

# Submission to the United Nations Special Rapporteur on Torture

Current issues in prison management

*27 November 2023*



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# Introduction

The Centre for Innovative Justice (CIJ) at RMIT University, Australia, welcomes this opportunity to engage with the Special Rapporteur on Torture.

Prisons, as closed institutions which primarily function to deprive people of their liberty, are inherently harmful. The CIJ's submission identifies a number of concerns within the Victorian prison system which support calls for criminal justice system reform. The CIJ's view is that prisons are not appropriate environments for the delivery of rehabilitation and reintegration support which could be better provided in the community. Overincarceration must be addressed, with the focus instead on crime prevention, community-based and self-determined justice models where individuals are supported to heal and address behaviours outside of a punitive, institutional environment.

Nevertheless, given that people continue to be incarcerated in prison custody, it is critical that all forms of violence and harm be addressed, and that, as far as possible, people have access to adequate support for their rehabilitation and reintegration.

## Acknowledgment

The CIJ acknowledges the Woi wurrung and Boon wurrung language groups of the Eastern Kulin Nation on whose unceded lands we conduct our business. We respectfully acknowledge their Elders past and present, as well as the Traditional Custodians and Ancestors of all lands and waters across Australia, and the ongoing strength of the world's oldest continuing and living culture.

We acknowledge the devastating and ongoing impacts of colonisation of First Nations communities across Australia, impacts which have a direct and continuing relationship with the vastly disproportionate rate at which Aboriginal people have contact with the criminal justice system, as well as their experiences of racism and discrimination once this contact occurs. We acknowledge the ongoing resilience and leadership of First Nations' communities in striving to address inequalities and improve justice, health, and social outcomes for their peoples.

Th CIJ also acknowledges people with lived experience of the prison and justice system whose perspectives have informed the CIJ's work and the reflections in this submission. It is crucial that States listen to the voices of people with lived and living experience of incarceration when designing, monitoring, and reforming the criminal justice system to ensure, to the extent that incarceration is considered necessary, it operates in a way that meets the needs of system-users, protects their rights to humane treatment and supports their rehabilitation.

## Background information

This submission is prepared to inform the Special Rapporteur on Torture's fourth report on current issues and good practices in the management of prisons, including pre-trial detention facilities, to be presented to the Human Rights Council.

The scope of this submission is limited to current issues and good practice in the state of Victoria, Australia, drawing on over ten years' experience in researching and advocating for innovative justice approaches and our recognised work in the fields of prison reform, disability and lived experience advocacy and restorative justice practice.

We outline some of the ongoing concerns that must be addressed as a precondition to mitigating the risk of cruel, inhumane, and degrading treatment or punishment, and supporting the rehabilitation and reintegration of people safely into the community. We also highlight some innovative justice responses employing ‘user-centred’ approaches to design solutions, which could be adapted to the custodial prison context.

Finally, this submission brings to the attention of the Special Rapporteur, recommendations made by recent Australian public inquiries and reviews that highlight persistent reform challenges and opportunities to create a safer, more humane, and rehabilitative criminal justice system.

### Quotes from CIJ Lived Experience Advisor

This submission includes quotes from interviews with CIJ’s Lived Experience Advisor, Dorothy Armstrong. As a person with lived experience of acquired brain injury and imprisonment, she has unique expertise to offer to this work. Within this submission Dorothy has contributed insights from her own experience of incarceration. We gratefully thank and acknowledge Dorothy’s contribution.

## The Centre for Innovative Justice

The CIJ was established in 2012 to explore innovative ways to improve the justice system, with a focus on people’s lived experiences. The CIJ’s objective is to develop, drive and expand the capacity of the justice system to meet and adapt to the needs of its diverse users. The CIJ meets this objective by conducting rigorous research which focuses on having impact – taking our research findings, most of which involve direct engagement with service users, and using them to develop innovative and workable solutions.

Our work includes research on therapeutic jurisprudence, restorative justice, victim services, family violence, women’s decarceration and disability in the criminal justice system, as well as the application of human-centred design to legal issues and processes.

We also work with governments, courts and tribunals, not-for-profit entities, community organisations and private corporations. The CIJ includes Open Circle, a service that provides restorative justice program and policy design consultancy and research services as well as undertaking restorative practice.

The CIJ platforms the expertise of people with lived experience of the justice system, and advocates for their voices to be heard, their participation and their expertise utilised to create a better justice system.

### Our work within the criminal justice system

The CIJ’s work is founded on the belief that the criminal justice system has the potential to function as a positive intervention in peoples’ lives rather than compounding their experiences of harm and disadvantage. For this to be realised, Australia’s criminal justice system must turn away from being punitive and reactive to focus on wellbeing, support, rehabilitation, and reintegration.

Recent CIJ projects relevant to this submission include:

- CIJ’s award-winning ‘Supporting Justice’ systems change project, working with people with lived experience of the criminal justice system and stakeholders from the criminal justice and disability service systems to address this over-representation.
- CIJ’s ‘Just Voices Project: Building mainstream justice workforce capability around the NDIS through lived experience’ to inform the design and development of workforce initiatives for the mainstream justice workforce.

- A recent review of Victoria Legal Aid’s (VLA) remand services which involved seeking the views of people with lived experience of remand and navigating other complex systems due to issues such as mental ill health, cognitive disability, family violence and substance use. The report is yet to be publicly released.
- A feasibility study into a Residential Program for Aboriginal women in contact with the criminal justice system as an alternative to prison.
- An evaluation of the Women Transforming Justice project, a multiagency collaboration providing legal and outreach support to women in contact with the criminal justice system.
- A project investigating women’s experiences of bail and sentencing since COVID-19 restrictions were imposed, to track patterns of subsequent contact with the criminal justice system and associated support needs during this time (‘The Lessons from COVID-19 project’, forthcoming).

## Overview

In Victoria the *Charter of Human Rights and Responsibilities* protects the rights of persons in prison to humane treatment and to be free from torture, cruel, inhumane, and degrading treatment<sup>1</sup> – drawing on international human rights treaties and standards. Yet recent reports and inquiries catalogue a long list of practices in contravention of these rights.

The Victorian prison system is not currently meeting its policy intent of supporting rehabilitation and community safety. Instead, it is propelling people into a cycle of criminogenic relationships and behaviour, and warehousing disadvantaged people at a significant human and financial cost.

Victorian prisons have been operating within an increasingly pressurised, ‘high churn’ environment, where rehabilitation is secondary to maintaining security and good order. In this context, the risk of ill-treatment increases.<sup>2</sup> There are specific and elevated risks of harm and ill-treatment to certain groups in Victorian prisons, including First Nations People, women, LGBTIQ+ people, people with disability, people from culturally and linguistically diverse backgrounds, young people, and the elderly. Experiences of discrimination and a lack of support for their specific needs has been well documented by recent reviews and inquiries.

First Nations People and people with cognitive disability are outrageously overrepresented in Victorian and Australian prisons. The lack of appropriate accommodation and specialist support for people with cognitive disability in prison in Victoria, undermines their rehabilitation and frequently act as triggers for ‘behaviours’, feeding a cycle of punitive discipline and diminishing wellbeing.

Australia’s colonial prison system is not culturally safe for First Nations Peoples who are unacceptably over-incarcerated and continue to pass away in prison at higher rates than any other group. Reform to prison health care provision, and the need for culturally safe services delivered independent of the prison, must be prioritised, as highlighted by the tragic and preventable death of Aboriginal woman, Veronica Nelson.<sup>3</sup>

To mitigate these risks and promote a safe and humane response to offending, the prison system must prioritise cultural change, ensure the facilities, programs, and services available are appropriate and safety accessed by all groups. The Victorian Government has accepted the findings and recommendation of recent inquiries calling for cultural and systemic change.<sup>4</sup> However, these entrenched problems require a greater financial investment and commitment to modern, innovative and alternative approaches to the institutional prison environment.

Central to prison reform is a more capable workforce and integration of more community services into prison case management, alongside an investment in relational security and reforms to prison disciplinary processes.

There is also an urgent need for an enhanced system of monitoring and oversight, including by designating, resourcing and implementing a Victorian National Preventive Mechanism (NPM) to give effect to Australia's international obligations under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).<sup>5</sup>

# Victoria's prison system and impact of the growing remand population

## The risk of ill-treatment increases as the remand population grows

Victoria experienced a decade of significant growth in the number of overall people incarcerated, including a significant rise in the percentage of people remanded in custody between June 2010-2022.<sup>6</sup> More people are entering the system and spending shorter periods on remand. First Nations' women have been disproportionately impacted, frequently imprisoned for repeat, non-violent, low-level offending.<sup>7</sup> Despite the welcome recognition by courts of the risk of contracting COVID-19 in custody which saw a temporary reduction in the female prison population, First Nations People and people with disability continue to be overrepresented in Victorian prisons.

As part of a recent review of the provision of legal services to people on remand in Victoria, people with lived experience of remand told the CIJ about their experience of distress, fear and disorientation which often impairs their ability to communicate their needs. The sense of vulnerability, confusion and need for care and support is heightened for people who have not previously been in prison custody and for people experiencing drug and alcohol withdrawal, mental ill health and who have a cognitive disability.

People remanded in prison custody require urgent, compassionate, and comprehensive support upon reception including access to legal advice, assistance to make childcare and other arrangements, and services to ensure their immediate health and wellbeing needs are met. Instead, the CIJ has heard that people on remand do not have immediate access to their prescribed medications, are often unclear about prison procedures and do not know how to seek help. The challenges and risks experienced by the remand population is set out in the 2022 report of the Cultural Review into the Adult Custodial Corrections System (Cultural Review)<sup>8</sup> and in CIJ's forthcoming review of Victoria Legal Aid's remand legal service.

Overcrowding and the changing configuration of the system, with increasingly numbers of people being held on remand for shorter periods, elevates the risk of ill-treatment. In an increasingly pressurised environment, the ability to provide relational security and effective case management are significantly diminished. Prison capacity to deliver rehabilitation programs and meaningful opportunities is also limited by staffing and demand.<sup>9</sup> As cultural and environmental pressure creates an unsettled and unstable prison environment, the use of force, restrictive practices and solitary confinement are more likely to become overutilised, increasing the risk of ill-treatment occurring.

## The COVID-19 pandemic exacerbated an already pressurised system and further restricted rights

The COVID-19 pandemic and related measures significantly reduced opportunities for meaningful rehabilitation and services to prepare individuals for reintegration into the community. Prisons suspended access to community-based education, training, programs, therapeutic services, and visits. Many therapeutic programs and supports were also suspended.

The suspension of in-person family visits for many months caused immeasurable distress and significantly impacted many people's mental health and wellbeing, particularly parents. While there is no adequate substitute for regular contact visits, Corrections Victoria did try to facilitate meaningful contact with the outside world using technology such as tablet computers. While demand for this technology outweighed supply, the CIJ understands that the practice of providing virtual visits has continued across some prisons.

#### Good practice – In-cell technology and virtual visits

Many people in custody spoke positively about the benefits of virtual visits with family including that virtual visits may be more accessible and convenient to family members living some distance from the prison; and that virtual visits enable people in prison to see children, pets and loved ones in their home environment.

We understand most prisons have continued to offer virtual visits; however, technology is not consistently or adequately available across all prisons.

Periods of administrative 'lockdowns', during which people were locked in their cells to prevent the spread of COVID-19 or to accommodate low staffing levels, occurred regularly during the pandemic. The extended periods of confinement were frequently in breach of international law and in some cases amounted to ill-treatment. This practice caused significant harm to individual's wellbeing and mental health that was not justified.

