our clients who do not have access to a regular and stable phone connection and/or to phone credit.

Recommendation 99: The Government should continue to invest in housing outcomes for Aboriginal communities in Victoria, including funding culturally appropriate justice housing projects such as VALS' Baggarrook program, supporting women being released from prison.

Recommendation 100: Measures must be put in place to ensure that bail justices attend at police cells or conduct hearings remotely when people are arrested.

¹⁴⁴ Office of the public Advocate, Independent Third Persons, available at <https://www.publicadvocate.vic.gov.au/volunteering/independent-third-persons>



Recommendation 101: Measures must be put in place to ensure that Independent Third Persons attend at police cells when adults and young people with disability are arrested.

Recommendation 102: With people having to comply with bail conditions for longer periods of time due to impacted court operations, there should be greater flexibility in relation to any breaches of bail.

Recommendation 103: There should be flexibility and understanding in relation to reporting as per bail conditions, in recognition that many of VALS' clients do not have access to a phone or phone credit.

Civil jurisdiction

20. VCAT

Hearings before VCAT are now proceeding via phone, whereas previously Members had discretion with regards to whether to allow phone appearances by parties, and in fact regularly refused applications. There are pros and cons to telephone hearings, though clearly a return to some in-person hearings once these are safe is desirable. For the reasons we outline below, we suggest that any long-term changes to the conduct of hearings as a result of COVID-19, including the increased use of remote hearings (be they for interlocutory or final matters), ought to be informed by qualitative research conducted during the current period. Particular attention should be given to whether those with complex needs have been able to effectively access remotely delivered justice, and how hearings conducted remotely impact on user comprehension, participation, satisfaction and outcomes.

Some clients, particularly those with disabilities and those who are difficult to engage because of the complexities of their lives and/or their distrust justice systems, have been unable or unwilling to attend hearings at all when they proceed in person. Many people also face financial difficulties in accessing transport to attend the Tribunal or struggle to arrange for childcare. In these circumstances, telephone hearings can provide such clients with the opportunity to participate in proceedings that affect their legal interests. Additionally, the option to appear by phone is much less resource intensive for our service, as we are not subjected to long periods of time spent at the Tribunal waiting for matters to be called on. It is similarly much less disruptive for our clients, who might otherwise have to take a whole day off work or arrange for childcare to attend what might only be a 10-minute mention of their matter in person.

On the other hand, most people who go through VCAT proceedings do so without representation. The prospect of the most vulnerable members of our community having only a telephone hearing in which to, for example, defend against eviction, is exceptionally problematic. If a person has an intellectual disability or an Acquired Brain Injury, this may make it difficult for them to understand what is happening during a hearing. If the hearing takes place in person, the Member can (at least theoretically) assess that person's body language and demeanour and recognise that the person needs more support. Over the phone, these nuances are lost. Most obviously, people with hearing impairments will simply be unable to participate in telephone hearings. If remote hearings continue to be widely used for the medium term, VCAT should consider how its procedures and processes can identify and respond to the prospect that certain parties may not be able to



effectively participate in remote hearings, and look to develop policies, procedures and adjustments to ensure meaningful participation.

VCAT proceedings are relatively informal and it is usual practice in the Residential Tenancies List for the parties to provide evidence, including documentary evidence, on the day. In a positive development, at the moment parties are required to provide VCAT with all documentary evidence by email at least 48 hours before the hearing or, for large bundles of documents, to send to these to VCAT by post. However, this still raises significant difficulties for the self-represented. It contains an underlying assumption that people have access to email and the internet and, perhaps even more problematically, that they will be able to discern what will be relevant evidence in advance of the hearing.

In particularly complex matters – for example, defending against an application for possession made on the basis of alleged illegal use of the property – witnesses need to be called and cross-examined. Cross-examination in particular can be difficult when all parties, including the Member, are unable to see each other’s body language (noting that there is some suggestion that VCAT will soon be listing more complex matters for hearings via video conference. This will assist where a client is represented, but where they are not, it does not ameliorate the concerns raised above). There needs to be a mechanism by which cases are filtered out as not being appropriate for contested hearing convened remotely (ie when the client may not be able to effectively participation in the hearing if convened by video or over the phone)

Recommendation 104: Some in-person VCAT hearings should recommence once it is safe to do so, recognising that phone hearings are not appropriate in all circumstances (due to the individuals involved, or the complexity of the matter). Any long-term changes to the conduct of hearings as a result of COVID-19, including the increased use of remote hearings (be they for interlocutory or final matters), ought to be informed by qualitative research conducted during the current period. Particular attention should be given to whether those with complex needs have been able to effectively access remotely delivered justice, and how hearings conducted remotely impact on user comprehension, participation, satisfaction and outcomes.

