

A PLAN FOR ABORIGINAL JUSTICE IN VICTORIA

EMPOWERMENT, IDENTITY, CULTURE



VALS

ACKNOWLEDGEMENT OF TRADITIONAL OWNERS

The Victorian Aboriginal Legal Services acknowledges all of the traditional owners in Australia and pay our respects to their Elders, past and present. Sovereignty was never ceded.

Always was, always will be, Aboriginal land.

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OUR PLAN

VALS was formed almost 50 years ago to ensure Aboriginal and/or Torres Strait Islander people had access to high-quality legal services that are culturally safe and holistic. We promote self-determination and social justice for our communities through their rights to empowerment, identity and culture.

We want our communities to be built on strong families. We want our people to be connected to community, culture, and Country. We want our communities to have the opportunity to make the choices in life that they believe are best. We believe our communities deserve secure housing, excellent healthcare and education, and secure work that pays the bills.

Aboriginal and/or Torres Strait Islander people maintain the oldest continuing culture on earth.

Our culture gives us strength. Our people thrived on our traditional lands for tens of thousands of years thanks to the strength we got from our culture.

Over 230 years ago, our lands were invaded by a colonial force that first tried to kill us and then tried to kill our culture. Our people and culture persist because we are strong, but the effects of colonisation continue to harm our people.

Our people are over-policed, overincarcerated and continue to die in custody. This is a crisis. The justice system has failed and needs to be rebuilt. This crisis demands strong political leadership. This crisis needs all Victorians to demand their political representatives to act.

Rebuilding the justice system will give Aboriginal and/or Torres Strait Islander communities a chance to breathe, and it will make the life of every Victorian better.

This is VALS' plan to rebuild the justice system so that it gives everyone a fair chance in life.

Our plan includes:

- funding for VALS to support all Aboriginal and/or Torres Strait Islander people who want to use our services
- bail and sentencing reform
- independent detention oversight
- raising the age of criminal responsibility
- ending Victoria's overreliance on prisons and police, and
- creating a better future for our children.

VALS is a not-for-profit legal service, one of the oldest community legal services in Australia. We have always required funding to help deliver our services, because our communities often cannot afford to pay for legal services. The current system was made by white men, for white men. It is a system that makes it harder for our people to get good housing, education, healthcare, and work. The actions of government have often directly led to our communities needing our legal services, and governments should recognise their responsibility to properly fund these services. The COVID-19 pandemic and Victoria's "tough on crime" agenda have dramatically increased demand for VALS' services. We need more resources to deliver our legal services in local communities.

CIVIL LAW & HUMAN RIGHTS

Many Aboriginal and/or Torres Strait Islander people have their basic rights denied because of the systemic discrimination they face every day. Our Civil Law and Human Rights Practice has helped our people with housing and employment issues, coronial inquests, discrimination and human rights matters, and debt issues. We have proudly helped our people engage with the Disability Royal Commission. We have also expanded our services to provide dedicated support for people with mental health issues. By ensuring our people can exercise their human rights, we are helping to empower them to live a good life and avoid contact with the legal system.

FAMILY VIOLENCE

Family violence continues to be an issue that all communities face. Eradicating family violence is not a quick fix, it requires generational work. Aboriginal and/or Torres Strait Islander people experience family violence in a unique way. Our people find it hard to access services, because there often aren't culturally safe or culturally aware services in their community. Our people are less likely to trust the police because of ongoing systemic racism within the police. Too often, when our people experience family violence, instead of receiving support, they are criminalised. The Victorian Government should invest more in self-determined responses, culturally safe supports, and community building.

OUT-OF-HOME-CARE

When Aboriginal and/or Torres Strait Islander people are given a fair chance, our strength shines through and we build strong families and communities. Too often, our people are not given a fair chance. Victoria has the highest rate of Aboriginal children in out-of-home-care and the highest rate of Aboriginal children on care and protection orders. The child protection system is harming our children and families, not helping them. Contact with the child protection system greatly increases the chances that a child will end up in the criminal legal system. At VALS, our Balit Ngulu and Aboriginal Families Practices work every day to reconnect our children to community, culture, and Country. The Victorian Government should give us the resources to expand our work to build strong families and communities that give our children the best chance in life.

IMPRISONMENT

The Victorian prison population has increased dramatically over the last decade. This is a failure.

Prisons do not rehabilitate people and they do not make communities safer. We want the Victorian Government to commit to moving towards a zero prison population. Getting people out of prison and keeping them out of prison by providing strong supports is the only way to make our communities safe. While we are moving towards a zero prison population, the Victorian Government must also commit to minimising the trauma and violence that prison inflicts on people.

PUNITIVE BAIL LAWS

The Victorian Government has created punitive bail laws that destroy lives, families, and communities. Aboriginal women are now the fastest growing group in Victoria's prisons and half of them are in prison because they were denied bail. They are in prison despite having not been found guilty and many of them are unlikely to receive a prison sentence if they are found guilty. They are often primary carers and when they are denied bail it has a damaging impact on their families and communities. It is the same for Aboriginal children, who make up a large portion of the children held in Victoria's youth prisons. At a time when they should be building their connections to culture, community and Country, they are put into a hostile and damaging environment that strips them of their future.

Victoria's bail laws are the complete opposite of what the Royal Commission into Aboriginal Deaths in Custody recommended - to increase access to bail.

The Royal Commission made it clear that custody should always be a last resort, but in Victoria it has been legislated as the default. The existence of mandatory sentences is also incredibly damaging and sends the message that the justice system is about retribution, not rehabilitation, healing, community safety or justice that fits the individual context. Victoria needs to reform bail and sentencing laws to focus on support, healing and reintegration.

RAISE THE AGE

In Australia, children as young as 10 years old are locked up in prison. Many of these children have allegedly committed only minor offences. Overwhelmingly, these children are Aboriginal and/or Torres Strait Islander. Expert health advice says that prison only traumatises children. Medical evidence says that the brain is still developing in children this young, and they do not have the capacity to have criminal intent. The Victorian Government agreed to the Closing the Gap target to reduce the rate of Aboriginal and/or Torres Strait Islander young people in detention by 30% and Victoria will need to raise the age to meet this target in a sustainable way. The UN Convention on the Rights of the Child states that incarceration of children should be a last resort and for the shortest period possible, but in Victoria children are often held in prison for months after being denied bail for minor offences. Many countries have raised the age of criminal responsibility to at least 14 years old. There is broad public support to raise the age. Victoria must raise the age urgently to at least 14 years.