People entering (or re-entering) prisons were also required to spend two weeks in preventative quarantine. Victoria's prison quarantine policy was widely criticised by advocates and human rights experts as disproportionate, excessive, and extremely harmful.

The Victorian Equal Opportunity and Human Rights Commission publicly raised concerns at the time:

'We remain concerned about mandatory 14-day quarantine when inmates enter prison – conditions that are, in some ways, akin to solitary confinement – and the impact it may have on prisoners with particular vulnerabilities, including Aboriginal and Torres Strait Islander people, people with mental health issues and people living with a disability.

Despite prisons' best efforts, mandatory quarantine necessarily reduces prisoners' access to family and other supports. While in 14-day protective quarantine, prisoners have more limited access to in-cell phone calls, video-based visits, books, educational material, printed exercise routines and television.'<sup>10</sup>

Recently completed research conducted by the CIJ explored the gendered impacts of COVID-19 disruptions in the justice system. The *Lessons from COVID-19* project (forthcoming), includes findings on the disproportionate impact of extended and repeat periods of isolation on women.

In addition, this and other research exploring the impact of the pandemic on access to services<sup>11</sup> highlights how the suspension of face-to-face visits in prisons made it even more difficult for incarcerated women subject to Child Protection orders to work towards family reunification with their children within the stipulated two-year timeframe.<sup>12</sup> With limited opportunities to reconnect with their children during the pandemic – whether because of a lack of responsiveness of the Child Protection case worker or the foster parent, or as a result of pandemic-related restrictions – women faced increased risk of having their child permanently placed in the care of another.



The Cultural Review described a decline in the prison culture over this period with staff fatigue and low morale contributing to a climate of tension in the prison environment.<sup>13</sup> As research indicates, when prisons do not meaningfully engage people and limit contact with the outside world, the environment will be more unstable with an increased risk of violence and ‘violent control measures’ such as excessive force, use of restraints and seclusion.<sup>14</sup>

The risk of ill-treatment was further elevated by a reduction in formal and informal external oversight during the pandemic with external visits and monitoring by Prison Visitors and the Victorian Ombudsman suspended or extremely limited during this period.

Another unfortunate implication of the pandemic is the fiscal impact, particularly in Victoria, which has limited Victorian Government resources to prioritise prison reform, including implementing the recommendations of the 2022 Cultural Review. The CIJ emphasises the importance of government investment in reforms designed to reduce the risk of ill-treatment, as well as investments to reduce incarceration.

## Rehabilitation and prison culture

Currently, the Victorian corrections legislative framework does not reflect the importance of rehabilitation or embed the values and human rights standards expected of a contemporary corrections system.<sup>15</sup> Rehabilitation and support to prepare a person for reintegration into society are recognised under international treaties and standards as fundamental goals of a prison system.<sup>16</sup>

The Cultural Review described the current state of the Victorian custodial corrections system as:

‘What we encountered was a system in transition – shifting from an operational model focused on security to one that attempts to balance more therapeutic engagement with people in custody with the ever-present need to uphold community safety. However, this transition is incomplete, reflecting a lack of clarity about the purpose of the adult custodial corrections system and creating a tension between the security and rehabilitative aspects of the corrections model in Victoria.’<sup>17</sup>

A prison system that is less punitive and orientated towards rehabilitation will also be a safer prison and one that is less likely to engage in human rights violations or ill-treatment.<sup>18</sup> The most effective way to reorientate the culture towards humane treatment is to embed rehabilitation as the core purpose within a therapeutic model that mirrors ‘community life’ as far as possible. This requires attention to the delivery of case management, the environment, climate and custodial routine as well as the programs and opportunities to prepare for reintegration into the community.

### There are limited opportunities for rehabilitation and preparedness for release

*‘Rehabilitation? Absolutely not! It’s not possible...all the prison does is manage people, there’s no rehabilitation in prison’ – Dorothy Armstrong*

CIJ has observed and heard directly from people with lived experience of the prison system that opportunities to participate in rehabilitation programs are extremely limited – particularly for people on remand. With very few opportunities for community-based programs, work, vocational training and education, people incarcerated in Victoria generally do not have the opportunity to adequately prepare for their release or address the underlying causes of their offending. In Victoria there are very limited uses of community permits for home visits, even for people with low-security ratings serving their final months of their sentence. Unlike other international jurisdictions, like New Zealand and the United Kingdom, there is no statutory guidance to support family connections and involvement in their family member’s rehabilitation and reintegration.

## Good practice – Accommodation that looks as much like ‘normal life’ as possible

Accommodation design is an important part of facilitating rehabilitation and preparation for life outside of prison. Contemporary prison architecture has been described as having the potential to act ‘as a vehicle for minimising harmful effects of incarceration, improving wellbeing, and eventually decarceration.’<sup>19</sup>

There are some aspects of good practice in the design of accommodation across some Victorian prisons that mirrors aspects of community life. For example, several low and medium security prisons offer limited placements within ‘apartment’ or ‘cottage’ like accommodation. These more open and contemporary units are usually reserved for people with low-security ratings, close to the end of their sentence. Residents usually have access to a shared kitchen with the responsibility to self-cater, cooking and sharing their meals with other residents, and in some cases, managing a weekly shopping budget for groceries.

*"It changed how I felt...being able to see grass and animals...that made a difference for me" – Dorothy Armstrong.*

More open, community-like accommodation also affords more privacy, encourages positive socialisation, reduces stress associated with overcrowding and have positive behaviour and psychological benefits. Unlike traditional prison units, cottages and apartments, for example, tend to have much lower abrasive sensory inputs including lower noise levels, more comfortable ventilation, natural light, temperature and ability to maintain cleanliness.

While this style accommodation is not available for the majority of people incarcerated across Victoria and is still located within the four-walls of the prison, research demonstrates that it much more effective in cultivating an atmosphere conducive to rehabilitation.<sup>20</sup>

*"...there should be...one woman per room...I think the space needs to be a lot bigger...there's always something going on...it's such a small area. I saw [lack of space] as being the cause of a lot of problems" – Dorothy Armstrong*

## External service providers can positively shape culture and improve accountability

One of the challenges for the adult custodial corrections system is its inherently closed and opaque environment in which unhealthy local custodial cultures can develop and become entrenched, influencing staff attitudes, practices and norms.

One of the ways, prisons can promote healthy, open and accountable cultures by embedding external organisations to deliver services inside prison walls as a way of disrupting and correcting the local culture, and creating an additional layer of external oversight (albeit informally). As external service providers are not accountable to the corrections or department, they are more likely to report unacceptable or risky conduct, which, in turn, would act as a protective factor for people incarcerated. For example, through the provision of education and training, drug and alcohol programs, and health and wellbeing services, provided by external organisations within prisons.

## Good practice – Embedding external support for people with disability within prisons

Notwithstanding that prisons are inappropriate and ineffective settings for the rehabilitation of people with cognitive disability and mental illness, the provision of external disability support services within prisons can act as a protective factor from ill-treatment.

This is especially true in the context of disability services funded by the National Disability Insurance Scheme (NDIS), and other disability service providers. External disability services have capacity to better understand the health, communication, wellbeing and support needs of people with disability, and provide non-punitive support to prisoners with disability. This may in turn assist in transforming practices of blame and punishment for disability-related behaviours, into a culture where disability-related behaviour can be recognised as distress occurring within a punitive environment.

Additionally, specialist disability services are aware of the need to safeguard people with disability against violence, abuse and neglect, and may therefore have capacity to identify the ill treatment of prisoners with disability where prison staff do not, and support their efforts to make complaints, or make complaints on their behalf. In this sense externally funded services will provide an additional layer to the safeguarding landscape for people with disability.

In the context of the Victorian youth justice system, Parkville College offers a model of service excellence which simultaneously acts as an oversight mechanism and safeguard against ill-treatment. The Parkville College model follows a therapeutic and trauma informed practice approach, with a focus not only on students involved in transformative education, but equally on the people and systems who share the transformative experience. At Parkville College, children continue to be in the care of the Department of Justice and Community Safety (DJCS)<sup>21</sup> despite the activities they undertake being delivered and supervised by Department of Education and Training. The independent delivery of education from the administration of the facility ensures the quality of the service is not subordinated by some other priority, contributes to a perception of safe access and provides ‘outside eyes and ears’ in support of good practice and accountability.

The presence of external service providers within the adult custodial corrections system similarly acts as a safeguard and creates a fundamentally different culture where positive interactions between service providers and people incarcerated can set the tone for a safer, more mutually respectful environment. There are few external service providers operating in adult prison on a daily basis and external services are not back to their pre-COVID-19 level.

As noted below, the need for independently delivered healthcare providers within the women’s prison was a key finding of a recent Coronial Inquest. This has triggered a commitment for health services to be delivered by community service providers, particularly Aboriginal Community Controlled Health Providers.

Further services, including industry, training, education, mentoring, disability and therapeutic programs, embedded within prisons and delivered independent of corrections, will improve the safety of people incarcerated, notwithstanding the inherent limitations of the prison environment as an effective context for rehabilitation.

## The prison system continues to fail to meet health and wellbeing needs

Recent reviews and inquiries have examined the Victorian prison health system finding a range of deficiencies including inadequacies in:

- access to health services, particularly in relation to mental health support and drug and alcohol programs
- delivery of medical assessments upon reception
- responsive, urgent healthcare.

The Cultural Review reported that waitlists to see psychologists and counselling are unacceptably long.<sup>22</sup> The health system is focused on responding to acute mental distress and suicide risks, rather than early intervention and support to address trauma and distress. A fear held by many in custody is of being over-classified as a self-harm or suicide risk and therefore restrictively monitored in a management unit upon disclosing mental health issues. This fear acts as a deterrent to people seeking help for their distress. Restrictive practices and seclusion continue to be used to manage poor mental health and disability-related behaviour which frequently exacerbates distress and perpetuates poor outcomes.

Other well documented issues include:

- deficiencies related to the outsourcing of health services to private providers
- gatekeeping by corrections staff
- a lack of culturally safe healthcare
- demand for in-community services not available in custody
- care being compromised by systemic stigma around drug addiction
- inappropriate, inadequate or unavailable disability support.<sup>23</sup>

The Cultural Review's report points to an unacceptable gap between the quality of health services in prison and accepted standards of care in the community. People on remand, women, transgender and gender diverse people (TGD), people with disability and First Nations' people are most affected and continue to experience specific barriers to accessing adequate healthcare in custody and discrimination.

