



ACSO

2022 Submission to the
Yoorrook Justice Commission

Acknowledgement

The Australian Community Support Organisation (ACSO) would like to acknowledge the Traditional Custodians of the lands on which we live and work, across this nation. ACSO proudly acknowledges Aboriginal and Torres Strait Islander people as Australia's first peoples and pay respect to their rich culture, lore's, customs and Elders past and present. This document was prepared on the lands of the Palawa people of Lutruwita (Tasmania) with contributions and knowledge from the lands of the Wurundjeri, Woi Wurrung and Boon Wurrung peoples of the Kulin Nation of Victoria; the Murri people of Queensland and the Dharawal people of NSW.

We strongly embrace the spirit of reconciliation and will continue to work towards ensuring an equal voice for Aboriginal and Torres Strait Islanders, particularly those who have come in contact with the justice system.

ACSO recognises the right to a safe and inclusive service without bias. ACSO is committed to the equitable treatment of its participants, employees and partners. We believe in humanity and celebrating the diverse voices of our community through leadership, practice, and policy design, to honour and embrace diverse traditions, cultures and experiences of those we support and work alongside.



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Introduction

ACSO is a not-for-profit company limited by guarantee and registered as a charity with the Australian Charities and Not-for-profits Commission. We pride ourselves on being a dynamic, values driven not for profit, focused on partnering with Government and the community to co-design services that create real social change, inclusive communities and promote wellbeing. ACSO work with people at risk of entering or who have already entered the justice system. Our work supports, diverts or reintegrates people through a range of services including mental health, alcohol and other drug treatment, intensive residential support, housing and employment. These services span the entire justice continuum from prevention to rehabilitation.

ACSO stand in solidarity with Australia's First Nations People. We support First Nations self-determination and will always seek to elevate and support First Nations' voices in the debates we need to have around justice, mental health, disability and substance abuse. ACSO understands that a history of irrevocable colonisation, systematic racism, genocide, familial displacement, and loss of country continues to contribute to intergenerational trauma and disadvantage for Aboriginal and Torres Strait Islander participants. ACSO recognises that Aboriginal and Torres Strait Islander people are arrested and placed into custody at disproportionate rates and the effects of this and the resulting number of deaths of Aboriginal and Torres Strait Islander people in custody effects the entire community and contributes to systemic racism and oppression in Australia.

ACSO supports the principles and statements within the Uluru Statement from the Heart that invites all Australian people to participate in giving First Nations peoples in this country a constitutionally enshrined voice and support. ACSO strongly support the work of the Yoorrook Justice Commission in giving voice to truth of the experiences of Aboriginal people and communities across Victoria, particularly those impacted by our criminal justice system.

Background

The Australian Royal Commission into Aboriginal Deaths in Custody was established in 1987 and submitted its final report to Parliament by 1991, now 31 years ago. The Royal Commission investigated 99 deaths and made 339 recommendations. The Commission found that the high number of Aboriginal deaths in custody was attributable to the over-representation of Aboriginal people in custody across Australia, whereby Indigenous peoples come into contact with the criminal justice system at vastly disproportionate rates relative to the non-Indigenous population.ⁱ

Five years on from this publication, the 1996 Australian report on Indigenous Deaths in Custody (1989–1996) found that rates of arrest and imprisonment of Aboriginal people had increased since the Royal Commission: incarceration of Aboriginal and Torres Strait Islander people increased by 61 per cent between 1988 and 1995, while incarceration of non-Indigenous people increased at almost half this rate, by 38 per cent.ⁱⁱ

An overview of twenty years of post- Royal Commission monitoring, published by the Australian Institute of Criminology in 2011, found that while Aboriginal deaths in custody had fluctuated over time and reduced in some areas, that the primary driver of these figures, being the over-representation of Aboriginal people in Australia's prisons, had experienced minimal change. In 2010, Indigenous people comprised less than 2.5 per cent of the Australian population, but more than one quarter of the total prison population; over a quarter of young people in youth detention; and more than one third of people involved in police custody incidents.ⁱⁱⁱ

In the same year, Chris Cunneen reflected on the slow progress towards closing the gap and the diminished political goodwill around criminal justice reform in Australia, including a shift away from neoliberal solutions and towards increasingly punitive 'law and order' responses, increasing police powers, increased use of mandatory minimum sentences, and increased arrests for minor offences.^{iv}

Since then, the rate of Aboriginal and Torres Strait Islander imprisonment in Victoria has almost doubled: rising between 2011 and 2021 from 965.2 to 1903.5 per 100,000 adults^v, heavily influenced by Victoria's bail and sentencing reforms.