CORRUPTION & ABUSE

In recent years, there have been many reports about corruption and abuse in prisons. The recent Coronial Inquest into the passing of Veronica Nelson heard evidence that Veronica did not receive appropriate healthcare and was not treated humanely by corrections staff. The Independent Broad-Based Anti-Corruption Commission (IBAC) linked billions of dollars of government spending on prison expansion to an increase in corruption within prisons and the abuse of people in prison. In Operation Rous, IBAC found that corrections officers had used excessive force and conducted strip-searches that breached official policy and were degrading in two incidents, including one that involved an incarcerated person with an intellectual disability. IBAC found that these incidents were not isolated. The Australian Government ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2017. OPCAT requires governments to establish independent detention oversight bodies. VALS is of the firm view the Commonwealth and Victorian Governments must design independent detention oversight in Victoria in consultation with Aboriginal and/or Torres Strait Islander communities, to ensure that it is culturally appropriate.

Victoria has spent billions of dollars expanding and upgrading prisons. Even though crime rates are low, Victoria's prison population has dramatically increased in the last decade. Prisons have proven to be ineffective at achieving rehabilitation and healing. Despite these low crime rates, Victorian Government spending on police has grown at twice the rate of other states over the last decade and Victoria now has the largest police force in Australia. The Victorian Government committed \$1.8 billion for prison expansions in the 2019/20 budget. This spending means that more Aboriginal and/or Torres Strait Islander people are locked up in prison. Aboriginal women are the fastest growing demographic in Victoria's prisons.

Spending on prisons, which harms Aboriginal families and destroys communities, is not the way forward.

VALS urges governments to spend their money on support services and programs that allow us to close prisons.

COMMUNITY BASED REFORM

Victoria should be rebuilding the legal system and making investments that empower stronger families and communities. Our Plan is based on our connection to our community and our almost half century of experience and expertise. We have the solutions – they have been researched and refined through countless inquiries like the Royal Commission into Aboriginal Deaths in Custody. We need the resources and authority to take real action to rebuild the justice system.

Many governments say they believe in Aboriginal self-determination. We need them to prove it. Governments need to properly fund VALS and adopt our proposed expert-informed, evidence-based reforms. Aboriginal and/or Torres Strait Islander people are strong. Aboriginal and/or Torres Strait Islander people are staunch. Aboriginal and/or Torres Strait Islander people have survived. Our people deserve the opportunity to heal our communities. When we are afforded that opportunity, Victoria will be a fairer place and all Victorians will benefit.

BUILDING THE ABORIGINAL LEGAL SERVICES OUR PEOPLE DESERVE

VALS is a community organisation.

We are at our best when we are connected to community and in community. We want to build our services so that we are more connected to community and delivering the Aboriginal legal services our people deserve.

Aboriginal and/or Torres Strait Islander people are the most incarcerated people on earth. There is an Aboriginal and/or Torres Strait Islander death in custody once every three weeks in Australia. VALS is on the front line of this crisis. Our Community Justice Programs supports community members in their most vulnerable moments, from when they are arrested by police, and our legal services help clients navigate their way through, and then out, of the justice system.

Both the Victorian and Commonwealth Governments must invest in stronger Aboriginal Legal Services by funding and supporting:

- Funding local, community-based Aboriginal Legal Services, so VALS is more accessible to community members
- Respecting the right of Aboriginal and Torres Strait Islander peoples to self-determination in legislative and other policy reform processes

- Early intervention services
- Implementing reforms that address the over-policing and overincarceration of Aboriginal and/or Torres Strait Islander people
- Culturally safe and responsive services
- Reducing recidivism

By strengthening our connection to community and implementing the reforms and services our communities need, we will be able to reduce the over-policing and overincarceration of our people.

Aboriginal Legal Services are the best investment a government can make. Spending on police, prisons, and courts is expensive and has failed on rehabilitation, healing and community safety. Investing in VALS helps get our people out of the justice system and to stay out of the justice system. That saves the government money by reducing demand on police, prisons, and courts. VALS also has almost half a century of experience in delivering high-quality services on limited resources. We know how to get the most out of our limited resources.

LOCAL ABORIGINAL LEGAL SERVICES

VALS is most effective when we are in community. Our people need connection to community, culture, and Country. When we have staff based in the communities where our people live, we have a stronger connection with them and are able to provide better services for them. When our people come into contact with the legal system, they face a lot of stigmatisation that can stop them from seeking help. When they do not receive high quality, culturally safe legal services, it can lead to further contact with the legal system.

Our children have disproportionate contact with the child protection system, are disproportionately expelled from school, and are disproportionately placed in residential care. This is often because they and their families have not received the services they need.

Contact with the child protection system and residential care means they are more likely to end up in youth prison. Being in youth prison drastically decreases their opportunities in life and makes it far more likely they will have ongoing contact with the criminal legal system. The trauma of ongoing contact with the legal system is shared by a person's family and community. It can often increase the likelihood of other people in the person's community coming into contact with the legal system.

The generational over-policing and overincarceration of our people continues to drive Aboriginal and/or Torres Strait Islander deaths in custody.

When VALS is part of a local community, we can help our people get out of the legal system and stay out.

We can do this through our services, and by connecting our people to other local services. When our people know they can trust us because we are part of their community, they are more willing to engage with us earlier and more willing to engage with other services to which we connect them.

That is why we are asking for government to invest in expanding our network of local offices. We want government to invest in 12 local offices which would be based in Mildura, Geelong, Latrobe Valley, Shepparton, Bendigo, Frankston, Bairnsdale, Ballarat, Melton, Warrnambool, Wodonga, and Horsham.

Over half of the Aboriginal people living in Victoria are based in regional and rural areas, but less than a quarter of VALS' current case work comes from outside of Melbourne. This points to a large unmet need in regional Victoria for VALS' services.

The outer suburbs of Melbourne are also home to growing Aboriginal communities, particularly in the north and west, but also along the bayside and Mornington Peninsula.

VALS' plan for local Aboriginal Legal Services is ultimately about Self-Determination. We know how to support our communities and make them strong. We know how to heal our families and raise our children. We are accountable to our people. Governments should give us the resources we need to help them as this will then reduce the costs of Victoria Police, Corrections Victoria and other system responses.

OFFICE LOCATIONS

VALS considered the following key factors when determining where our new office network should to be located:

- Where are there largest Aboriginal and/or Torres Strait Islander populations, and where will there be significant population growth?
- Where are Aboriginal and/or Torres Strait Islander people having disproportionately high rates of contact with the justice system?
- Where do our people need support connecting to other support services?
- With which services can we partner with to ensure our services are holistic and that we are able to prevent clients and community members having future contact with the justice system?
- Where are courts and prisons located?