## The Coronial Inquest into Veronica Nelson and systemic failings

System failures in the delivery and oversight of prison health in the Victorian women's system were examined in the Coronial Inquest into the death of Gunditjmarra, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Nelson.<sup>24</sup> Ms Nelson was 37 years old when she died at the Dame Phyllis Frost Centre ('DPFC', Victoria's maximum security and remand prison for women), on 2 January 2020, three days after being taken into custody. Ms Nelson died of complications of withdrawal from chronic opiate use and Wilkie Syndrome in the context of malnutrition.<sup>25</sup>

The Victorian Coroner found Ms Nelson's death was preventable and was caused by repeated failures of Corrections Victoria<sup>26</sup> and the contracted private health provider, Correct Care Australia (CCA).<sup>27</sup> The Coroner found that Ms Nelson's treatment by corrections staff amounted to inhumane and degrading treatment.<sup>28</sup>

The Victorian Coroner made recommendations that the Victorian Government consider changes to the delivery of prison health services to ensure its independence from Correction Victoria<sup>29</sup> including considering transferring oversight to the Department of Health 'to draw upon its institutional knowledge as well as its access to a network of public and private health services to establish appropriate referral and oversight pathways, with therapeutic rather than punitive objectives.'<sup>30</sup>

In response, the Victorian Government have announced a new primary prison healthcare model for the prison system and delivered a new Healthcare Services Quality Framework, working closely with the Department of Health. The government have commenced transferring medical services for women from private to community and specialist delivered health care providers and is introducing regular health checks for Aboriginal people.<sup>31</sup> These changes are designed to ensure the State meets their duty of care and that care meets community standards. The CIJ welcomes this change which will reduce the risk of ill-treatment in the delivery of healthcare and brings Victoria's prison health system into closer alignment with international standards.<sup>32</sup>

## Coroner McGregor's key findings in the Inquest into the passing of Veronica Nelson

### *Opioid Substitution Therapy*

"I find that Justice Health's Opioid Substitution Therapy Program Guidelines, in so far as they restrict access to pharmacotherapy, deny prisoners equivalent care to that available in the community. I find that Justice Health's Opioid Substitution Therapy Program Guidelines infringe prisoners' rights to be treated humanely while deprived of liberty and their right to life given the greater risk of fatal overdose upon release contrary to sections 22 and 9 of the Charter...I find treatment she received constituted cruel and inhumane treatment contrary to section 10 of the Charter"<sup>33</sup>

### *Urgent care*

"I find that Veronica should have been transferred to hospital at the time of her reception to DPFC, and that CV and CCA staff continually failed to transfer her to hospital thereafter, and this ongoing failure causally contributed to her death."<sup>34</sup>

### *Cultural Isolation*

"I find that Veronica was culturally isolated and provided with no culturally competent or culturally-specific care or support from the moment of her arrest on 30 December 2019 to her passing at DPFC on 2 January 2020."<sup>35</sup>

### *Equivalency of community care*

"I find that CCA at DPFC failed to provide Veronica with care equivalent to the care she would have received from the public health system in the community, and that this failing causally contributed to her passing. I find that Justice Health failed to ensure that CCA delivered a standard of health care equivalent to that available in the public health system at DPFC, and this failing causally contributed to her passing."<sup>36</sup>

### *Drug stigma*

"I find that Veronica's care and treatment by CV and CCA staff while at DPFC was influenced by drug-use stigma, and that this causally contributed to Veronica's passing."<sup>37</sup>

### *Treatment by corrections staff*

"I find that CV staff continually and collectively obstructed the provision of 'equivalent care' to Veronica and failed to protect her welfare. I find that Veronica's treatment by some POs in the morning on 1 January 2020 amounted to inhumane and degrading treatment contrary to section 10 of the Charter."<sup>38</sup>

# Supporting the safety and needs of groups at a heightened risk of harm in prison

## The prison system cannot support people with cognitive disability and is entrenching harm

Despite the over-representation of people with disability in the prison system, successive Victorian governments have failed to address the overwhelming evidence that prisons are dangerous for people with disability, and the prison system fails to provide adequate support, treatment or access to appropriate services<sup>39</sup>. The physical and mental health of people with disability are frequently made worse in custody, with long lasting adverse impacts, and prisoners' exposure to violence, coercion, abuse, psychological restraint, neglect and exploitation greatly increased.<sup>40</sup> Many people with disability in prison are likely to have experienced trauma, adverse childhood experiences, and have comorbid mental health diagnoses, and imprisonment often worsens psychosocial disabilities that are associated with this trauma.<sup>41</sup> These facts are clearly stated in a range of inquiries, commissions, reports and in the academic literature, many of which have sat in the public domain for several years with little action taken. This is despite the evidence that lack of disability support for criminalised people with disability is correlated with increased recidivism and that the harm caused by prison can further entrench trauma and disadvantage.<sup>42</sup>

## Screening, Diagnosis and Access to Support

Lack of screening and subsequent diagnosis remains problematic in prisons, despite the clear evidence of the gross over-representation of cognitive disability – especially acquired brain injury (ABI) and intellectual disability (ID) in prison populations around Australia and internationally.<sup>43</sup> People who enter the prison system without a diagnosed disability are disadvantaged, as their behaviours and support needs are not necessarily considered in the context of cognitive disability, but instead viewed as oppositional, aggressive and resistive. Poor and inconsistent screening practices and prisoners' fears of disclosing disability can lead to a range of adverse outcomes.<sup>44</sup> For example, a person who has an undiagnosed cognitive disability may experience greater periods seclusion, increased restrictive practices and additional punishment because they are viewed by custodial staff as troublesome rather than disabled.

*'I think screening is absolutely necessary for the safety of everybody. Not just screening, but appropriate help and supports as well. Because if you don't have supports available, what's the point in screening everybody?'* – Dorothy Armstrong

The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (commonly referred to as the DRC) in its final report (Volume 8, Criminal Justice and People with Disability) recommended that “screening, identification and diagnosis of disability in custody are consistent with the national practice guidelines.”<sup>45</sup> This means that in Victoria, the Department of Justice and Community Safety (DJCS) should develop guidelines on the screening, diagnosis and subsequent provision of supports, and transition planning should be trauma-informed, and person-centred. People with lived experience of disability and imprisonment should have opportunity to contribute their expertise, and codesign guidelines alongside other professionals with expertise in cognitive disability.<sup>46</sup>



Additionally, people who undergo screening and diagnosis upon entry into custody need to feel safe to disclose to staff that they experience difficulties in areas such as memory, cognition, behaviour and emotional regulation. Yet it is known that many prisoners with disability do not feel safe disclosing that they have a disability while they are in custody as it often leads to becoming a target of violence and abuse by other prisoners and staff. It is essential that the policies and practices related to screening and diagnosis of disability are made safe and confidential for people with disability, and that they have access to independent support and non-legal advocacy in relation to screening and diagnostic processes.

In the case of First Nations people in custody, 98 per cent of whom may have a cognitive disability,<sup>47</sup> it is vital that cultural safety is ensured, and people feel safe to disclose any difficulties they may be experiencing. It is essential that First Nations people with disability receive screening and diagnosis from First Nations organisations.<sup>48</sup>

## Restrictive Practices

The evidence is clear that the use of restrictive practices as a means of managing disability-related behaviour and distress is excessive in Victorian prisons and secure treatment facilities.<sup>49</sup> The research report commissioned by the DRC, 'Restrictive Practices: A Pathway to Elimination' examined the use of restrictive practices across a range of settings and found that restrictive practices strip people with disability of their dignity, cause harm and violation, and are experienced by many as cruel and punishing treatment. The report details the "violence, pain, suffering, harm, humiliation, cruelty, and dehumanising effects of restrictive practices" and notes that those subject to restrictive practices often experience "life-long and life-altering effects of being subject to this form of violence".<sup>50</sup>

Whilst the report did not focus exclusively on the use of restrictive practices within correctional settings, it found that the use of restrictive practices in prisons may in fact be worse than in the community for people with cognitive disability. The report found that restrictive practices occur within systems of violence, coercion and control, and that staff who hold risk-focussed, pathologizing views about people with disability are more likely to implement restrictive practices. Additionally, the authors found that restrictive practices are more likely to be imposed where there are poorly trained staff and shortages of staff.<sup>51</sup>

Restrictive practices are commonly used in prisons to manage risk without disabled prisoners having access to disability-specific oversight, safeguarding or even advocacy from disability advocacy organisations in the community. Indeed, they are subject to restrictive practices outside of an 'authorising' or 'disability-friendly' environment, without access to staff trained in disability support where practices such as seclusion, chemical and psychological restraint are commonplace to manage disability-related behaviour. Commonly, prisoners with disability are subject to a range of restrictive practices that are inherent to the prison environment, such as surveillance, mechanical (such as shackles) and environmental restraints (such as locked doors), but people with cognitive disability in prisons and treatment facilities are subject to additional and excessive restraints which serve the purpose of further entrenching trauma, fear and 'behaviours of concern'.

## Lack of Reasonable Adjustments

Prisons across Victoria do not routinely make 'reasonable adjustments' despite the legislated requirement that they do so, nor is DJSC even aware of whether or not it meets its own requirements to make provisions for prisoners with disability.<sup>52</sup> The DRC heard evidence that people with disability in prison are routinely denied access to equipment, treatments, supports and assistance that are the responsibility of the State, rather than the National Disability Insurance Scheme (NDIS). Accordingly, recommendation 8.17 stipulates that the National Disability Insurance Agency (NDIA) clearly state which supports will be funded by via NDIS plans; define which supports are deemed 'criminogenic' and which are considered 'disability-related'; and where agreement cannot be reached both the state and the NDIA should joint-fund the support.<sup>53</sup>

Below is a case study that illustrates how lack of reasonable adjustments lead to solitary confinement for a person with an intellectual disability in Victoria.

### Case Study – “John”

John is a man with cerebral palsy and intellectual disability. In the community he uses a motorised scooter and accesses supports for mobility, activities of daily living and self-care. John is unable to shower without support and requires hand rails for toileting. When in the community John eats with others who are aware of the risk of aspiration and choking that eating poses for some people with cerebral palsy. When John was in prison, he did not have access to meal-time support, nor did he have modifications made to his meals to assist swallowing.

John's prison cell was not modified to meet his support needs, and John had several falls while showering and toileting. He suffered multiple head wounds from hitting his head on the ground, and cuts, scratches and bruises from falls. John became distressed in his prison cell because of the lack of support he received, and what he perceived to be undignified, neglectful treatment. His behaviour deteriorated and he began shouting, screaming and throwing objects in his cell. He became verbally abusive to prison staff. This resulted in John being placed in a different unit of the prison, further away from 'disability-friendly' staff, and secluded for periods of time.

When John was released from prison he and his family remained extremely angry about his treatment in prison, and John remained terrified of returning to prison as he and his family feared he might die there without adequate disability support.

## Lack of access to complaints, safeguarding and advocacy

People with disability are often fearful of complaint making, and in many instances cannot make complaints about service providers because they lack the means to do so (such as access to a telephone or internet connection), or the complaint body is inaccessible.<sup>54</sup> It is known that complaints processes are frequently inadequate and fail to address harm to people with disability who live in the community. This is especially so for imprisoned people with disability, where complaints bodies are not only inaccessible, but complaint making is dangerous because of retribution from staff or the institution itself via further restriction for 'speaking out'.

*'I couldn't trust the [complaints body]. I know phone calls are monitored. The fear of being found out would have been too great. Whether by other women, or staff. I wouldn't have made a complaint for fear of the consequences'* – Dorothy Armstrong

Institutional denial of harm, and institutional indifference towards complainants are known to cause further harm and distress, and research suggests that there is a relationship between poor complaints systems and prison violence.<sup>55</sup>

In Victoria there is no independent statutory body with disability expertise and right of entry into prisons. Similarly, there are no disability-friendly or familiar safeguarding bodies available to people with disability in prisons, such as Office of the Public Advocate (OPA) or the Office of the Disability Services Commissioner (ODSC) for people with disability residing in the community. People with disability require access to safeguarding bodies that are visible, supportive and accustomed to working with people with complex communication needs who may not tell their story of abuse in a linear narrative, but who may express their distress and concerns through behaviour.

Not only is it vital for people with disability to have access to independent, genuinely accessible complaints bodies, they also need to receive information on what the imprisoning institution is responsible for, and how harm is defined. If people with disability are often too scared to make complaints, it is essential that they are provided with clear information about what they can and should make complaints about.

The DRC has made a range of recommendations in relation to independent oversight and complaints mechanisms, including the broadening of the definition of 'places of detention', and a disability inclusive approach to the implementation of OPCAT.<sup>56</sup> It is crucial that oversight and complaints functions are equally available to imprisoned people with disability as those living in the community, and that prisons are adequately recognised as settings where people with disability are at increased risk of harm.