Recommendation 105: Some VCAT matters should proceed by way of video conference rather than via phone. Parties should be asked whether they would prefer a video conference to a telephone hearing, and VCAT should develop guidelines in relation to which matters will be given priority for video conferencing.

21. Infringements

Fines Victoria had made an initial policy commitment to cease all enforcement action and debt recovery during the COVID-19 pandemic, but have recommenced enforcement action. In light of this, cessation of enforcement actions should be legislated for.

VALS has been contacted in relation to children receiving COVID-related fines for breaching curfew. Children may have a range of reasons for being outside past curfew, including not having a safe home. Additionally, magistrates are only able to fine children under 15 years old \$165.20, and children between 15 and 17 years



\$826.¹⁴⁵ In contrast, COVID-specific fines are \$1652. Children do not have the financial capacity to pay fines, and their culpability is less than that of adults, given their age and maturity.

The *Covid-19 Omnibus (Emergency Measures) Act 2020* (Vic) changes allow prisoners to access the time-served post release. Previously, the application had to be lodged prior to their release from custody (but after sentencing). This welcome change is due to expire on 25 October 2020.

In terms of Family Violence scheme applications, Fines Victoria is accepting the accompanying statutory declaration (which is a mandatory part of the application) to be filed in draft form, alongside a signed client authorisation form. This negates the need for clients to attend VALS to have their statutory declaration witnessed, and Fines Victoria should continue to accommodate clients in this way for the foreseeable future.

Recommendation 106: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector, that to prevent the significant impact of COVID-19 specific fines on children and young people, the Victorian Government should withdraw all fines issued through the COVID-19 Directions to children and young people aged 18 and under, and instead prioritise a service, education and health-based response.

Recommendation 107: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that the Victorian Government ensures that:

- enforcement agencies exercise appropriate discretion in determining when to issue COVID-specific fines, and when to educate or caution vulnerable community members to avoid them becoming unnecessarily entrenched in the infringements system;
- enforcement agencies inform people when issuing them with fines in a clear, legally correct and accessible way that they are being fined for a breach of the COVID-19 directions;
- enforcement agencies include sufficient information on the infringement notices to comply with the *Infringement Regulations 2016* , so as to enable COVID-specific fines recipients to effectively submit internal reviews;
- enforcement agencies effectively implement the Internal Review Guidelines to ensure best practice in relation to decision-making on COVID-specific fines reviews.

Recommendation 108: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that there is a stay of enforcement of existing infringements and court fines and that all infringements notices, penalty reminder notices, notices of final demand and enforcement warrants are placed on hold to avoid additional fees being imposed. Cessation of enforcement actions should be legislated.

Recommendation 109: Prisoners should be able to continue having access to the time-served scheme post- release, beyond 25 October 2020.

Recommendation 110: Fines Victoria should continue permitting filing by lawyers of draft statutory declarations, accompanied by a signed client authorisation form, for the foreseeable future.

¹⁴⁵ *Children Youth and Families Act (Vic)*, s373



Recommendation 111: Documents should continue to be provided to parties and the Tribunal in advance of the day of a VCAT hearing. However, Members should take a flexible approach where parties are self-represented, keeping in mind that it may be onerous to expect this of vulnerable community members.

22. VOCAT

VOCAT is allowing lawyers to sign and lodge hard copy applications and other documents on behalf of their clients, with an email authority or by clearly stating that it has been signed on the client’s behalf, and are accepting statutory declarations without an applicant’s signature. These changes limit the need for clients to attend the VALS office in person to have documents witnessed, and prevent delay where documents need to be sent via post to the client and then returned before filing. VOCAT should continue these accommodations for the foreseeable future.

Recommendation 112: VOCAT should continue to permit lodgement of hard copy applications and other documents by lawyers on behalf of their clients, accompanied by an email authority.

23. Consumer law

Unemployment benefits

It is critical to note that many of our clients are in the best financial position they have been in for a long time. The effective doubling of unemployment benefits (now Jobseeker, which replaced Newstart in March) to the higher baseline payment of \$1,100/fortnight (which also applies to Sickness Allowance, Youth Allowance, Abstudy and Parenting Payments) has meant that clients are able to pay their debts and have money to spend on essentials. The Federal Government recently announced changes to JobKeeper and JobSeeker payments from 28 September 2020. These changes reduce access to JobKeeper and reduce the payment to JobKeeper and JobSeeker recipients. Particularly in Victoria, where Stage 3 restrictions have been re-imposed, and Stage 4 restrictions have also been imposed, casual and part-time employees have been significantly impacted.