Based on these criteria and relying on ABS census data, Crime Statistics agency data, Social Ventures Australia's 2019 report on Demand for services for Aboriginal and Torres Strait Island people in Victoria, key indicators from *Burra Lotjpa Dunguludja (Aboriginal Justice Agreement phase 4)*, and our own data of service demand, we believe that the following locations should be prioritised:

Hub Offices:

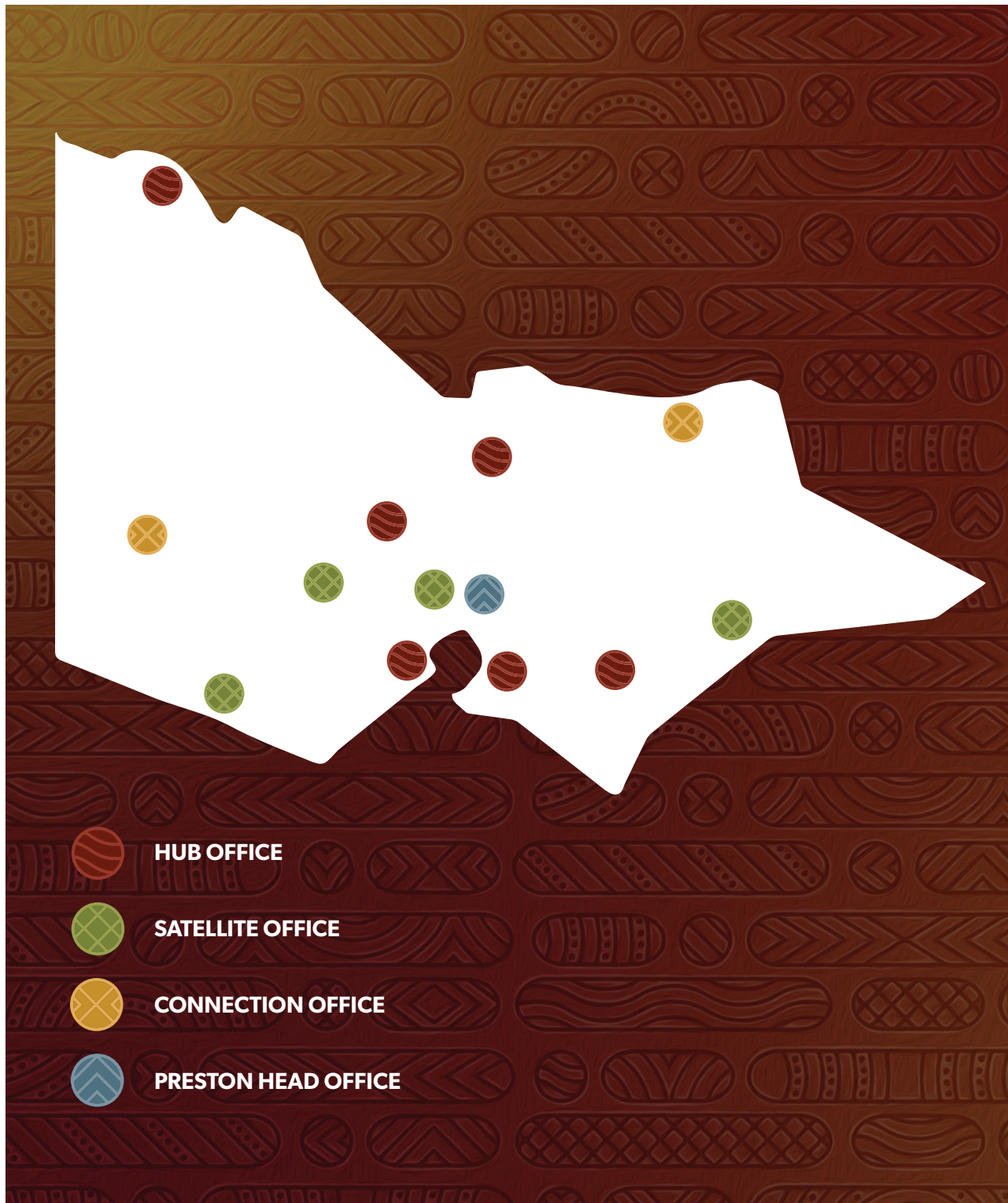
- Mildura - Latji Latji and Ngintait
- Geelong - Wathaurung
- Latrobe - Gunaikurnai
- Shepparton - Yorta Yorta
- Bendigo - Dja Dja Wurrung
- Frankston – Bunurong

Satellite Offices:

- Bairnsdale - Gunaikurnai
- Ballarat - Wadawurrung
- Melton - Wurundjeri
- Warrnambool – Eastern Maar and Gunditjmarra

Connection Offices:

- Wodonga - Wiradjuri, Waveroo and Dhudhuroa
- Horsham – Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagalk



Expansion of Aboriginal legal services will need to include funding for renting office space located near other relevant service providers, staff costs that cannot be relocated from centralised services, furniture, IT, utilities, and transport.

Local offices would have the following staffing allocations:

- **Hub Office:** 1 Criminal Lawyer, 1 Civil Lawyer, 1 Family/Child Protection Lawyer, 1 Legal Secretary, 2 Client Service Officers. (6 FTE)
- **Satellite Office:** 1 Criminal Lawyer, 1 Family/Child Protection Lawyer, 1 Legal Secretary, 1 Client Service Officer. (4 FTE)
- **Connection Office:** 1 Client Service Officer. (1 FTE)
- **Preston Head Office:** 4 Administration Officers and 4 Filing Clerks primarily based in Preston but dedicated to servicing the local office network. (8 FTE)

In 2021, the Victorian Government provided funding for VALS to relaunch Balit Ngulu, our specialised practice for Aboriginal and Torres Strait Islander children, in Preston and Shepparton. Our local offices would also allow for future expansion of Balit Ngulu, which has already received praise from several courts for the quality of service it has provided for our young clients.

SERVICES TO WHICH WE CONNECT CLIENTS

An essential part of our holistic, culturally safe model is to connect clients with support services. This is not just a referral. Our staff will often help clients with transport and small costs to help them engage with those support services. Our staff help clients fill out application forms and other paperwork that may be required to access some services.