The Prison Reform Trust in the United Kingdom has created an advice guide about safety in prison, which details the types of harm prison services are responsible for protecting against, such as physical, sexual, psychological and discriminatory.<sup>57</sup> Whilst this resource does not fit the Victorian context, it is an example of one of the ways in which imprisoned people must be given information and access to rights. It is especially important that prisoners with disability are provided with accessible information, delivered in ways that meet their communication needs about their entitlement to adequate care and protection when imprisoned, and how to safely complain if their rights are breached.

*'I had no idea [about making complaints], it was never a thought in my head. It never once occurred to me that I could talk to anyone about anything going on. It just wasn't safe. It wasn't the place to do it...I didn't trust Corrections staff...they didn't have my best interests at heart'* Dorothy Armstrong

## Advocacy and Self-Advocacy

Not only do imprisoned people with disability lack access to disability-specific safeguards, they do not generally have access to non-legal disability advocates or opportunities for self-advocacy. The advocacy and self-advocacy activities of people with disability that occur in the community form part of the safeguarding ecology, and often mean that common institution and service problems and 'hotspots' for abuse and neglect are well known within the advocacy community, and can be acted on by safeguarding bodies. However, these opportunities for additional protections and ways of 'speaking out' are not available to prisoners with disability. Commonly, prisoners with disability will have access to legal assistance for their criminal matters, and some will have legal assistance in relation to guardianship or financial administration matters, but non-legal advocacy that is directed towards the prison system in order to gain access to rights and improve conditions in prison is non-existent in any formal sense in Victoria.

The Intellectual Disability Rights Service (IDRS) in New South Wales runs a Justice Advocacy Service (JAS) for people with cognitive disability involved with the criminal justice system. The JAS is largely staffed by volunteers, and covers large areas of rural and regional NSW, as well as Sydney. Despite the important advocacy and safeguarding work done by IDRS, the JAS is the only advocacy service of its kind in Australia and has struggled to maintain funding. Rather than JAS being the exception, justice advocacy services for people with cognitive disability should be expected, adequately funded and accessible and readily available to imprisoned people with cognitive disability. While the DRC did not make criminal justice system specific recommendations about advocacy, strong recommendations were made about the vital role of disability advocacy, and the urgent need for adequate funding. The DRC recommendation 6.21 stipulates that advocacy should be funded by both the Commonwealth and the states.<sup>58</sup> It is crucial that Victoria fund justice focussed advocacy for justice involved people with cognitive disability to ensure their rights are upheld, their needs are met and they can be diverted from entering the system. Well-funded advocacy for disabled people in prison is crucial so that Victoria can work towards the elimination of torture and ill-treatment of criminalised people with disability.

*"[Advocacy is]...absolutely necessary. The only two groups of people in prison are Corrections and people serving sentences. The people working there are in total control and have the power to provide access to the things people need. It's all in their control. So somebody independent is integral" – Dorothy Armstrong.*

## The prison system is not safe for First Nations People

As highlighted in the Yoorrook Justice Commission's Critical Issues report into injustices against First Nations Peoples in the criminal justice and child protection systems,<sup>59</sup> First Nations Peoples are around 15 times more likely to be in adult prison. Victorian bail changes in 2013 and 2018 are linked to a 560 per cent increase in the number of First Nations Peoples entering prison unsentenced.<sup>60</sup> First Nations people with a disability are also overrepresented in prison.<sup>61</sup>

The CIJ draws the Special Rapporteur's attention to experiences of racism, discrimination and a lack of cultural safety in Victorian prisons. There have been 19 deaths of Aboriginal people in prison custody in Victoria since the 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC),<sup>62</sup> and more than 335 Aboriginal deaths in prison custody across Australia.<sup>63</sup> Within the Victorian context, the Yoorrook Justice Commission reported six deaths of Aboriginal people in Victorian prison custody in the preceding four years.<sup>64</sup>

The Yoorrook Justice Commission has described the Victorian Government's 'failures to implement recommendations made over many years and by many inquiries.'<sup>65</sup> The Victorian Coroner has also been critical of the Victorian Government's lack of progress noting, 'had the RCIADIC recommendations been successfully implemented by the Government and its agencies, Veronica's passing would have been prevented'.<sup>66</sup>

First Peoples, Aboriginal Community Controlled Organisations (ACCOs) and experts told Yoorrook that prisons cause irreparable, lifelong harm — they entrench disadvantage, they are punitive rather than rehabilitative, and they are dehumanising.<sup>67</sup>

While the CIJ welcomes recent changes and commitments by the Victorian Government to improve cultural safety in prison, for example, through the new 'Dame Phyllis Frost Healing Centre' and a review of the physical environment for cultural safety, we reiterate that closed, institutional prisons will never be culturally safe for First Nations People.

## Self-determination is critical to First Nations Peoples' safety

The United Nations Declaration on the Rights of Indigenous Peoples acknowledges the right of Indigenous peoples to live by their own law, make law and administer law. The right to self-determination is also effective justice policy. Research indicates that self-determination is associated with positive social and economic outcomes, including reduced crime.<sup>68</sup>

CIJ's submission to the Yoorrook Justice Commission on systemic injustice in the criminal justice system outlines examples of good practice and approaches CIJ have researched, or contributed to, as part of its role supporting Aboriginal-led or community-controlled organisations to articulate their vision for justice, or to design self-determine justice models.<sup>69</sup> In that submission, we emphasise that enabling self-determination promotes local and specific responses that best fit the needs of individuals and communities, rather than the ineffective and inflexible 'cookie cutter' approach which has contributed to the poor outcomes seen to date.<sup>70</sup> For these and other reasons, self-determination has been a central theme of the recommendations of several landmark Australian inquiries into how the justice system could be improved for First Nations,<sup>71</sup> and is supported by First Nations communities across Australia.

*'The evidence is settled that self-determination is the only strategy that has generated the sustainable wellbeing – cultural, physical, spiritual, economic and social – that Aboriginal and Torres Strait Islander communities and the broader community desire. Self-determination relates to the capacity of the Aboriginal community itself to determine its preferred future and to create the human, institutional and financial infrastructure to bring those aspirations into being.'*<sup>72</sup>

First Nations leaders across Australia, and in Victoria through the First Peoples' Assembly of Victoria, are increasingly calling for self-determination to address the systemic harms within the criminal justice system. The right to self-determination of First Peoples is recognised by the State of Victoria and the Aboriginal Justice Agreement (AJA)<sup>73</sup> which has provided the most effective framework for moving towards greater self-determination in justice for the community to date. The AJA and the work of the Aboriginal Justice Caucus and is a foundation of the Yoorrook Justice Commission's Letters of Patent and the Treaty process underway in Victoria.<sup>74</sup> The CIJ supports the aspirations of the Victorian community to achieve self-determination in the justice system, as set out in Burra Lotjpa Dunguludja (AJA, Phase 4), and recognises its many achievements since its establishment.<sup>75</sup>

The Yoorrook Justice Commission have recommended that the Victorian Government give full effect to the rights of First Peoples to self-determination within the criminal justice system as it relates to First Peoples, by transferring or creating decision-making powers, including, for example, in relation to system design, obtaining and allocating resources, accountability and oversight functions. The Yoorrook Justice Commission reports:

'Yoorrook has found widespread failings in Victorian prisons including: over-imprisonment; deaths in custody; racism and discrimination; lack of knowledge and implementation of human and cultural rights, and widespread violations of those rights; disconnection of First Peoples prisoners from family, kin and culture; a strong and disproportionate emphasis on punishment rather than rehabilitation and healing; lack of independent oversight; and lack of support on release (often into homelessness) leading to reoffending.'

These persistent and ongoing features of the Victorian prison system are evidence of a structural problem demanding a structural solution to which First Peoples want to contribute, consistent with their right to self-determination.<sup>76</sup>

### **Alternatives to institutional prison custody will reduce the risk of torture and ill treatment**

First Nations leaders in Victoria have carried out substantial work, through the Aboriginal Justice Caucus, to reimagine the current system of youth justice in Victoria as part of a process of consultation around future reform. Critical in a reimagined youth justice system is the need to prioritise alternatives to youth justice custody. Similarly, alternatives to custody for First Nations adults should be considered including Aboriginal designed and controlled residential facilities, that move away from an institutional prison model and towards a home-like environment.

Examples of alternative, culturally responsive models exist in other jurisdictions including Spain (Diagrama for young people)<sup>77</sup> and Canada (Healing Lodges for adults).<sup>78</sup> In the Victorian context, Wulgunggo Ngalu Learning Place,<sup>79</sup> which was established under the Aboriginal Justice Agreement, offers a residential program to assist Aboriginal men to fulfil their Community Correction Orders. Wulgunggo Ngalu Learning Place enables us to imagine a culturally safe alternative to prison where First Nations People can heal through 'cultural strengthening' to support connection to community, culture and country, alongside the provision of support for reintegrating into the community including employment, training and education.



## **Key insights – Aboriginal women need a safe alternative that prioritises healing from trauma and connection to culture, country and community**

Burra Lotjpa Dunguludja emphasises the Victorian Government’s commitment to ensure that “fewer Aboriginal people progress through the criminal justice system”.<sup>80</sup> In recognition of the clear service gap for Victorian Aboriginal women, this includes an action to “explore the feasibility of a residential program similar to Wulgunggo Ngalu Learning Place to provide cultural and gender-specific supports for Aboriginal women involved in the corrections system”. Accordingly, the Victorian Government commissioned Djirra to undertake the Aboriginal women’s residential program feasibility study in partnership with the CIJ.

The aim of the project was to assess the feasibility of establishing a culturally-responsive and gender-specific residential program for Aboriginal women in Victoria who are involved, or at risk of involvement, with the criminal justice system. This included articulating a clear and comprehensive model for the delivery of trauma-informed support to justice-involved Aboriginal women in a residential setting, as well as a strong evidence base for the proposed model drawing on the available literature and the perspectives and deep expertise of Aboriginal community members.

The project involved extensive engagement with community including co-design consultations with community, practitioners and stakeholder and yarning circles with Aboriginal women with lived experience of custody to explore and better understand the supports they feel would make a difference to their experience of the criminal justice system.

The study highlighted the need for a wide range of interventions and different levels of support to be available, given the diverse needs of Aboriginal women in contact with the criminal justice system. Across the options, however, an overarching need for healing from trauma was evident as the priority. This included experiences of interpersonal trauma, such as family violence and child sexual abuse, as well as the intergenerational trauma that continues to be fuelled by colonisation.

While the proposed model is still in the process of being finalised and endorsed by Aboriginal Justice Caucus, it is important to recognise that this initiative has been called for by the Victorian First Nations community for many years, and has the potential to provide a safer context for women to address their offending and underlying challenges

## **Cultural safety and culturally competent programming**

Prisons are unlikely to ever be culturally safe for First Nations People given they perpetuate the power imbalance and trauma of colonisation and disconnect Aboriginal people from community, culture and country – preconditions to the health and wellbeing of First Nations People. The high rates of incarceration must be addressed. Yet First Nations People are and remain in prisons. While they do, prison must be safe, culturally competent and offer a range of Aboriginal-led cultural programs.

In Victoria, Aboriginal Wellbeing Officers (identified, specialist roles) and Aboriginal Liaison Officers (usually non-Aboriginal people without specific training) support First Nations People in prison including by delivering some cultural programs. However, the Cultural Review reported that there is a shortage of Aboriginal Wellbeing Officers across the custodial system and challenges retaining staff, who frequently experience racism, discrimination, high-work and cultural loads and burn out. Aboriginal Wellbeing Officers are also inadequately paid and are afforded little authority within the staff hierarchy, limiting their impact.<sup>81</sup> In response to the Cultural Review, the Victorian Government has agreed to review its approach to Aboriginal recruitment, retention and cultural safety, including by appointing an Assistant Commissioner for Aboriginal Services following consultation with the Aboriginal Justice Caucus.<sup>82</sup>

Prisons also engage with local Elders and Respected Persons and ACCOs to provide cultural services and programs. Access to community-based cultural programs and community members is a key protective factor for First Nations People however these services are frequently underfunded and experienced major disruptions during the COVID-19 pandemic.