Essential services

VALS is concerned about an increase in consumer debt for Aboriginal communities, due to the increase in financial strain associated with unemployment and already high levels of household debt. In April, more than 30 consumer and community organisations called for a ban on payday lending during the COVID-19 crisis, to prevent payday lenders exploiting people in vulnerable financial situations. For people who were unable to pay for essentials such as food and rent, high-interest loans with high fees are a recipe for financial disaster. Research carried out by VALS and the Consumer Law Action Centre in 2019 indicates that Aboriginal communities in Victoria are affected by irresponsible lending, including payday lenders and utilities debt and disconnection.¹⁴⁶ We expect that consumer law needs will continue to increase as predatory lenders take

¹⁴⁶ Consumer Issues in Victorian Aboriginal Communities: Integrated Project Final Report 2020, available at https://consumeraction.org.au/wp-content/uploads/2020/02/VALS-IP-Report_FINAL_ForWeb_UPDATED.pdf



advantage of increasing debt levels associated with unemployment and other flow on effects arising from the pandemic.

National Cabinet agreed on 9 April 2020 to a nationally consistent approach to hardship support across essential services for households and small businesses. The Essential Services Commission has adopted principles including offering flexible payment options to all households in financial stress, not disconnecting or restricting supply/services to those in financial stress, deferring debt recovery proceedings and credit default listing, waiving late fees and interest charges on debt and minimising planned outages for critical works, and providing as much notice as possible to assist households and businesses during any outage. Energy Services Commission noted there have been 'no disconnections for non-payment in the month of July.'¹⁴⁷ Under the Utility Relief Grant Scheme (URGS), an individual can get \$650 max per utility type every two years.¹⁴⁸ However, the URGS program is already under-resourced and slow.

Recommendation 113: VALS supports the recommendation of the Consumer Action Law Centre that the Victorian Government introduce a public moratorium on energy disconnections until further notice.¹⁴⁹

Recommendation 114: VALS supports the recommendation of the Consumer Action Law Centre that the Essential Services Commission consider additional safeguards in relation to external debt collection practices and the sale of debts and explore the possibility of debt waivers in appropriate circumstances.¹⁵⁰

Recommendation 115: VALS supports the recommendation of the Consumer Action Law Centre that the Victorian Government increase energy concessions, particularly via the Utility Relief Grant scheme, and ensure applications for concessions are accessible and processed promptly.¹⁵¹

24. Tenancy and homelessness

Positive changes to tenancy

The amendments to the Residential Tenancies Act 1997, implemented through the *COVID-19 Omnibus (Emergency Measures) Act 2020* and the *Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020*, which were applicable for 6 months from 29 March 2020, 'facilitate rent relief for eligible tenants, suspend rental increases, and establish a new dispute resolution process. The laws also make changes to how

¹⁴⁷ Energy Services Commission, Energy customers during the coronavirus pandemic, available at <https://www.esc.vic.gov.au/sites/default/files/documents/energy-customers-during-coronavirus-pandemic-july-update-20200819.pdf>

¹⁴⁸ DHHS, Utility relief grant scheme, available at <https://services.dhhs.vic.gov.au/utility-relief-grant-scheme>

¹⁴⁹ Consumer Action Law Centre, PAEC submission (10 August 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/65a_Consumer_Action_Law_Centre_Redacted_printed.pdf

¹⁵⁰ Consumer Action Law Centre, PAEC submission (10 August 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/65a_Consumer_Action_Law_Centre_Redacted_printed.pdf

¹⁵¹ Consumer Action Law Centre, PAEC submission (10 August 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/65a_Consumer_Action_Law_Centre_Redacted_printed.pdf



a tenant or landlord may end a tenancy during the six-month moratorium period.¹⁵² Of note, there is a moratorium on giving notices to vacate, but it is still possible to evict people for a variety of reasons, although this must be done via an application to VCAT.

While VALS welcomes the extension of bans on evictions and rent increases to 31 December 2020, announced on 20 August,¹⁵³ VALS is of the view that emergency measures such as the processes for seeking rent relief, the moratorium on eviction notices and the ban on rental increases should be extended to 31 March 2021 the risk of evictions, due to the increase in unemployment and financial strain resulting from COVID-19 will persist beyond the end of the year.