Examples of organisations that we refer clients to for support services are:

- **Statewide and metro organisations:**

Victorian Aboriginal Health Service, Victorian Aboriginal Community Controlled Health Organisation, Ngwala Willumbong Co-Op, Mullum Mullum Indigenous Gathering Place, DirectLine, Drummond Street Services, Co-Health, IPC Health, Care Connect, Headspace, Yarns Heal, Strong Brother Strong Sister, Dardi Munwurro, Wulumperi Aboriginal and Torres Strait Islander Sexual Health Unit, Black Rainbow, First Nations Rainbow, Koori Pride Victoria, Rainbow Door, LGBTIQ+ Rural and Regional Program, Djirra, Yappera Children's Services, Elizabeth Morgan House, Mackillop Family Services, The Smith Family, Aboriginal Housing Victoria, VACSAL, Aboriginal Advancement League, Aboriginal Hostels, Vincent Care, Kara House, Women's Housing Ltd, iBobbly Phone App.

- **Victorian Co-Ops:**

Goolum Goolum Aboriginal Co-Op, Gunditjmara Aboriginal Co-Op, Worn Gundidj Aboriginal Co-Op, Bendigo & District Aboriginal Co-Op, Budja Budja Aboriginal Co-Op, Dandenong & District Aborigines Co-Op, Murray Valley Aboriginal Co-Op, Wathaurong Aboriginal Co-Op, Willum Warrain Aboriginal Service, Maggolee.

- **Mildura:**

Mallee District Aboriginal Service, Aboriginal Action Committee, Sunraysia Community Health Service, Dareton Home Care Service, Coomealla Health Aboriginal Corporation, Robinvale District Health Service, Haven Home Safe, Mallee Accommodation and Support Program, Sun Assist, Mallee Track Health and Community Service.

- **Shepparton:**

Rumbalara, GV Health, Primary Care Connect, Beyond Housing, Housing Victoria, Salvocare Shepparton, The Bridge Youth Service, The Youth Foyer, Wintringham Housing, Mooroopna Life Church/Op Shop, Shepparton Red Cross, Shepparton Family and Financial Service, Vincent Care Shepparton.

These lists are not exhaustive, but represent the types of organisations to which we connect our clients, based on their need.

SUCCESSFUL IMPLEMENTATION OF REFORMS

A number of reforms have started over the last few years which have the potential to improve the lives of our people. These reforms target systemic racism and generational injustices. If these reforms are successful, they will help reduce the over-policing and overincarceration of our people. We believe that VALS has a role to ensure these reforms achieve their full potential, and that the Victorian Government should fund us to do that.

Support for Community to Engage with Yoo-rrook

Yoo-rrook is a significant Government commitment. It has the potential to empower our people and give them the power to drive systemic reform that improves their lives. Community Legal Education programs are required to raise awareness of Yoo-rrook and help our people be part of this important work. For those who choose to participate, many need legal advice and access to a support worker to prepare for their participation and help them cope with what could be a re-traumatising experience. During the Disability Royal Commission, VALS has found that many participants also have other legal issues with which they need help to resolve. In their first interim report, Yoo-rrook asked for the term of their work to be extended. VALS believes that the funding we have been provided to effectively contribute to and support the Yoo-rrook commission will also need to be extended.

Support Community Applying to the Stolen Generations Reparations Package

Members of the Stolen Generation disproportionately have greater needs. This includes more risk of contact with the justice system. Access to the Reparations Packages will help them address these needs.

Community Legal Education is needed to help Aboriginal and/or Torres Strait Islander people understand potential entitlements and how to apply for a package. Applicants require access to culturally safe legal services. These legal services require brokerage funding to enable support for applicants with small costs associated with the scheme. Applicants also need support workers to help them navigate the process and connect them to services, particularly when the process is traumatising.

Anti-Vilification Legislative Reforms

Our people regularly face vilification. This impacts their ability to get secure housing and employment, access education and health services, and live the life they choose to. In 2021, a Parliamentary Inquiry found that the current legal process makes it difficult for people who have been vilified to seek justice.

Recommendation 28 of the Inquiry into Anti-Vilification Protections is “[t]hat the Victorian Government fund organisations such as Victoria Legal Aid and the Victorian Aboriginal Legal Service to engage in strategic litigation on vilification matters to develop practice in this area.”

VALS welcomes the Victorian Government commitment to stronger anti-vilification laws. It is hard to predict how many complaints might be brought under the new legislation. The VEOHRC Annual Report 2020-21 reports almost 500 enquiries and just under 200 complaints related to racism and racial vilification. VEOHRC also reported that they continue to have large annual increases in enquiries and complaints about racial vilification. There is clearly significant under-reporting of racial discrimination in the past. Successful litigation is likely to drive demand into the future.

VALS requires some targeted funding for a lawyer and social worker to deliver this recommendation.

Implementation of the Royal Commission into Victoria’s Mental Health System Recommendations

Our people are more likely to have mental health issues and are more likely to face discrimination because of their mental health issues. The Royal Commission into Victoria’s Mental Health System showed a link between mental health issues and contact with the criminal legal system. The Commission highlighted the need for culturally safe and trauma informed services.

Investment in VALS to restart and sustain the Disability Justice Support Program, piloted as part of the *Unfitness to Plead Project*, would support equal access to justice for people with disability. Key findings of the project included inaccessible court proceedings that rely on complex language, inconsistent availability of support throughout court proceedings and under-resourced legal services.

CULTURALLY SAFE AND RESPONSIVE SERVICES

Our people often do not trust government and generalist services because of a history of discrimination that continues today.

Culturally safe services are the best way to deliver services to our people.

Investing in culturally safe services is the only way Victoria will meet the targets of the Aboriginal Justice Agreement and the Closing the Gap Agreement.

WE BELIEVE THE VICTORIAN GOVERNMENT SHOULD INVEST IN THE FOLLOWING CULTURALLY SAFE AND RESPONSIVE SERVICES:

Expand Housing and Support Services for Aboriginal and/or Torres Strait Islander People Leaving Prison

The Victorian Government funded the establishment of Baggarrook, a program that provides housing and support to build independent living skills and reduce future offending of Aboriginal and/or Torres Strait Islander women transitioning out of prison. There is potential to expand this program and to offer a similar service to Aboriginal and/or Torres Strait Islander men.

Increased Community Legal Education for Aboriginal and/or Torres Strait Islander People

Community Legal Education helps keep people out of the legal system. It is crucial this is delivered in a culturally safe way, involving Aboriginal community members working alongside Elders, lawyers and other specialists. This education needs to be provided in many ways, including face-to-face and online sessions, and accessible resources in print and digital forms.

Social Workers to Support Our Clients

Most people who come into contact with the justice system have complex needs. These often involve mental health needs, trauma, disability, family violence and poverty. Social workers improve the quality of culturally safe legal services. They help clients address the underlying causes of offending and work through other parts of the legal system, such as child protection and civil law. They also help minimise the risks of vicarious trauma and build the skills and resilience of front-line staff.