### **First Nations community organisations must be resourced and empowered to provide services to First Nations people in prison custody**

Self-determination is a matter for First Nations communities. Many communities have identified self-determination as the key to addressing systemic injustice in the criminal justice system and the many harms that the system, as a central tool in the colonisation process, has caused. Structural reform is required to enable the transfer of power, resources and responsibility to Aboriginal people as a means of promoting self-determination and addressing systemic injustice.<sup>83</sup>

As a starting point, ACCOs must be properly resourced and empowered to deliver services within the prison system, and in a way that accords with their understanding of what works best for Aboriginal people. The CIJ refers to the Special Rapporteur to the Yoorrook Justice's Commission's 2023 report for their full set of prison-related recommendations.

#### **Key insights – Positive outcomes are achieved when First Nations People and communities have power, resources and decision making authority**

Aboriginal-led design, reform and oversight is critical to the cultural safety, wellbeing, and rehabilitative outcomes of First Nations people in prison custody. When First Nations People are not empowered to make decisions about the design and administration of prison programs and services, service delivery is unlikely to be culturally responsive, accessible, or safe.

There are examples of community-led justice models such as the Koori Court model – a sentencing court for Aboriginal people who plead guilty to a criminal offence – and the recently established Yallum Yallum Elders and Respected Persons Council, a priority of the RAJAC, developed by First Nations leaders with CIJ support, to promote cultural healing, social and emotional wellbeing and stronger role in culture and community.<sup>84</sup>

These models illustrate the potential to reform the system when First Nations People can self-determine justice solutions. While there are no equivalent self-determined prisons or services in the Victorian system, there is a growing recognition of the importance of Aboriginal community organisations providing services and support to Aboriginal people within prison.



## There is a lack of gender-responsive and trauma-informed accommodation and support for incarcerated women

The CIJ have conducted extensive research into women's incarceration detailed in a 2022 Issues Paper, *Leaving custody behind: Foundations for safer communities and gender-formed criminal justice systems* and accompanying fact sheet.<sup>85</sup> Our recent Submission to the Victorian Parliament Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System also focuses on the experiences and needs of the women, and more specifically, Aboriginal and Torres Strait Islander women, who are the fastest growing group in Victoria's prison population.

This research presents overwhelming evidence that custody is neither appropriate nor effective as a justice response to the overwhelming majority of women charged with criminal offences. The conditions of and lack of gendered considerations for women in Victorian prisons fall below international standards including the Bangkok Rules.<sup>86</sup>

We have recommended a *Women's Justice Reinvestment Strategy*<sup>87</sup> that would enable Victoria to meet its international human rights obligations, reversing the rates of incarcerating and stemming the harm caused to women, their children and communities.

There were 179 sentenced and 118 unsentenced women in Victorian prison custody as of September 2023, representing a reversal of the alarming trend of previous years.<sup>88</sup> Women, however, continue to be remanded at higher rates than men, with 52.5 per cent of women incarcerated unsentenced (compared to 42 per cent of men) and tend to serve short sentences for low-level offences in Victoria.<sup>89</sup> Aboriginal women continue to be overrepresented in prison (comprising 11 per cent of the female population)<sup>90</sup> despite the known risks of harm, violence, and a cultural safety in prison custody.

The CIJ's research highlights the 'trauma to prison pipeline' for adult women – who have almost universally had experiences of trauma and victimisation which drive women into contact with the criminal justice system.<sup>91</sup> Our 2022 Issues paper describes a growing body of research identifying the link between gendered factors, including experiences of family violence, and the incarceration of women in Victoria for relatively low-level, repeat offending. It also highlights the disproportionate level of harm experienced by women in prison custody. CIJ has advocated for an alternative trajectory to the current rate of incarceration, and for gender-specific non-custodial measures. A key part of this strategy is a therapeutic approach that addresses the drivers of the criminal justice system – including through early and sufficient rehabilitation and integration support.<sup>92</sup>

The CIJ is mindful that advocacy for investment in the rehabilitative capacity of prisons can seem at odds with a justice reinvestment approach. The CIJ's clear position is that institutions which have a primary function of depriving people of their liberty should never be prioritised as the location for treatment and support when that support could be more appropriately provided in the community.<sup>93</sup>

Nevertheless, given that women are and continue to be incarcerated, it is critical that they are treated with respect and dignity, have access to gender-specific services and support, and are protected from ill-treatment.

## Support for substance abuse, trauma and parenting

Women are increasingly entering prison custody with complex needs including substance dependence, experiences of trauma and crime victimisation including related to family violence, child abuse or sexual abuse,<sup>94</sup> and mental illness.<sup>95</sup> Despite this concerning profile and the Bangkok Rules,<sup>96</sup> the CIJ and others have reported that Victoria's custodial prison system is not trauma-informed and does not provide a therapeutic environment in which women with complex needs and trauma can recover and rehabilitate.

There are also fewer opportunities for women on short stays to get the support they need in prison, and following release, to address the issues that led to their offending.

Key concerns identified by recent research and reviews include:

- Limited beds for specialist mental health treatment for women.
- Significant delays in accessing programs and services to support rehabilitation, treatment and recovery from substance dependency, abuse, and trauma.
- Lack of support for women with cognitive disability and Acquired Brain Injuries, with no dedicated facilities (which has resulted in women being held in management units for prolonged periods).
- Lack of transitional support, including for parenting children and preparing for reintegration into a home environment.
- Fewer employment and training opportunities compared to the men's system.
- Limited opportunities to live with children in a child-safe and supportive, environment.<sup>97</sup>

Victorian prisons, particularly the Dame Phyllis Frost Centre, have been found to be re-traumatising and lack a considered, trauma-informed approach to the environment, routine, conditions, and requirements. Despite advocacy and policy reform in recent years, there are still major gaps in gender-responsive practice and policies in Victorian prisons. For example, CIJ's 'Leaving Custody Behind' study found a lack of gender-sensitive approach to reception and security classification systems (which frequently treat mental health as a security risk), having significant implications for women's living conditions and access to programs and services.

As noted earlier, women come into custody with poorer health than men including higher rates of mental illness, drug dependence disorders<sup>98</sup> and disability.<sup>99</sup> The Nelson Inquest identified a series of systemic failings with the women's health system and the lack of response to Ms Nelson's health issues upon reception to prison custody. One of the Coroner's recommendations was that the Victorian Department of Health, in collaboration with relevant ACCHOs and other stakeholders, prioritise the design, establishment and adequately resource a safe, gender-specific residential rehabilitation facility for First Nations people with drug and/or alcohol dependency.<sup>100</sup>

## Home leave, open prisons and transitional support

Research on incarcerated women's post-release needs has also highlighted the lack of pre-release planning<sup>101</sup> and the inadequacies of male-centred post-release programs as major reasons for poor community transitions for women.<sup>102</sup> In our submission to the Cultural Review we note research confirming that the 'throughcare' model of prison management fails to deliver for women because:

- they are overwhelmingly on remand or serving shorting periods of time in custody

- custodial settings lack specialist trauma-informed programs to meet the needs of the higher number of women with mental health, cognitive and substance dependence disorders
- of the disproportionate levels of disadvantage from which women enter prison and return post-release.<sup>103</sup>

Despite this research, there is no medium-security or transitional facility for women in Victoria, limiting opportunities for a stepped-down approach. There is currently only one low-medium security prison, Tarrengower prison, in which women can live with their pre-school aged children in a ‘home-like’ campus environment.<sup>104</sup> Most women, including women on remand, will not be eligible for placement in Tarrengower prison which only accommodates a small number of women. Its location in regional Victoria also makes it unsuitable for many families.

As noted above, there is also no equivalent culturally safe residential post-release program for First Nations women as there is for Aboriginal men. However, positively, a feasibility study for a cultural and gender-specific residential program for Aboriginal and Torres Strait Islander women in Victoria has been conducted by CIJ and Djirra.

## **Transgender people in prison experience discrimination and harm in management units**

Incarceration in highly institutionalised settings can be especially damaging for transgender and gender diverse people (TGD) due to transphobic stigma, discrimination and assault.<sup>105</sup> There is also a greater risk of suicide and self-harm, as well as mental health and substance dependence issues for transgender people than cisgender people in prison.

In Victoria, the Commissioners Requirements<sup>106</sup> set out guidelines on the management of ‘prisoners who are Trans, Gender Diverse or Intersex,’ requiring that they be treated with ‘the same respect and dignity accorded to any other prisoner.’ The CIJ have reported human rights concerns for TGD people in prison custody including systemic misgendering through placements or treatment in prison; transphobic abuse and violence; lack of access to appropriate health and support, as well as prolonged separation.<sup>107</sup>

The Cultural Review reported that several transgender women have been held for prolonged periods in solitary confinement because of lack of alternative safe accommodation. The Cultural Review observed that the separation of transgender women in the Dame Phyllis Front Centre has led to the deterioration of women’s mental health and reveals a system that does not have appropriate systems and infrastructure to uphold the human rights of transgender women.<sup>108</sup>

# Managing prison safety and behaviours humanely

Recent reports by the Broad-based Anti-corruption Commission (IBAC), Victorian Ombudsman<sup>109</sup> and the Cultural Review<sup>110</sup> document integrity risks and conduct which increases the risk of ill-treatment in prison. Restrictive practices, strip-searching and seclusion are used pre-emptively, in response to behaviours of concern or security risks, for protective reasons and as part of the formal prison disciplinary system.

The misuse of management units, restrictive practices and restraints increase the risk of ill-treatment occurring. People with cognitive disability are disproportionately affected by these practices which are frequently used to control 'behaviours' associated with their disability and cyclically escalate such behaviours.

## Strip searching continues to be used routinely and cause harm

While steps have been taken to reduce strip searching requirements, particularly within women's system, many people in custody report that strip searching continues to be used routinely rather than as a last resort,<sup>111</sup> as required under the Mandela Rules<sup>112</sup> and Victorian Charter.

Some prisons have adopted less intrusive and intelligence-based approaches and search methods including using saliva drug testing and body scanner technology – which significantly mitigate the risks involved in strip searching. However, these safeguards not universally adopted. The CIJ supports calls for the legislative prohibition on strip searching, noting the particular risks it poses particularly to women with histories of sexual violence and trauma.

## Separation regimes and solitary confinement are overutilised

The gap between policy reform and practice is highlighted in relation to the overutilisation of seclusion and separation (amounting to solitary confinement) which should only be used as a last resort with people being accommodated in the least restrictive environments as possible, managing a range of risks to peoples' wellbeing and safety.

IBAC, the Victorian Ombudsman and the Cultural Review have found separation continues be over utilised and in some cases amounts to torture and ill-treatment (for example, seclusion with less than the requisite out-of-cell hours and no meaningful human contact).<sup>113</sup> The CIJ is concerned that separation is being used pre-emptively, punitively, and in is disproportionately harming people with cognitive disability, mental illness, First Nations People and TGP. The Cultural Review found data and oversight systems were inadequate to mitigate the significant risks associated with these practices.

Further, management units in several Victorian prisons have been found to have extremely poor conditions in breach of the Mandela Rules and the Convention Against Torture. Following the Cultural Review, the Victorian Government have announced infrastructure upgrades including a new management unit within the women's maximum-security prison to replace the notoriously inhumane 'Swan 2' unit. The CIJ remain concerned that without cultural change across the criminal justice system including an investment in trauma-informed, therapeutic practice to both reduce the prison population and facilitate rehabilitation, seclusion will continue excessively and inappropriately.