Additional positive changes have included that, in specified circumstances, the period of notice that must be given under a notice of intention to vacate has been reduced from 28 to 14 days (those circumstances include where the tenant needs special care, has received and accepted an offer of social housing, needs to move into temporary crisis accommodation, lives in specialist disability accommodation and the landlord's registration to provide that accommodation has been revoked, is suffering severe hardship or if the landlord has made an application to VCAT to terminate the tenancy).

Also positive is the removal of VCAT's power to order that a tenant pay compensation/lease break costs to the landlord if the tenant successfully applies for a reduction of their fixed term lease, as well as the early introduction of the RTA amendments enabling victim-survivors of family violence to apply to VCAT to get a lease transferred into their name or have their name removed from a lease, as well as to apply for orders to protect themselves from debt created by the family violence perpetrator due to damage to the property or unpaid rent.

The use of videoconferencing is preferable to the use of phones in Residential Tenancies List hearings, as it facilitates assessment of communication needs and assessment of witness credibility and comprehension of directions made.

Concerns regarding tenancy

VALS notes that there is slow uptake of the rent reduction grants, which is related to insufficient public knowledge of the grants. Given the lack of public awareness of the scheme, and the low and slow uptake, VALS is concerned about a flood of rent arrears matters once the *Emergency Measures Act* expires. The Government needs to consider how it will assist the most vulnerable people in our community, who have not accessed the scheme, or have accessed it after having accumulated significant arrears.

Homelessness

The PAEC Interim Report notes that the 'Committee heard that funding provided for emergency accommodation allowed 4,500 people to be placed in hotel and motel accommodation and that rough sleeping in Melbourne's CBD had almost been eliminated,' and that on '13 June 2020 the Minister for Housing

¹⁵² Available at <https://www.consumer.vic.gov.au/resources-and-tools/advice-in-a-disaster/coronavirus-covid19-and-your-rights/restricted-areas> (accessed 18 July 2020)

¹⁵³ Media Release - Pause On Evictions Extended And Extra Renter Protections, 20 August 2020.



announced \$9.8 million of further funding for the homelessness sector in order to keep people in emergency accommodation and facilitate longer term housing options.¹⁵⁴ VALS welcomes this long overdue investment in addressing homelessness, but also highlights that some people have been moved to areas away from their community connections and usual service providers. Emergency re-housing for those who have been homeless represents an opportunity to redeploy support services, to ensure those that have not previously had access to support services can have them, and that those who have moved away from their usual providers have access to same.

Public housing detention orders

Overcrowding in public housing increases the risk of COVID-19 transmission, shining a spotlight on the need for significant investment in public housing. Recently, detention orders were applied to public housing estates. The purpose of the Detention Directions under the Public Health and Wellbeing Act 2008 (Vic), which applied to a number of public housing estates in Melbourne, was to 'limit [resident's] interactions with others by restricting the circumstances in which they may leave the premises where they ordinarily reside.'¹⁵⁵ The initial detention period was 14 days, and people were not to leave their premises unless granted permission to do so for the purposes of attending a medical facility to receive medical care, where it was reasonably necessary for their physical or mental health, on compassionate grounds or in the event of an emergency. The Victorian Equal Opportunity & Human Rights Commission produced a Factsheet on residents' rights in full lockdown (which included rights such as that to 'access disability services and receive healthcare, including pre- and postnatal care, mental health care, access to drug and alcohol services, access to medications, and treatment if you test positive for COVID-19'¹⁵⁶) and the Victorian Ombudsman is conducting an investigation into the treatment of public housing residents at 33 Alfred Street, North Melbourne¹⁵⁷ (one of the housing estates that was subject to detention directions).