Brokerage Funding for Frontline Services

Brokerage funding allows for culturally safe services to pay for small costs that help our people avoid contact with the legal system. For instance, the VALS Custody Notification Service would benefit from being able to help clients with small costs such as after-hours transport and short-term accommodation, particularly when clients are released from custody after-hours. VALS' recently relaunched Balit Ngulu would like brokerage funding to buy items such as sport uniforms, school books and medical supplies for clients to help them reconnect to education, support services and community. This supports effective diversion and prevention.

Aboriginal and Torres Strait Islander Cultural Awareness Training for the Legal System

Many organisations ask VALS to provide cultural awareness training, particularly organisations in the legal system. It is not surprising - we are the only dedicated, full service legal assistance service for Aboriginal and/or Torres Strait Islander people in Victoria, and have nearly 50 years of experience. We provide cultural awareness training and advice on an ad hoc basis, but we have no dedicated funding for this purpose. We welcome being able to improve cultural awareness across the legal system, but we should be funded to provide this training so that we are able to address some of these systemic issues while continuing to provide wrap-around support for our clients.

Improved Transport Access

The legal system is often viewed as inaccessible and hostile by Aboriginal and/or Torres Strait Islander communities. Transport often plays a decisive role in whether the legal system is accessible or not. Courts can be difficult to physically get to for our people in regional communities, or those from low-income communities. Our people often need access to transport to have their bail approved. Aboriginal and/or Torres Strait Islander people released from custody or prison, often cannot access transport due to the location or time of their release. This is distressing and increases the risk of them breaching the conditions of their release. Having the ability to provide transport for clients to get to court, or pick them up when they are released from custody, will help our people get out of the legal system and stay out.

Court Outreach Workers

Court is often an intimidating place and the process is foreign to many people. Court outreach workers for Aboriginal and/or Torres Strait Islander people have been successful in making court more accessible, but there is scope for much greater investment in this work.

Improved Office Accessibility and Capability

The Victorian Government has acknowledged that the COVID-19 pandemic has led to significant changes in the way courts operate and that some of those changes will become the new normal for Victoria's courts.

An increase in online court hearings has put a significant infrastructure burden on legal services like VALS. It means that there is need for PPE and air filtration, soundproofing, and high-quality audio-visual equipment to ensure that legal services can properly participate in online court hearings with their clients.

REDUCING RECIDIVISM

Reducing recidivism and getting people out of the quicksand of the legal system helps the individual and has significant community benefits. It is essential to achieving the justice targets in the new Closing the Gap Agreement.

Spent Convictions Legislation

When passing the spent convictions legislation, the Attorney-General noted that the legislation will provide an opportunity for rehabilitation. It is hard to quantify the number of people who will be eligible for the spent convictions scheme or how quickly they will engage with it.

To ensure the spent convictions legislation is effective, Community Legal Education is necessary. This equips the community with knowledge of available options and about the benefits to having convictions spent. People will also need legal advice and representation, and services will need brokerage to make the process accessible.

Aboriginal Community Justice Reports

The Aboriginal Community Justice Reports project is currently a pilot project that does not have ongoing funding. The Reports are modelled on Canada's Gladue Reports and adapted for the Victorian context. The reports support judges to make sentencing decisions that reflect the strengths and challenges in a person's life, and increase their chances of being rehabilitated. In Victoria, 20 Aboriginal Community Justice Reports will be produced. A case worker is made available to each person who participates to provide support and care.

It has received wide support from the courts, including a recommendation from the Supreme Court of Victoria which said "we note that a project has recently commenced to trial Aboriginal Community Justice Reports. As this case has demonstrated, the provision of such reports in appropriate cases will constitute an important step in ensuring the just sentencing of offenders in this State."

VALS believes that the Victorian Government should provide ongoing funding for the Aboriginal Community Justice Reports.

Parole Lawyer/Support Worker

There is the opportunity for a scoping project on the accessibility of parole for Aboriginal and/or Torres Strait Islander people and how Aboriginal legal services can develop services to increase access to parole in ways that support reduced recidivism. While Aboriginal and/or Torres Strait Islander people may be sentenced in a manner that envisages opportunities to be released on parole, and being provided additional supports in the community, many of our people end up serving their entire sentence. This contributes to the overincarceration of Aboriginal and/or Torres Strait Islander people.

Develop a Victorian Bugmy Bar Book

The development of a Victorian Bugmy Bar Book will be useful in improving access to bail and improving sentencing decisions for Aboriginal and/or Torres Strait Islander people.

Bugmy is a court decision that said the courts must consider the circumstances of someone's background and that this be given proper weight by sentencing judges. This project can bring relevant research together for lawyers and the court to ensure they are properly considering these circumstances. It needs to be ongoing to ensure the latest research is available, requiring a librarian.

It is essential that this project is led by Aboriginal and/or Torres Strait Islander people and the Victorian Government should fund VALS to lead this project.

EXPANDING SERVICES TO SUPPORT OUR CHILDREN

Balit Ngulu is a law practice dedicated to Aboriginal children and young people. It is a trauma-informed, holistic service. In 2021, The Victorian Government provided funding for the relaunch of Balit Ngulu in Preston and Shepparton. Balit Ngulu has hit the ground running and achieved great results for our clients and received praise in several courts for the extensive support that the service provides.

In an evaluation of Balit Ngulu, several justice sector stakeholders said that Balit Ngulu ensured Aboriginal and/or Torres Strait Islander children were better prepared for court, had better follow up, and received high quality, holistic support. When asked about their experience, a client said “it [the court proceedings] would have been really stressful, really hard to cope, I don’t think I could have done it without them.”

Balit Ngulu should be expanded so that it can support more of our children in more communities across Victoria.

BAIL REFORM

Victoria's bail laws are destroying our families and communities. In 2017, the Victorian Government introduced punitive bail laws and said they would make communities safer. In reality, these laws have led to a massive increase in the prison population, which has destroyed families and drained government resources away from communities.

In Victoria, the Aboriginal imprisonment rate has almost doubled in the last ten years, and about half of the prison population is on remand.

Aboriginal women are the fastest growing demographic in Victoria's prisons. Many of them have been denied bail on charges that would not lead to a prison sentence if they were convicted. Many of them are primary carers, and removing them from their families and communities has a devastating impact. Many of them are victim-survivors of family violence. They need support, not a prison cell.

About half of the Aboriginal children in youth prisons have been denied bail. They are charged with petty offending, and they are subjected to the same bail test as an adult. Youth prisons do not rehabilitate any child. Youth prisons steal a child's future and increase the likelihood that they will be trapped in the quicksand of the legal system for their whole life.

Which communities are safer because of the Victorian Governments punitive bail laws? Not our communities. Over-policed and denied support, our communities are battling to survive.