## Restrictive practices and excessive force are prevalent with poor cultures of integrity

The Cultural Review noted elevated incidents of excessive force reported in maximum security prisons alongside higher rates of other integrity risks. These risks coincide with unstable and overcrowded environments, and limited oversight.<sup>114</sup> Private prisons operate in an even more opaque environment.

Restrictive practices are used routinely and in a context that may be unnecessary, for example, in public hospital settings while women are in labour.

The use of body worn cameras and CCTV footage can reduce ill-treatment associated with restrictive practices and use of force, however, where the local custodial culture lacks integrity, these systems are vulnerable to being misused.<sup>115</sup>

The Cultural Review recommended changes to the management of force and other integrity risks through enhanced oversight, training, centralised data systems,<sup>116</sup> and more effective staff disciplinary processes. Recommendations were also made to create a safer complaints process for people in prison custody who have been mistreated, noting the prevalence fear of victimisation and low levels of reporting against corrections staff.<sup>117</sup> Similar concerns were raised by the Yoorrook Justice Commission.

The Department of Justice and Community Safety have agreed to make some changes including to engage IBAC and the Victorian Equal Opportunity and Human Rights Commission to deliver a custodial-focussed education and training program, and by appointing a new leadership role with oversight of workforce integrity and cultural reform.<sup>118</sup>

## Prison disciplinary processes are punitive and increase the risk of ill-treatment

Prison disciplinary processes have been found to be inconsistent, punitive and often disproportionate with overwhelmingly negative outcomes for people with cognitive disability.<sup>119</sup> The outcome of disciplinary processes is frequently a restriction of a person's rights including time in seclusion which furthers their vulnerability to ill-treatment. The Victorian Ombudsman<sup>120</sup> has made recommendations to improve the fairness and transparency of prisoner disciplinary hearings, which were further enunciated by the Cultural Review.<sup>121</sup>

The Ombudsman's concern was that disciplinary processes lack transparency and procedural fairness, enable bias, and are carried out without sufficient information, consultation or oversight. People with cognitive disability have inadequate independent support to participate and understand the process or outcome, which may include a loss of privileges, visitation and time in seclusion.<sup>122</sup> These concerns are significant given the potential that staff misunderstand a person's disability as resistance, aggression or frustration, and when they do not have the skills to manage challenging behaviours humane.

## The potential of restorative justice practices as part of prison behaviour management

The Cultural Review recommended that restorative practices be considered as part of diversionary case management and approaches to responding to minor prison offences, to create a fairer more humane response to prison offences.<sup>123</sup> The Review notes that external, skilled restorative facilitators could consider using restorative processes to prevent conflict and promote positive interpersonal relationships suggesting opportunities for 'prisons to respond to minor issues through alternative processes that are informed by restorative justice principles and support people in custody to develop skills in resolving conflict and recognising the impact of their actions on other people.'<sup>124</sup>

The CIJ note that a greater focus on building understanding, empathy and respect between people in prison and corrections staff would likely lead to more stable, safer custodial environments that are more conducive to rehabilitation. Restorative practice, to the extent that it can contribute to safety within a custodial environment, may be one of a number of tools that could contribute to improved prison cultures, and potentially reduce the need for formal, often ineffective, disciplinary processes.

The CIJ support further research to assess the feasibility of safely offering restorative services within the adult custodial system, including to prevent conflict, noting that the context, including the extreme power differential between people incarcerated and staff may be irreconcilable with restorative principles.

### Best practice – Restorative justice practices in prison

The CIJ is a recognised leading expert in restorative justice and undertakes research, policy and program design work in restorative justice and restorative practice. Our research, program practice arm, Open Circle, was established in October 2019 following a successful pilot restorative justice program and a commitment to make restorative justice processes more accessible to people impacted by crime or other harms. Restorative justice, which involves, bringing people together to collectively acknowledge and respond to experiences of harm can be used within and alongside the criminal justice system and in relation to institutional harm.

The CIJ has established expertise in exploring opportunities to adapt restorative practice to respond to and prevent harm. Open Circle practitioners have undertaken restorative processes with people with disability, and most recently undertook a complex process for a large disability service provider.

The CIJ has partnered with Yooralla, a large disability provider in Victoria to support restorative responses to people with disability who have experienced abuse in its care. CIJ has also developed training in restorative practices as a means of preventing conflict and harm between residents in closed environments, including group homes.

# Independent prison monitoring

Victoria does not have an adequate system of preventative monitoring of prisons, with no dedicated external oversight body resourced to conduct regular prison monitoring visits. Seeking to address this deficiency, the Victoria's Cultural Review recommended a new independent inspectorate of Custodial Services including an Aboriginal Inspector of Adult Custodial Services.<sup>125</sup>

## OPCAT and the need for Victoria to urgently designate its NPM

Australia ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in December 2017, postponing its obligations to establish an NPM until January 2023. Australia's NPM, along with the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), will establish a system of regular visits to places where people are deprived of their liberty.<sup>126</sup> OPCAT specifies that the NPM's role is to strengthen protections against ill-treatment; make recommendations about improving conditions in prisons to prevent ill-treatment; and identifying and analysing factors that may directly or indirectly increase or decrease the risk of ill-treatment and to reinforce protective factors and safeguards.<sup>127</sup>

Under Australia's federal system of government, the Commonwealth and each state and territory is required to nominate an NPM to monitor places of detention, including prisons, in their respective jurisdiction. Several Australian jurisdictions have appointed their NPM and commenced monitoring.<sup>128</sup> However Victoria has fallen behind and remains non-compliant.<sup>129</sup> At the time of writing, the Victorian Government had not consulted with civil society or sector stakeholders about the proposed NPM model or provided a timeline for implementation.

The delay in nominating an NPM has, apparently, been tied up in failed negotiations with the Commonwealth over funding arrangements, with Victoria (among other states), suggesting that it will not be able to designate its NPM without full funding from the Australian Government.<sup>130</sup> Concerningly, the 2023-2024 Federal Budget does not contain any additional funding to support Australia's NPM, limiting the capacity of current and future NPM to discharge their mandate to carry out preventive visits.<sup>131</sup>

The Cultural review, Yoorrook Justice Commission and others have recommended the Victorian Government take priority action to designate and resource its NPM.<sup>132</sup>

The CIJ draws the Special Rapporteur's attention to the urgent need for the Victorian Government to designate, implement and resource an independent NPM to give effect to Australia's obligations under OPCAT, and ensure a system of preventive monitoring of prisons is established in Victoria as a matter of urgency.



# Other opportunities to improve the management of the prison system

## Lived Experience must inform prison design, oversight and reform

The CIJ's experience elevating the voices of justice system users highlights the criticality of involving people with lived experience in prison system design, evaluation, and reform. People with direct experience of incarceration are best placed to identify solutions to complex problems affecting them but are usually furthest from the power and resources needed to achieve change. Lasting solutions are unlikely if they do not involve meaningful participation by people who have been drawn into the justice system and have lived and living experience of it.

The adoption of user-centred or co-design practices can provide innovative solutions to entrenched and systemic problems.<sup>133</sup> Further, incorporating the experience and views of people with lived experience of incarceration should inform policy development, codes of conduct and staff training and capacity programs. In CIJ's Just Voices project, co-design with and the participation of, people with disability who have lived experience of the justice system was used to design, pilot and evaluate workforce development initiatives to support capability uplift for the mainstream frontline corrections and youth justice workforce. Drawing lived experience into the project, by involving disability advocacy and self-advocacy networks, subsequently influenced the Department of Justice and Community Safety's decision to include lived experience as a central part of its approach to building the capability of the corrections workforce in relation to disability awareness and capability.

### Good practice – Enabling Justice Project and lived experience co-design approaches to drive reform

The CIJ's Enabling Justice Project,<sup>134</sup> a partnership between the CIJ and Jesuit Social Services explored ways to address the over-incarceration of people with ABI. A key strategy was to involve people with lived experience in providing their perspective on the challenges and in developing solutions by establishing a 'Justice User Group' of people with ABI. The group included Aboriginal people, and men and women who had ABIs and who had experienced the justice system.

Justice User Group participants provided powerful examples of how the criminal justice system failed to recognise their disability and failed, time and again, to provide them with respect and support. Drawing on these accounts, the Enabling Justice report found that the gross over-representation of people with an acquired brain injury in our prison system will only be reduced if the voices of people with an ABI are heard and they are given recognition, respect and support.

The project recognised that people with lived experience have insights, knowledge and experiences that can help shape and design solutions to improve the way the justice system operates. The project is a good example of the potential for lived experience and co-design approaches to drive reform.



## Key insights – Government are beginning to establish Lived Experience Frameworks to effectively respond to clients in contact with the criminal justice system

Building on the CIJ's previous work with people with lived experience of cognitive disability and the criminal justice system, the Department of Families, Fairness and Housing (DFFH) Lived Experience Framework project will establish principles and practices for ensuring that DFFH forensic disability and complex needs services and programs more effectively respond to the needs and interests of clients. Working alongside a steering group of people with intellectual disability and justice system involvement, the CIJ is conducting research with current clients of DFFH's forensic disability services with the aim of creating a framework for how DFFH can better listen to their clients and integrate their lived experience expertise into policy and service design.

A Lived Experience Framework should be established by the Department of Justice and Community Safety (DJCS), in line with best practice, to guide engagement and ensure the voices of people with lived experience of prison inform improvement across the prison system. Lived experience participants should be established in line with best practice principles including:

- Recognising and valuing lived experience
- Commitment to support and resources
- Influence
- Redistribution of power
- Future focus
- Self-determination
- Social justice and human rights
- Commitment to organisational change
- Cultural safety

Lived experience participation should inform prison design, oversight, improvement, and policy.

## The Victorian corrections workforce require a capability uplift to uphold human rights

The CIJ considers the need for a fundamental shift in the model of training and developing the capability of the corrections workforce, with a focus on equipping staff to provide culturally responsive services, meet the needs of people with disability<sup>135</sup> and to provide trauma-informed care. There must also be a significant uplift in staff understanding of human rights and decision-making that conforms with the Charter of Human Rights and Responsibilities. Through the lawful and appropriate exercise of discretion informed by an understanding of trauma and relational security, the risk of excessive use of force, and the inappropriate use of management units and restrictive practices should be eliminated.

The Yoorrook Justice Commission has also recommended that the Victorian Government significantly upscale the workforce's capability, competence and support in relation to human rights, including Aboriginal cultural rights; reviewing policies, practices and training to strengthen compliance and decision making consistent with human rights.

The Victorian Government has expressed a commitment to develop a new corrections workforce strategy and consider the establishment of a Centre for Corrections Practice.<sup>136</sup>

The CIJ acknowledges that education and training is insufficient without a robust accountability and oversight framework and clear consequences for staff misconduct. Even then, people will remain vulnerable to mistreatment given the closed nature of prisons and power differentials which will continue to create opportunities for the abuse of power.

## Conclusion

A system-wide cultural shift is required to reduce incarceration and the risk of ill-treatment occurring in prison custody and ensure the safety of people who have been imprisoned. Unless these changes occur, prisons will continue to harm to people in custody and fail to deliver any positive outcomes for people and communities affected by crime and victimisation.

As outlined in this submission, innovative solutions exist including alternatives to institutional prison custody, but there is a lack of political will and sustained investment to transform the justice system and chart a new path forward. At minimum, responses to offending must reduce and address trauma, be informed by lived experience, and be open and transparent.