Despite significant efforts to close the gap, Aboriginal people continue to be significantly over-represented in the Victorian prison system. Aboriginal people make up 7.8 per cent of the Victorian prison population, despite accounting for only 0.9 per cent of the Victorian population. They are more likely to be on remand and to be serving a shorter prison sentence, more likely to have experienced a prior period of imprisonment, and (for males) nearly twice as likely to return to prison within the first two years after release.^{vi} In 2021, Victoria's The Age news outlet reported that the state's spending on police, courts and prisons grew at double or triple the rate of other states and territories over the past decade, with Victoria now arresting and jailing people at levels not seen since the 19th century. With an election looming at the time of this submission, the partisan political debate continues, with the proposed closure of Barwon and Loddon prisons by the Victorian Greens making controversial news headlines.

The 30 plus years since the release of the Royal Commission into Aboriginal Deaths in Custody Report have not been void of action. Many initiatives and strategies have been introduced with a focus on Aboriginal self-determination, and significant resources have been invested towards closing the gap. Increasingly, Victorian Aboriginal people and communities have a voice in the debate that surrounds their futures. ACSO

applauds the work of the Victorian Government, the Victorian First People's Assembly and the Yoorrook Justice Commission in raising this voice. There is much still to be done, and these voices must command the power to affect change.

ACSO is not an Indigenous corporation, and we do not propose here to suggest solutions or strategies on behalf of First Nations people. We note, however, that Aboriginal people are not only over-represented in the correctional system in Australia. As a group, they are disproportionately represented in all measures of socioeconomic disadvantage across our society and are much more likely to themselves be victims of violent crime.^{vii} Indigenous Australians experience shorter life expectancies, higher infant mortality rates, and lower levels of health, education and employment.^{viii} Aboriginal people in Australia experience addiction, mental illness, homelessness, disability and poverty at higher rates than non-Indigenous Australians, often significantly higher, for example, Aboriginal Australians are four times more likely to have an intellectual disability than their non-Indigenous peers.^{ix} A 2013 report by the Centre for Forensic Behavioural Science found that, amongst incarcerated Aboriginal participants surveyed, 71.7% of men and 92.3% of women had received a lifetime diagnosis of mental illness, and rates of all disorders, including psychotic illnesses, were dramatically higher than those found in the general community in Victoria.^x Many of these markers of poor health and wellbeing are the result of the ongoing effects of colonisation.^{xi}

ACSO sees the impact of colonisation on First Nations communities daily in our work. Our forensic counsellors, case workers, support workers and clinicians support people overcoming cycles of addiction, homelessness, imprisonment, illness, and conflict.

In ACSO's experience and the experience of so many of the people we support, it is often gaps and deficiencies in other systems – welfare, health, housing and economic safety nets, which thrust individuals in the direction of the criminal justice system, where other attempts at supportive interventions have failed. It is known that in Victoria a high proportion of Indigenous people in detention are there on short sentence or remand^{xii}, typically convicted of minor offences and routinely denied bail or parole due to a lack of suitable available housing and community support. This high prevalence of Aboriginal and Torres Strait Islander persons impacted by Victoria's criminal justice system is not seen to exist in isolation, rather, as the culmination of trauma and entrenched disadvantage in all social determinants of health; and in the failure of successive governments to offer culturally appropriate alternatives to the warehousing of people in correctional institutions. Australia needs a long-term solution to provide a genuine chance for First Nations people to thrive outside of the western justice system which has been imposed on their communities. Government investments should focus not on expanding prisons, but on programs of work that increase the wellbeing of Aboriginal communities, as led by the expert voices of Aboriginal communities themselves.

ACSO have advocated previously that Australian prisons are not genuinely rehabilitative environments conducive to healing and treatment.^{xiii} If we continue to remand and imprison Aboriginal community members at such high rates, within systems of detention built on Western principles of supervision and security, we will likely continue to see this marginalisation and disadvantage reinforced across Aboriginal communities. In order to reduce the disproportionate and unjust impact of Australia's criminal justice system on Australian Aboriginal peoples, solutions must look far beyond the walls of our prison systems and to the communities and lands where people grow, live, and connect.