30 years ago, the Royal Commission into Aboriginal Deaths in Custody handed down its report, which included recommendations to increase access to bail and only use prison "as a sanction of last resort". Since then, they have been repeated in many reports, reviews, inquiries and forums, yet Victoria has failed to implement these recommendations and instead has gone backwards.

All Victorians are paying the price for these punitive bail laws. The rapidly increasing prison population has required the Government to spend billions of dollars on expanding prison capacity and lead to an unsustainable increase in the ongoing costs of prisons. IBAC has linked this spending to an increase in corruption within Victoria's prisons.

VALS Policy Brief, *Fixing Victoria's Broken Bail Laws*, makes recommendations on the crucial legislative and policy reforms that are needed to fix Victoria's failing bail regime, including:

- Repealing the reverse onus provisions;
- Create a presumption in favour of bail for all offences;
- Clarify that "flight risk" is a risk that the person will flee the jurisdiction;
- Bail hearings must take place in person;
- If someone is unrepresented in a bail hearing, the bail decision maker must be required to make inquiries as to whether the person is Aboriginal;
- All bail decision makers must be required to explain how they have discharged their obligation to consider Aboriginality in bail decisions.

It is important that these bail reforms are done properly and quickly. Every day, the lives of Aboriginal and/or Torres Strait Islander people and their communities are being destroyed by the current punitive bail laws. The Victorian Government and all our politicians must take responsibility for the damage that is being inflicted on our people by the punitive bail laws and fix them.

RAISE THE AGE

VALS wants the Victorian Government to stop putting children in prison. In Victoria, children as young as 10 years old can be put in prison. Aboriginal and/or Torres Strait Islander children are far more likely to be put in prison than non-Aboriginal children. Prisons do not rehabilitate our children.

According to Closing the Gap data, the incarceration rate of Aboriginal and/or Torres Strait Islander children is more than 6 times higher than the rate of non-Indigenous children. Putting our children into prison steals their future from them and traumatises their families and community.

Children who have contact with the legal system have been failed over and over again by society.

We should be investing in the support services that children and their families need, to give them a good chance in life. When we fail children, we have the responsibility to do the hard work to give them a second chance. Prison takes away a child's chances.

Every child should be free to go to school, have a safe home to live in and be supported to learn from their mistakes. Locking children away in prison can cause them lifelong harm, increases their risk of mental illness, disrupts their education, and even increases their chance of premature death.

VALS believes that the age of criminal responsibility should be raised to at least 14 years old and that the minimum age of imprisonment should be at least 16 years old. We say at least because we believe the evidence shows that no child benefits from imprisonment. Cut off from family, culture, friends, school, and proper healthcare, children in prison are being forced into a life trapped in the legal system.

Much of the world has raised the age of criminal responsibility. They have not experienced an explosion in youth crime. They have just stopped putting children in prison.

Almost all of the children in youth prisons are there for minor offending. Children committing serious crimes is not a problem that needs to be dealt with through prisons. The Attorney-General, Jaclyn Symes, said that *"serious offending by children under 15 is exceedingly rare...the rate at which children under 15 commit serious offences...is around one conviction per year."* We can rehabilitate this very small number of children in ways that give them a chance at living a good life.

Alternatives to prison already exist and they work, but services do not have enough resources to support all the children who need them. Governments can fund these programs if they choose to. It would not be a blow to their budget – it would actually save money because these children would not end up in contact with the legal system for their whole lives

VALS wants the Victorian Government to:

- Raise the age of criminal responsibility to at least 14 years old;
- Raise the age that children can be detained to at least 16 years old and;
- The presumption of doli incapax should be extended by legislation to young people aged 14 to 17, with further amendments to ensure its effective operation.

Australia has a long history of taking Aboriginal and/or Torres Strait Islander children away from their parents. It has even apologised for it at times. Yet that history is not the past, because it continues today. Putting our children in prison is destroying our families and it needs to stop.

POLICE OVERSIGHT AND ACCOUNTABILITY

VALS wants police to be accountable. Systemic racism in Victoria Police impacts our communities on a daily basis and manifests itself in the way that our people are over-policed, over-represented in police custody and under-served when they seek assistance from police. Our people are also more likely to be subjected to police use of force and explicit racial abuse. An independent oversight body that provides culturally aware services is needed to begin to change the entrenched culture of Victoria Police.

Abuse of police power has been rife, and inadequately investigated, for so many years that only a broad-ranging Royal Commission into Victoria Police could expose the full extent of police misconduct that has been allowed to happen unchecked. Root and branch reform is needed.

There can be no more delays. There can be no more police investigating police. It is time for accountability.

In our submission to the Inquiry into Victoria's Criminal Justice System by the Legal and Social Issues in 2021, our *Building Back Better: COVID-19 recovery plan*, and our policy brief *Reforming Police Oversight in Victoria*, we have made dozens of recommendations for systemic reform to policing in Victoria.

VALS believes that the Victorian Government must:

- Undertake a more comprehensive reform process to consult on, design and implement all the core components of an effective police oversight system;
- Establish a new independent police complaints body;
- Ensure all police complaints, except customer service matters, are dealt with by the independent police complaints body;
- Ensure the Office of Public Prosecutions must be required to provide a written justification to the complainant and the independent complaints body if it does not pursue charges following a recommendation from the independent police complaints body to prosecute;
- Require Victoria Police to publicly release data, broken down by key demographic characteristics, including Aboriginality and geography, on the use of key police powers that disproportionately affect marginalised people, including searches, move-on orders, and youth arrests;
- Establish an independent monitoring body with powers to access and analyse data about the use of police powers, and issue public reports;
- Ensure the new independent police complaints body and all bodies responsible for monitoring police places of detention, must be mandated to investigate systemic racism.

We must have a world class police oversight system. A legal system without police accountability can never deliver justice. It is clear that Victoria has no effective police oversight. Patching up the system will not work – we need a fully independent police oversight body.

INDEPENDENT DETENTION OVERSIGHT

VALS wants an independent detention oversight system in Victoria, that is culturally appropriate for Aboriginal and/or Torres Strait Islander people. Independent detention oversight has the potential to prevent Aboriginal deaths in custody if it is implemented properly. In December 2017, Australia ratified the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)*. This commitment required the Commonwealth Government and all State and Territory Governments to implement independent detention oversight. This would involve independent bodies having the right to enter places of detention unannounced and observe how they operate. These bodies would also be able to interview people in those places of detention and report their findings publicly.

Australia asked for a three-year extension to implement independent detention oversight but failed to meet that extended deadline. The UN then granted a further extension of a year to Australia, until January 2024. Governments continue to blame each other for these delays instead of working together to end torture in Australia.