## Authors

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# Endnotes

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- <sup>1</sup> Charter of Human Rights and Responsibilities Act 2006 (Vic), Article 10.
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- <sup>3</sup> Coroner's Court of Victoria, Inquest Into the Passing of Veronica Nelson, (30 January 2023) <<https://www.coronerscourt.vic.gov.au/sites/default/files/2023-04/COR%202020%200021%20-%20Veronica%20Nelson%20Inquiry%20-%20Form%2037%20-%20Finding%20into%20Death%20with%20Inquest%20-%2030%20January%202023%20-%20Amended%20%281%29.pdf>>. See also, The Yoorrook Justice Commission, 'Critical Issues report into injustices against First Nations Peoples in the criminal justice and child protection systems' (August 2023), <<https://yoorrookforjustice.org.au/wp-content/uploads/2023/08/Yoorrook-for-justice-report.pdf>>.
- <sup>4</sup> See Corrections Victoria, 'Statement from the Commissioner in response to the Coroner's findings' (31 January 2023) <<https://www.corrections.vic.gov.au/statement-from-the-commissioner>>. See also Victorian Government Response to the Cultural Review of the Adult Custodial Corrections System (March 2023), <[https://content.vic.gov.au/sites/default/files/2023-03/Victorian-Government-response-to-the-Cultural-Review-of-the-Adult-Custodial-Corrections-System\\_.pdf](https://content.vic.gov.au/sites/default/files/2023-03/Victorian-Government-response-to-the-Cultural-Review-of-the-Adult-Custodial-Corrections-System_.pdf)>
- <sup>5</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 26 June 1987, 1465 UNTS 85.
- <sup>6</sup> Victoria's prison population has increased by 58% from 2010 to 2020, noting a large rise in the number of unsentenced people held in custody. This was despite an 11.8% decrease in the 2019–2020 year, due to the impacts of COVID-19. See, Parliament of Victoria, Legislative Council, Legal and Social Issues Committee, 'Inquiry into Victoria's Criminal justice system' (Volume 1) (March 2022) 51-58. <<https://new.parliament.vic.gov.au/4a4b67/contentassets/6961bccea1ac41dd812811ab0312170d/lclsic-59-10-vic-criminal-justice-system.pdf>>
- <sup>7</sup> The Yoorrook Justice Commission, (August 2023), above n 3, 21. See also, Parliament of Victoria (March 2021), above n 6, 59-61.
- <sup>8</sup> Cultural Review of the Adult Custodial Corrections System, *Safer Prisons, Safer People, Safer Communities* (December 2022), 278 <[Final report: Safer Prisons, Safer People, Safer Communities - Cultural Review of the Adult Custodial Corrections System \(correctionsreview.vic.gov.au\)](https://www.corrections.vic.gov.au/cultural-review-of-the-adult-custodial-corrections-system)>
- <sup>9</sup> Naylor and Winford (2019) above, n 2, 118.
- <sup>10</sup> Victorian Equal Opportunity and Human Rights Commission, 'Corrections in the COVID-19 recovery' <<https://www.humanrights.vic.gov.au/legal-and-policy/covid-19-and-human-rights/centring-human-rights-in-the-covid-19-recovery/corrections-in-the-covid-19-recovery/>>
- <sup>11</sup> McCann et al., (2022) 'Future-proofing Safety: Surfacing inequality and building service capacity for crisis-ready responses', Centre for Family Research and Evaluation at Drummond Street Services, Centre for Innovative Justice, RMIT University, Australian Institute of Family Studies
- <sup>12</sup> As set out in the *Children, Youth and Families Act 2005* (Vic).
- <sup>13</sup> Cultural Review (December 2022), above n 8, 108, 231-232.
- <sup>14</sup> Naylor and Winford (2019), above n 2, 113–129, 118. See also Liebling, A. (2011). 'Moral performance, inhuman and degrading treatment, and prison pain'. *Punishment and Society* 13(5) 530, 535; Hardwick, N. (2013). *HMP/YOI Feltham – Violent and unsafe* <[www.justiceinspectorates.gov.uk/hmiprison/media/press-releases/2013/07/hmpyoi-feltham-violent-and-unsafe/](http://www.justiceinspectorates.gov.uk/hmiprison/media/press-releases/2013/07/hmpyoi-feltham-violent-and-unsafe/)>; Cooke, D.J. (1991) 'Violence in prisons: The influence of regime factors' *The Howard Journal* 20(2), 95–109.
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- <sup>16</sup> See, e.g., International Covenant on Civil and Political Rights (ICCPR), Article 10(3) and the United Nations (UN) Standard Minimum Rules (the 'Nelson Mandela Rules'), Rule 4.1.
- <sup>17</sup> Cultural Review (December 2022), above, n 8, 1.
- <sup>18</sup> Naylor and Winford (2019), above n 2, 113–129, 118.
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- <sup>21</sup> DJCS is the department responsible for oversight and delivery the criminal justice and corrections system in Victoria under the. Corrections Victoria is a business unit of DJCS.
- <sup>22</sup> Cultural Review (December 2022), above n 8, 36; 720.
- <sup>23</sup> Ibid, above n 9, 640; 723-735. See also Coroner's Inquest into the Passing of Veronica Nelson (30 January 2023), above n 3.
- <sup>24</sup> Coroner's Inquest into the Passing of Veronica Nelson (30 January 2023), above n 3.
- <sup>25</sup> Ibid, Appendix B, 1[1].
- <sup>26</sup> Ibid, Appendix B, 4[23]-[27]; 5[32-33; 6[39-41].
- <sup>27</sup> Ibid, Appendix B, 3[19]; 4[23]-[27]; 5[28]-[31], [33]; p6[37], 7[50].
- <sup>28</sup> Ibid, Appendix B, 5[34].
- <sup>29</sup> Ibid, Appendix C, 3[18]-[19].
- <sup>30</sup> Ibid, 305 [881.2].
- <sup>31</sup> See Corrections Victoria, 'Statement from the Commissioner in response to the Coroner's findings' (31 January 2023); Victorian Government Response to the Cultural Review of the Adult Custodial Corrections System (March 2023), n 4.
- <sup>32</sup> World Health Organization, 'The WHO Prison health Framework: a framework for assessment of prison health system performance', (2021). See also World Health Organization, 'Good governance for prison health in the 21st century' (2013) 8-9.
- <sup>33</sup> Nelson Inquest, above, n 3, Appendix C, p 3[16]-[18].
- <sup>34</sup> Ibid, Appendix C, 4[23]
- <sup>35</sup> Ibid, Appendix C, 4[26]
- <sup>36</sup> Ibid, Appendix C, 5[31]-[32]
- <sup>37</sup> Ibid, Appendix C, 5[34]
- <sup>38</sup> Ibid, Appendix C, 5[29-34]
- <sup>39</sup> Caroline Doyle, Shannon Dodd, Helen Dickinson, Fiona Yates & Fiona Buick 'There's Not Just a Gap, There's a Chasm: The Boundaries Between Australian Disability Disability Services and Prison', *Public Service Research Group*, UNSW, <<https://www.unsw.edu.au/news/2022/06/researchers-demonstrate-significant-gaps-between-australian-disa>>
- <sup>40</sup> Law Council of Australia, The Justice Project, Final Report, Part 1, People with Disability. August 2018 <<https://lawcouncil.au/justice-project/final-report>>
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- <sup>42</sup> Caroline Doyle et al, above n 39.
- <sup>43</sup> Ibid.
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- <sup>45</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, Final Report, Volume 8, Criminal Justice and People with Disability, 197.
- <sup>46</sup> Ibid 196.
- <sup>47</sup> Law Council of Australia, The Justice Project, Final Report, Part 1, People with Disability. August 2018 <<https://lawcouncil.au/justice-project/final-report>>
- <sup>48</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, above n 45, 197.
- <sup>49</sup> Claire Spivakovsky, Linda Steele & Dinesh Wadiwel. 'Restrictive Practices: A Pathway to Elimination'. Research Report for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, July 2023.
- <sup>50</sup> Ibid.
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- <sup>52</sup> Victorian Auditor-General's Office, 'Correctional Services for People with Intellectual Disability or an Acquired Brain Injury', Independent Assurance Report to Parliament, June 2023.

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- <sup>53</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, above n 45, 25.
- <sup>54</sup> Claire Spivakovsky, above n 49.
- <sup>55</sup> Ibid.
- <sup>56</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, above n 45, Volume 11, Independent Oversight and Complaints Mechanisms, 14-15.
- <sup>57</sup> Prison Reform Trust, Safety in Prison <<https://prisonreformtrust.org.uk/adviceguide/safety-in-prison/>>
- <sup>58</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, above n 45.
- <sup>59</sup> The Yoorrook Justice Commission is the first formal truth-telling process into historical and ongoing injustices experienced by First Nations Peoples in Victoria. <<https://yoorrookjusticecommission.org.au/overview/>>
- <sup>60</sup> The Yoorrook Justice Commission (August 2023), above n 3, 14.
- <sup>61</sup> The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability indicates that Aboriginal and/or Torres Strait Islander people with disability are about 14 times more likely to be imprisoned than the general population: see Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Issues Paper – Criminal Justice System, January 2020) 1
- <sup>62</sup> Australian Institute of Criminology, Merran McAlister and Samantha Bricknell, ‘Statistical Report 41: Deaths in Custody in Australia 2021-22’ (Website 2022) <[https://www.aic.gov.au/sites/default/files/2022-12/sr41\\_deaths\\_in\\_custody\\_2021-22\\_v2.pdf](https://www.aic.gov.au/sites/default/files/2022-12/sr41_deaths_in_custody_2021-22_v2.pdf)> Table D2: Indigenous deaths in prison custody by jurisdiction, 1979-89 to 2021-22 (n).
- <sup>63</sup> Ibid, 7.
- <sup>64</sup> The Yoorrook Justice Commission (August 2023), above n 3, 360.
- <sup>65</sup> Ibid, 237-238
- <sup>66</sup> Coroner’s Court of Victoria, Inquest into the Passing of Veronica Nelson, above n 3, Appendix B, p 8[51]
- <sup>67</sup> The Yoorrook Justice Commission (2023), above n 3, 361.
- <sup>68</sup> See generally: Chen, D., ‘Self-determination in the criminal justice system’, Indigenous Justice Clearinghouse, Research Brief 28, October 2020 <<https://www.indigenousjustice.gov.au/publications/self-determination-in-the-criminal-justice-system/>>
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- <sup>70</sup> Ibid, p 16.
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- <sup>73</sup> See, Burra Lotjpa Dunguludja - Senior Leaders Talking Strong, Aboriginal Justice Agreement, Phase 4, A partnership between the Victorian Government and Aboriginal Community. <https://files.aboriginaljustice.vic.gov.au/2021-02/Victorian%20Aboriginal%20Justice%20Agreement%20Phase%204.pdm>
- <sup>74</sup> The Yoorrook Justice Commission (August 2023), n 3, 17.
- <sup>75</sup> Centre for Innovative Justice (November 2022), above n 69, 17.
- <sup>76</sup> Yoorrook Justice Commission (2023), above n 3, 380.
- <sup>77</sup> <<https://www.fundaciondiagrama.es/en/who-we-are/about-us> See also CIJ’s article A European alternative approach to juvenile detention <https://cij.org.au/news-and-views/a-european-alternative-approach-to-juvenile-detention/>>
- <sup>78</sup> <<https://www.csc-ccc.gc.ca/002/003/002003-2000-en.shtml>>
- <sup>79</sup> <[wulgunggodl2015\\_acc.pdf \(corrections.vic.gov.au\)](https://www.corrections.vic.gov.au/wulgunggodl2015_acc.pdf)>. See also the Evaluation report <<https://www.corrections.vic.gov.au/wulgunggo-ngalu-learning-place-final-evaluation-report>>
- <sup>80</sup> Aboriginal Justice Agreement Justice Outcomes Framework, Goal 2.3.
- <sup>81</sup> Cultural Review (December 2022), above n 8, 540-563.
- <sup>82</sup> Victorian Government Response to the Cultural Review of the Adult Custodial Corrections System (March 2023), above n 4.
- <sup>83</sup> Centre for Innovative Justice (November 2022), above n 69, 17.