VALS highlights the Victorian Aboriginal Child Care Agency's submission to PAEC:

The geographical location of Melbourne's second COVID-19 spike and public housing tower lockdowns are an example of this showing the correlation between housing insecurity, financial hardship and health inequalities. People who live in conditions of housing stress, overcrowding and affordability stress have less agency and are limited to an environment with a lesser capacity to self-isolate than the remainder of the community. Such living conditions are the product of decades of public and social housing de-investment, systemic policy failure and stigmatisation creating highly vulnerable communities. We raise this concern and disparity because 22% of Aboriginal households live in social housing in Victoria, compared to 0.9% of total population.¹⁵⁸

¹⁵⁴ Public Accounts and Estimates Committee, Inquiry into the Victorian Government's response to the COVID-19 pandemic Interim Report (July 2020), available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Report/PAEC_59-07_Vic_Gov_response_COVID-19_Interim_report.pdf

¹⁵⁵ Detention Directions under the Public Health and Wellbeing Act 2008 (Vic) (4 July 2020) <https://www.dhhs.vic.gov.au/sites/default/files/documents/202007/Detention%20Directions-signed.pdf>

¹⁵⁶ Victorian Equal Opportunity & Human Rights Commission, Factsheet: Your rights in full lockdown, available at <https://www.humanrights.vic.gov.au/resources/factsheet-your-rights-in-full-lockdown/>

¹⁵⁷ Victorian Ombudsman, Update on Ombudsman's investigation into public housing lockdown (18 August), available at <https://www.ombudsman.vic.gov.au/our-impact/news/update-on-ombudsmans-investigation-into-public-housing-lockdown/>

¹⁵⁸ Victorian Aboriginal Child Care Agency, Submission to the Parliament of Victoria Public Accounts and Estimates Committee: Inquiry into the Victorian Government's Response to the COVID-19 Pandemic (August 2020); see also Introducing Competition and Informed User Choice in Human Services: Identifying Sectors for Reform. Aboriginal Housing Victoria's response to the Productivity Commission preliminary findings report (October 2016) page 6, available at https://www.pc.gov.au/data/assets/pdf_file/0018/209403/subpfr316-human-services-identifying-reform.pdf



Throughout the lockdown, VALS conducted welfare checks on at least 12 families, assisting and advocating for vulnerable clients who were impacted by the tower lockdowns. VALS was also meeting on a daily basis with other legal services, in relation to providing legal information to residents, residents' access to legal services and sharing developments (such as procedures and issues arising). VALS' crucial work should have been complemented by robust, culturally competent detention oversight by an independent body, which is yet to be designated or established as per Australia's international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It would have fallen within the mandate of these detention oversight bodies, National Preventive Mechanisms (NPMs), to conduct inspections at the housing estates, with the objective of preventing treatment of residents or conditions that might amount to torture or cruel, inhuman or degrading treatment, such as elderly Aboriginal people not having access to the carers who assist them with food preparation and personal hygiene. The UN body under OPCAT, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) has issued advice that 'any place where a person is held in quarantine and from which he or she is not free to leave is a place of deprivation of liberty for the purposes of [OPCAT] and so falls within the visiting mandate of a national preventive mechanism.'

Recommendation 116: All of the emergency measures implemented through the *COVID-19 Omnibus Act* with respect to residential tenancies should be extended to at least 31 March 2021.

Recommendation 117: Amendments that, in specified circumstances, the period of notice that must be given under a notice of intention to vacate has been reduced from 28 to 14 days should be retained. Some guidance should be given as to what will constitute "severe hardship", perhaps in the form of considerations that may be taken into account by the Tribunal in determining whether a person's hardship meets this standard.

Recommendation 118: The *Residential Tenancies Amendment Act 2018* should commence immediately upon the expiration of the Emergency Measures Act.

Recommendation 119: Videoconferencing, rather than phones, should be used in Residential Tenancies List hearings. There should be a presumption that videoconferencing will be used.

Recommendation 120: VALS supports the recommendation of the Federation of Community Legal Centres and others in the legal sector that accessible information and resources should be provided to tenants around their rights and options in relation to the COVID-19 rent reduction process, including mandating that landlords provide tenants with prescribed information on the rent reduction process and where to get assistance. Information should also be provided in relation to rent relief under the DHHS grant scheme.

Recommendation 121: The Government needs to consider how it will assist the most vulnerable people in our community, who have not accessed the rent assistance grants, or have accessed it after having accumulated significant arrears.

Recommendation 122: There needs to be greater investment in public housing, particularly given the increased risk of COVID-19 transmission in overcrowded public housing estates.



Recommendation 123: Emergency re-housing for those who have been homeless represents an opportunity to redeploy support services, to ensure that those who have not previously had access to support services can have them, and that those who have moved away from their usual providers have access to same.

Recommendation 124: Any future lockdowns of public housing estates should be monitored by independent detention oversight bodies.