Aboriginal and/or Torres Strait Islander deaths in custody are a crisis. Over 520 Aboriginal and/or Torres Strait Islander people have died in custody since the Royal Commission into Aboriginal Deaths in Custody. Analysis of these deaths in custody by government organisations and media outlets found that a large portion of them were preventable. A lack of access to healthcare and prison staff failing to follow procedures are two major factors in the crisis.

Independent detention oversight would allow for these failings to be identified and publicly reported on before people die.

Too often, the loved ones of Aboriginal and/or Torres Strait Islander people who have died in custody spend years in coronial processes, only for the findings to be ignored by government.

While recommended changes are ignored, the same mistakes are repeated over and over, and more of our people die too young.

Independent detention oversight bodies, or National Preventive Mechanisms, should not only investigate prisons. Oversight bodies must be able to investigate all places where individuals are or may be detained. This should include all police places of detention, secure residential care facilities, and forensic mental health hospitals. The Royal Commission into Mental Health in Victoria and the Disability Royal Commission have both highlighted shocking abuses in these facilities. Aboriginal and/or Torres Strait Islander people are subject to the worst of these abuses because we are more likely to be in these facilities due to the ongoing effects of colonialism and the gap in health outcomes compared to non-Indigenous people, as well as systemic racism in the mental health sector and disability sector.

During the COVID-19 pandemic we have seen people detained due to emergencies. The lockdown of public housing in Flemington was particularly concerning. The Victorian Ombudsman later said that the lockdown had breached human rights and that “the early days of the lockdown were chaotic: people found themselves without food, medication and other essential supports.” An independent detention oversight body should have the right to be on the ground at such events.

To properly implement OPCAT, the Victorian Government must:

- Urgently undertake robust, transparent and inclusive consultations with the Victorian Aboriginal community on the implementation of OPCAT in a culturally appropriate way;
- Ensure the operations, policies, frameworks and governance of the designated detention oversight bodies are culturally appropriate for Aboriginal people;
- Legislate for the National Preventive Mechanism's mandate, structure, staffing, powers, privileges and immunities;
- Ensure that the National Preventive Mechanism is sufficiently funded to carry out its mandate effectively;
- The National Preventive Mechanism in Victoria must have jurisdiction over all places where individuals are or may be detained;
- Amend COVID-19 Emergency legislation to ensure that visits to correctional facilities and youth detention facilities by independent detention oversight bodies cannot be prohibited.

When a person is deprived of their liberty, they still have a right to be safe and treated humanely. Yet there are too many examples of torture and abuse when people are deprived of their liberty in Victoria. We need to shine a light on these places.

NO MORE PRISONS

VALS wants Victoria to end prison expansions and commit to a legal system that seeks to reduce the prison population towards zero.

Prisons do not work.

Prisons do not rehabilitate people.

Prisons are inherently violent and corrupt places.

Prisons are unaffordable and an irresponsible spend.

A legal system built on decarceration is best for everyone. Victoria's ambition must be a legal system built on the understanding that prison does not support healing and rehabilitation, and does not achieve community safety. Since 2010, Victoria's prison population has almost doubled. In recent years, the Victorian Government has spent billions of dollars expanding prison capacity across the state with a typical cost of \$1 million per bed. That is just the construction cost. The annual cost of keeping a single person incarcerated for a year is over \$100,000. That is more than the average fulltime wage in Australia and more than 6 times the annual Newstart allowance for a single person. This money would be far better spent supporting people and communities, to prevent the risk factors that lead to offending, including housing insecurity, unemployment, poor access to education and healthcare, family violence and systemic racism.

IBAC and the Victorian Ombudsman have published damning reports of Victoria's prison system. It is clear that a broken and rotten culture within Victoria's prison system has been exacerbated by the huge expansion of prison capacity in recent years. Our recommendations for bail reform, independent detention oversight, and raising the age of criminal responsibility to at least 14 would be an important first step towards decarceration and would progress Victoria towards a legal system that does not rely on incarceration. The Victorian Government needs to move towards addressing the inequality and discrimination that leads to contact with the legal system, and to focusing on community supports, prevention, early intervention, rehabilitation and healing.

People in prison do not have access to Medicare or the Pharmaceutical Benefit Scheme. Many Aboriginal and/or Torres Strait Islander deaths in custody are due to inadequate healthcare. Prison is traumatic and retraumatising. The use of isolation and solitary confinement has deep and long-lasting impacts on a person's health and can shorten their life expectancy. Strip-searches, the use of excessive force and restraints, and the systemic mistreatment of people in prison is incredibly damaging for a person's health and wellbeing. Far from being rehabilitated or healed, people in prison often leave with complex health issues which they must live with for the rest of their lives, and which impede on healing and reintegration.

VALS has made many recommendations about decarceration. Some of our key recommendations are that the Victorian Government must:

- Move towards a zero prison population and minimise the trauma and violence that prison inflicts on people as we work towards that ambition;
- Increase the use and availability of diversion and cautions;
- Increase access to parole and bail;
- End the use of solitary confinement, strip-searches and other traumatising methods of control;
- Make prison disciplinary hearings fair and transparent;
- Ensure access to equivalent healthcare in prisons;
- Invest in restorative justice approaches.

Prisons do not make the community safer. Prisons create trauma. Prisons are an unsustainable expense. We should invest our money in the supports that make our communities stronger.

A PUBLIC HEALTH RESPONSE TO PUBLIC INTOXICATION

In December 2017, much-loved mother, grandmother, sister and proud Yorta Yorta woman, Aunty Tanya Day, passed away after falling and hitting her head in a police cell in Castlemaine, Victoria. Aunty Tanya Day was locked in the police cell for being drunk in a public place after falling asleep on a train.

After almost two years of courageous advocacy by Aunty Tanya Day's family, and over 30 years since the Royal Commission into Aboriginal Deaths in Custody, the Government finally passed legislation to decriminalise public drunkenness and replace it with a public health response.

This reform was important because public intoxication is known to be used to over-police Aboriginal and/or Torres Strait Islander communities. The use of public intoxication laws was part of many of the cases investigated by the Royal Commission into Aboriginal Deaths in Custody and the discriminatory use of these laws has been highlighted in many reports since.

Whilst Aboriginal people make up 0.8% of the Victorian population, 6.5% of all public intoxication offences between 2014 and 2019 were recorded against Aboriginal people.