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<sup>84</sup> Ibid, 3-5.

<sup>85</sup> Centre for Innovative Justice, 'Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice systems. Issues Paper' (July 2021), 22 <<https://cij.org.au/research-projects/leaving-custody-behind-foundations-for-safer-communities-and-gender-informed-criminal-justice-systems/>> and Factsheet <[https://cij.org.au/cms/wp-content/uploads/2021/07/leaving-custody-behind-fact-sheet\\_final.pdf](https://cij.org.au/cms/wp-content/uploads/2021/07/leaving-custody-behind-fact-sheet_final.pdf)>. See also Centre for Innovative Justice, Submission to Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System' (August 2021) <[https://cij.org.au/cms/wp-content/uploads/2021/09/parliamentary-commission-of-inquiry-into-the-criminal-justice-system\\_final.pdf](https://cij.org.au/cms/wp-content/uploads/2021/09/parliamentary-commission-of-inquiry-into-the-criminal-justice-system_final.pdf)>

<sup>86</sup> United Nations Office on Drugs and Crime (UNODC), (2010) 'United Nations rules for the treatment of women prisoners and noncustodial measures for women offenders (The Bangkok Rules).'

<sup>87</sup> Centre for Innovative Justice, (July 2021), above n 85, 63.

<sup>88</sup> In the 10 years to June 2018, the number of women in prison in Victoria increased by close to 138 per cent, compared with an 81 per cent increase in the male prison Page 5 of 7 population over the same period. Corrections Victoria, (2020) Annual Prisoner Statistical Profile 2018-19. Overview of female prisoners at 30 June (Table 1.2). By June 2019, that 10-year percentage increase dropped to 104%.

<sup>89</sup> See Annual Prison Statistical Profile 2012-13 to 2021-22, Table 1.2-1.2. Available at: <https://www.corrections.vic.gov.au/annual-prisons-statistical-profile>

<sup>90</sup> Imprisonment rate for Aboriginal and Torres Strait Islander women is 182 per 100,000 adult population compared to the general female rate of 13 per 100,000 general population.) NB: The rate has reduced from previous years (e.g., between 2018-19, approximately 13 per cent of women in person custody identified as aboriginal or Torres Strait Islanders represents a three-fold increase between 2012-18. See Annual Prison Statistical Profile 2012-13 to 2021-22, Table 1.2.

<sup>91</sup> Centre for Innovative Justice, (July 2021), Above n 85. See also Mental Health Legal Centre/Inside Access/Centre for Innovative Justice, Submission to Family Violence Royal Commission, (May 2015) <<https://cij.org.au/cms/wp-content/uploads/2018/08/family-violence-royal-commission-mhlc-inside-access-and-cij.pdf>>

<sup>92</sup> Ibid, 64. See also the Bangkok Rules 29 (Prison staff to be trained to ensure that they have the skills to support the rehabilitation and reintegration of women prisoners); Rules 40-41 (Gender-specific assessment and classification methods to be implemented for women to ensure individualised planning for their early treatment, rehabilitation and release; Rule 46 (Prisons, in collaboration with non-government support agencies are to provide comprehensive and individualised rehabilitation plans for women).

<sup>93</sup> For more information on CIJ's Justice Reinvestment proposal see Centre for Innovative Justice (July 2021), above n 73.

<sup>94</sup> Johnson, H. (2004), 'Drugs and crime: A study of incarcerated female offenders' AIC: Research and public policy series, xiv.

<sup>95</sup> Walker, S., Sutherland, P. & Millstead, M. (2019), 'Characteristics and offending of women in prison in Victoria 2012-2018' (Crime Statistics Agency, Melbourne), 16 and Green, B., Jeanne, M., Daroowalla, A., & Siddique, J. (2005) 'Trauma exposure, mental health functioning and program needs of women in jail', 51 (1) Crime & Delinquency 133-151, 134 in Centre for Innovative Justice, (July 2021), above n 73, 22.

<sup>96</sup> The Bangkok Rules, Rules 60 and 62.

<sup>97</sup> There are two women's prisons in Victoria, and both admit pre-school aged children to live with their mothers in limited circumstances. Tarrengower Prison, in regional Victoria, is the only minimum-security women's prison and accommodates a small number of women and children in fifteen self-contained and self-catering units.

<sup>98</sup> Drug and Crime Prevention Committee, Parliament of Victoria (2010) Inquiry into the Impact of Drug-Related Offending on Female Prisoner Numbers, Parliamentary Paper No 371. For women serving a second or subsequent sentence, 90 per cent of their offences have been found to be related to drug and alcohol dependence.

<sup>99</sup> According to 2023 data, women entering Australian prisons are more likely to report having a history of a mental health conditions (63% compared to 49% for men, and 21%) and women entering prison were more than 2 times as likely as males to report a history of self-harm. Almost a half (47%) of female prison entrants reported a limitation in everyday activities. See Australian Institute of Health and Welfare, *The Health of Australia's prisoners* (November 2023) <<https://pp.aihw.gov.au/reports/prisoners/the-health-of-people-in-australias-prisons-2022/contents/about>>.

<sup>100</sup> Coroner's Court of Victoria (30 January 2023), above n 3, Appendix C, 18



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- <sup>101</sup> Trotter, C., & Flynn, C., (2016) 'Best practice with women offenders: Literature Review' *Monash University Criminal Justice Research Consortium*.
- <sup>102</sup> Centre for Innovative Justice, 'Submission to the Cultural Review of the Adult Custodial Corrections System' (November 2021).
- <sup>103</sup> Ibid. See also Baldry, E. (2010) 'Women in Transition: From Prison to...' 22(2) *Current Issues in Criminal Justice*, 253, 256.
- <sup>104</sup> Children must leave the care of their parents when they reach school which means women would likely be transferred to Melbourne's maximum-security women's prison to be closer to their children or would serve the remainder of their sentence with little in person contact with their children.
- <sup>105</sup> Ministry of Justice, (2016) *Review of the care and management of transgender offenders*, United Kingdom and Edney, R. (2004) 'To keep me safe from harm? Transgender prisoners and the experience of imprisonment' 9 (2) *Deakin Law Review* 327, 336.
- <sup>106</sup> See Commissioner Requirements – Part 2,.4.1 'Management of prisoners who are Trans, Gender Diverse or Intersex'. Available at: [Commissioner's Requirements - Part 2 | Corrections Victoria](#)
- <sup>107</sup> Centre for Innovative Justice (July 2021), above n 85, 29-30.
- <sup>108</sup> Cultural Review (December 2022), above n 8, 585-586.
- <sup>109</sup> See e.g., Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017); Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial* (Report, 2018); Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019); IBAC's Special Report on Corrections also 'highlighted a culture of excessive use of force among Tactical Operations Group (TOG) officers' at Port Phillip prison: Independent Broad-based Anticorruption Commission, *Special Report on Corrections* (Report, 2021).
- <sup>110</sup> 39% of staff respondents to the Cultural Review's survey reported witnessing integrity issues or inappropriate behaviour over the last five years. See Cultural Review (December 2022), above n 8, 334.
- <sup>111</sup> Ibid, 23; 335; 375 .
- <sup>112</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN Doc A/RES/70/175 (8 January 2016, adopted 17 December 2015) (the Mandela Rules), Rule 50 provides that strip searches 'shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched.
- <sup>113</sup> 2017 and 2019 reports by the Victorian Ombudsman have found women and young people in adult prisons, respectively, held in management units for prolonged periods in breach of the Mandela Rules (Rule 44), increasing their risk of self-harm and mental health deterioration, above n 97.
- <sup>114</sup> Cultural Review (December 2022), above n 8, 350.
- <sup>115</sup> Victorian Auditor-General's Office, *Managing Body-Worn Cameras* (June 2022). See also Cultural Review (December 2022), above n 8, 366.
- <sup>116</sup> Cultural Review (December 2022), above n 8, 206-210.
- <sup>117</sup> Ibid, 685.
- <sup>118</sup> See also Victorian Government Response to the Cultural Review of the Adult Custodial Corrections System (March 2023), above n 4.
- <sup>119</sup> Victorian Ombudsman, *Good practice when conducting prison disciplinary hearings* (Report, 2021). See also, Zack Hope, 'Intellectually disabled prisoners punished without oversight' *The Age*, 24 October 2020 <<https://www.theage.com.au/national/victoria/intellectually-disabled-prisoners-punished-without-oversight-20201023-p5680g.html>>
- <sup>120</sup> Victorian Ombudsman (2021), above n 109.
- <sup>121</sup> Cultural Review (December 2022), above n 8, 667-674.
- <sup>122</sup> Zack Hope, 'Intellectually disabled prisoners punished without oversight' *The Age*, 24 October 2020.
- <sup>123</sup> Cultural Review (December 2022), above n 8, see Recommendation 6.8 'Proportionate Responses and outcomes in disciplinary processes.'
- <sup>124</sup> Ibid. 672-673.
- <sup>125</sup> Ibid 180. See also, Recommendation 2.3; see also Yoorrook Justice Commission, recommendation 43(b).
- <sup>126</sup> OPCAT, Article 1.
- <sup>127</sup> OPCAT, Articles 19(a); 19(b) and 4(1).



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<sup>128</sup> The Commonwealth, Western Australia, Northern Territory, Australian Capital Territory, Tasmania and South Australia have NPMs in place. Queensland and Victoria have enacted legislation to facilitate visits by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but have not designated their NPM.

<sup>129</sup> Upon ratification Australia opted to delay its obligations until January 2022. The Subcommittee against Torture (SPT) granted an extension for the Australian Government's obligation to establish an NPM until 20 January 2023.

<sup>130</sup> Australian National Preventive Mechanism, Australian National Preventive Mechanism members' joint submission to the Parliamentary Joint Committee on Human Rights – Inquiry into Australia's Human Rights Framework (4 July 2023) 5.

<sup>131</sup> See Joint Statement of Australia's National Preventive Mechanism, 'Joint Statement – No additional funding to implement Australia's obligations under OPCAT' (May 2023), Available at [Joint-Statement-Federal-Budget-10-May-2023-Final-Clean.pdf \(ombudsman.gov.au\)](https://www.ombudsman.gov.au/SharedAssets/Reports/2023/Joint-Statement-Federal-Budget-10-May-2023-Final-Clean.pdf)

<sup>132</sup> Cultural Review (December 2022), above n 8, 190-193; Yoorrook Justice Commission (August 2023), above n 3, 382.

<sup>133</sup> See also Cultural Review (December 2022), above n 8, Part 2, Chapter 2 'Involving system users in policy and operational changes.'

<sup>134</sup> <<https://cij.org.au/cms/wp-content/uploads/2018/08/enabling-justice-full-report.pdf>>

<sup>135</sup> See Australian Institute of Health and Welfare, *Reporting on Australia's Disability Strategy 2021-2031*: In 2022 40% of Victorian Justice and Legal Workers were not confident they could respond positively to people with disability <<https://www.aihw.gov.au/australias-disability-strategy/outcomes/community-attitudes/justice-and-legal-worker-attitudes>>

<sup>136</sup> See also Victorian Government Response to the Cultural Review of the Adult Custodial Corrections System (March 2023), above n 4.