Family Law jurisdiction

25. Court

Audio-visual hearings, when conducted well, are extremely useful and save on travel time and time spent in Court waiting for a matter to be called. It has also meant that the process of appearing in the Court has been streamlined and has therefore saved practitioners' time. As an example of how matters may be dealt with, the Court would invite all parties in all matters to a WebEx meeting in the morning. The Magistrate calls each matter in turn and asks each party where they are at in the matter and what they are seeking. If the matter cannot be resolved at that moment, the Magistrate stands the matter down so that the parties can continue their discussions and get instructions. The Court then sends another WebEx meeting invite for all parties in all matters for after lunch. After lunch the Magistrate calls matters in turn and hears each of the parties.

Because the Magistrates and parties are aware they must be prepared for the hearing on the next occasion, procedural orders such as having the DHHS notes released are dealt with on the day the Orders are made meaning that parties are able to be prepared at the next hearing date.

Similarly, audio hearings and conciliation conferences, when conducted well, allow a legal representative to undertake matters in several regional Courts on the same day. They are much easier to run as one can see the body language of the person as well as hear what they are saying. Receiving documents electronically, such as the DHHS notes, is useful as it saves the DHHS lawyers having to print large documents for each of the parties which, usually takes a considerable amount of time, and thus parties find themselves waiting for documents at Court and therefore wasting time. Electronic documents are also easier to search and to store and can be printed if necessary.

Moving beyond pandemic, audio-visual hearings could be extremely useful in regional areas where at present the Children's Court may only sit once per month and where there are no specialist Children's Court Magistrates. It would allow Children's Court matters to be heard much more frequently and by specialist Magistrates. Further, as matters move back into the Courts, matters could be heard in a streamlined manner similar to how matters are heard via audio-visual link. In addition, giving parties the option to negotiate and consent to Orders prior to the hearing date would save the Court and practitioners time and resources.



Recommendation 125: Audio-visual hearings, which can save resources and improve efficiency of the court, should be retained.

Recommendation 126: Audio hearings and conciliation conferences should also be retained.

Recommendation 127: Audio-visual hearings would be particularly useful in regional areas, where there are no specialist Children’s Court Magistrates.

26. The impact of COVID-19 on family reunification

‘A report commissioned by Victoria’s largest child and family services organisation, Berry Street, found that in the most severe scenario – recurring virus outbreaks resulting in long periods of lockdown – the number of children in out-of-home care would more than double from almost 12,000 to 27,500 within six years.’¹⁵⁹ The approach of the Government during the pandemic provides enormous discretion to Child Protection workforce and uncertainty for families, and fails to recognise that the legislated family reunification permanency provisions were already disproportionality affecting Aboriginal families. The approach being taken by the Department does not compel the Child Protection workforce to take additional measures in relation to family reunification in the response to the pandemic, and it is unclear what guidance, training and hierarchy of approval is in place in relation to the exercise of this discretion.

DHHS practice directions¹⁶⁰ provided to the Child Protection workforce place the onus on parents to demonstrate that the pandemic has had an impact on their capacity to meet conditions on orders; rather than the presumption being that it has impacted (eg through limited services and reduced face-to-face contact between children and their families) and Child Protection discussing with all affected parents what extension of time would be appropriate in their particular circumstances, noting that some parents may not want an extension. This is not in the best interests of children and young people or their parents.

Recommendation 128: There is an urgent need to further reconsider how the COVID-19 pandemic is impacting progress towards family reunification, and taking further steps such as amendments to the *Children, Youth and Families Act*. This should include extending the timeframes for family reunification.

Recommendation 129: VALS supports the Victorian Aboriginal Child Care Agency’s recommendation that Aboriginal Community Controlled Organisations and the Aboriginal community be involved in determining the local needs of Aboriginal children, young people and families involved in the Child Protection system during COVID-19.¹⁶¹

¹⁵⁹ Pandemic impacts 'could push thousands more children into care' (6 August 2020), available at https://amp.theage.com.au/national/victoria/pandemic-impacts-could-push-thousands-more-children-into-care-20200805-p55ioz.html?btis=&_twitter_impression=true

¹⁶⁰ Coronavirus (COVID-19) Fact Sheet: Determining the permanency objective in exceptional circumstances (25 April 2020)

¹⁶¹ Victorian Aboriginal Child Care Agency, Submission to the Parliament of Victoria Public Accounts and Estimates Committee: Inquiry into the Victorian Government’s Response to the COVID-19 Pandemic (August 2020), page 33, available at https://www.parliament.vic.gov.au/images/stories/committees/paec/COVID-19_Inquiry/Submissions/78_Victorian_Aboriginal_Child_Care_Agency_Redacted.pdf