Recently, the Government announced that it would delay the decriminalisation of public intoxication by 12 months, because it has deprioritised this issue and has not done what was needed in time. This delay is deeply disappointing. As long as public intoxication remains a criminal offence, Aboriginal and/or Torres Strait Islander people will continue to be locked up for this archaic offence. A public health response to public intoxication must be prioritised and implemented properly, and Aboriginal self-determination must be at the forefront of the health response.

VALS supports the position of the Day family, that police should not be involved in the health response to individuals who are intoxicated in public. This is a health issue, not a justice issue; and the reforms require a fundamental shift in culture and systems reform.

If Victoria Police continue to play a role in relation to public intoxication, they should only be involved as a last resort and their role must be strictly limited, with appropriate safeguards and accountability mechanisms in place to prevent abuse of power. Under no circumstances should anyone be locked up in a police cell for being intoxicated in public.

A properly implemented public health model for public intoxication would also serve as a model for public health responses to other matters such as drug decriminalisation.

Along with limiting the involvement of police, VALS' key recommendations for the implementation of this reform are:

- There must be no further delays. The Victorian Government must properly resource the development and implementation of the public health model so that it is in place as soon as possible;
- The Day family and Aboriginal organisations should continue to lead the implementation of the reform.

VALS' detailed recommendations can be found in our *factsheet on public intoxication*.

Our people have been fighting for this reform for decades. A proper public health model would ensure so many of our people avoid ever having contact with the criminal legal system and it would help people heal instead. Many governments denied us this reform, now that it is happening it must be the best public health model possible.



ABORIGINAL SOCIAL JUSTICE COMMISSIONER

Over 500 of our people have died since the Royal Commission into Aboriginal Deaths in Custody. Many of the Commission's recommendations have never been implemented. The recommendations of many inquiries into the treatment of our people in custody have never been implemented.

The Aboriginal Justice Caucus has been asking the Victorian Government to establish an Aboriginal and Torres Strait Islander Social Justice Commissioner in this state for over 15 years. An essential role of the Commissioner would be to measure the implementation of recommendations from the Royal Commission into Aboriginal Deaths in Custody and other relevant inquiries.

VALS believes that Victoria should establish an Aboriginal and Torres Strait Islander Social Justice Commissioner, with the final design of the Commissioner's office to be determined by the Aboriginal Justice Caucus. It has been promised by politicians previously, but those promises were broken. It is time to deliver.

We need accountability and transparency to drive reform of Victoria's legal system. Often when our people are victims of abuse by the justice system, they don't have the ability to tell their story. When our stories are told at inquests and inquiries, often the findings are ignored. We need an Aboriginal Social Justice Commissioner so that we can tell more of our stories and hold government to account for the way our people are treated by the legal system.



A FUTURE FOR OUR CHILDREN

Our children deserve to be safe and have the support they need to live a good life, connected to culture, community, and Country. The impact of over-policing and overincarceration of Aboriginal and/or Torres Strait Islander children, along with their overrepresentation in the child protection system is a modern-day Stolen Generation. In schools, in residential care and the child protection system, and in courts and prisons, Aboriginal and/or Torres Strait Islander children are forced to survive hostile environments.

Most of our children never come into contact with the legal system, but we know that there are common themes in the stories of those that do. Children who come into contact with the legal system are likely to have been referred to child protection by the time they are 3 years old. They are also more likely to have a health issues, mental health issues, or learning difficulties, and not receive appropriate treatment. They are also more likely to have been expelled from school. Children who are detained in youth prisons have almost certainly spent time in residential care. This common path shows that children in youth prisons have been failed for many years. Time and time again, society not only fails to help these children, society inflicts harm and trauma on them.

Every child Victoria puts in prison is a failure.

Victoria must fix the child protection system so that it is helping our children, not creating more harm. We need an Aboriginal self-determined model for child and family services where our families and communities actively participate in the decision-making process, and possess the right to free, prior and informed consent over administrative and legislative measures that affect them. We must also invest in the prevention and early intervention services for Aboriginal families.

We also know that youth prisons cause tremendous harm and trauma to our children. Victoria must invest far more in using cautions and diversions to keep children out of prison. While Victoria continues to use youth prisons, it has a responsibility to reduce the harm they inflict. And the Government must invest in more support services while children are in prison and after they leave them.

There has been a lot of work done in recent years to engage Aboriginal children and young people to find out what changes they want. The *Ngaga-dji* report, published by the Koori Youth Council, and the *Our Youth, Our Way* report, published by the Commission for Children and Young People, are two important pieces of work that have given voice to our children. The Victorian Government should be committed to ensuring this work leads to the change our children asked for.

We believe the Victorian Government should:

- Support children and young people to be strong in their culture;
- Establish an Aboriginal self-determined model for child and family services;
- Invest in prevention and early intervention services for Aboriginal families;
- Reduce the criminalisation of children and young people in residential care;
- Make significant investment into residential care, to improve cultural appropriateness, and make them a more supportive environment so that they are not driving children into contact with the justice system
- Ensure compliance with the Aboriginal Child Placement Principle;
- Invest in more Koori Children's Courts so that they are accessible across the state;
- Prioritise and strengthen youth diversion options;
- Eliminate harmful practices, like solitary confinement, in youth prisons;
- Expand the Dual Track system to 25 years old so that Aboriginal and/ or Torres Strait Islander young people charged in adult courts can receive a young justice centre order, meaning that they are sentenced to spend time in a specialised youth justice centre;
- Invest in better supports for young people leaving custody.

You can find more detail on VALS' recommendations to create a better future for our children at our *Submission to the Commission for Children And Young People Inquiry: Our Youth, Our Way* and our *Submission to the Inquiry into Victoria's Criminal Justice System*.

Our children deserve a fair chance in life. Our children deserve to grow up knowing their culture and being supported by a strong community. The government has a responsibility to ensure that our children get the support they need to have those things. And government must stop criminalising our children when the government fails to give them that support.



VALS

FOR MORE INFORMATION:

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ABOUT THE ARTWORK

Come Yarn with Us

The artwork features message sticks, which are passed between different peoples, language groups and even within clans to establish information and transmit messages. They were often used to invite neighboring groups to corroborees, marriages, burials, declarations of war and ball games.

Our ways of communication inform and reform social, moral and human values of our societies.

In this instance, our community is extending the message stick as a symbolic gesture to communicate our distress within the justice system. We invite the Government and representatives to sit with us and hear our pleas for support, resources and understanding of their role in the systems failures and also its successes.

The art is also indicative of 'morse code' which is used in emergency situations. The rate of our people being imprisoned, deaths in custody and lack of cultural safety or awareness should be seen and treated as an urgent societal and governmental priority.

Artwork by Bitja (Dixon Patten Jnr)
Gunnai, Yorta Yorta, Gunditjmara, Dhudhuroa