“As the RCIADIC established so clearly, further efforts to reduce Indigenous deaths in custody must focus on reducing the number of Indigenous people who come into contact with the criminal justice system. There are many reasons why the rates of Indigenous over-representation remain high, despite the efforts of government and other agencies and Indigenous Australians themselves to close the gap on Indigenous disadvantage in the criminal justice system. There are many factors that contribute to high rates of offending among Indigenous Australians, leading to their over-representation in prison and police custody. These include the impacts of colonisation, the policies and practices of past governments, socio-economic disadvantage, alcohol misuse, the intergenerational transmission of violence and the younger age profile of the Indigenous population.”^{xiv}

Voices of Truth

ACSO work with people at risk of entering or who have already entered the justice system. For more than 35 years, our work has supported, diverted or reintegrated people through a range of services spanning the entire justice continuum from prevention to rehabilitation. Our programs support over 20,000 individuals each year, with the majority of our services being delivered in Victoria.

To deliver effective and safe services to Aboriginal and Torres Strait Islander participants, ACSO targets the provision of culturally appropriate, self-determining partnerships with appropriate Aboriginal and Torres Strait Islander led and controlled organisations to provide a broad and culturally grounded response.

Throughout 2021-22 ACSO has worked alongside registered Indigenous corporation Warrigunya Inc. to secure funding and development of an accommodation, culture, training, and employment centre for Indigenous men released from prison, currently under construction in Gippsland. Warrigunya has been led and designed by a committee of 49 people, 28 of whom are Aboriginal. It is overseen by a Board of seven Directors four of whom are Aboriginal. The design process for the centre was the work of this community led organisation, the daily commitment of its Directors along with input and consultation from Aboriginal people imprisoned at Fulham Correctional Centre. It is an example of true community led design resulting in a culturally safe and meaningful space. ACSO have supported this project in a practical sense by working alongside the committee to apply for funding, undertake contract negotiations, oversee building administration, and assist with set up, including strategic planning, policy & procedure design and finance set up. Once the build is completed, ACSO will fully hand the facility over to Warrigunya Aboriginal and Torres Strait Islander Corporation.

In planning for the Warrigunya Project, the organisation consulted extensively with local Aboriginal community members and with Aboriginal men incarcerated at Fulham Correctional Centre (FCC) in Gippsland. With permission from Warrigunya Inc and in the spirit of highlighting the voices of these men, ACSO is respectfully sharing an excerpt of some findings from Warrigunya’s consultations.

In the below examples, life was stable for both men, until a close relative passed away, leading to a self-repeating spiral of drug use, introduction to the justice system, eventual imprisonment, and loss of stable accommodation. ‘The difficulty many Aboriginal men have with dealing with grief and anger is an aspect of Intergenerational Trauma’ (Warrigunya 2019).

“A”, 32, had no contact with prison until his father’s death in 2015 when he got into ice. Since then, he has been in and out 4.5 months first time, 12 months the second, few more then out for 15 months, broke up with partner and went back to ice. Has only been back in for 2 weeks. He saw the biggest barrier to getting out of the prison system as lack of housing which meant he was couch surfing after his breakup and his use of drugs escalated.

“H” was in a long-term relationship and stable accommodation when his father and then brother died and he “went off”. He was given a Community Corrections Order – the community work was unstitching logos off jumpers, and he didn’t want to do it so is currently imprisoned for breaching the order. He is on remand and has been told he should do the Dardi program when he gets out.

In the story of “X”, the interplay between trauma, victimisation and violence are obvious, as is the inadequate availability of appropriate supports in the community.

“X” was employed and married for 16 years with 4 children. “X”, who suffered abuse as a child, was giving evidence at the Royal Commission and that was “bringing things up for him”. His partner and his best mate had an affair. “X” reacted violently. “X” was rendered homeless after a Family Violence order was taken out. He was not allowed to go to the family home even after the family was moved to a shelter. He was sleeping rough, stealing, couldn’t get mail, missed court, breached. Jail.

Once indoctrinated into Australia’s prison system, many Aboriginal persons have difficulty escaping the perpetuating cycle of disadvantage this creates. This is evidenced in the below stories.

“Y” is 49 and has spent almost all his life in the prison system. He was born in prison and taken from his mother when he was 9 months old. Spent time in U’10s at Belara. Estimates going in and out 30 times since 1988. Prison is his normal. He is very anxious on the outside, has never had a job, but does want to get out. Tired of prison life. His mum used to tell him she was pleased he was in prison – because he did better in there and was safe. He agrees.

“W” had done 1 stint in Juvey and had been in and out of prison, 17 times, since he was 20, laughing that he had his 21st in prison. “W” believed the reasons he returned to jail were lack of appropriate housing and not getting into rehab quick enough after release. He said there were not enough facilities, and the waiting lists were too long. “W” was due for release later in the year. “W” was due for release soon and did not yet have a place in rehab. He was adamant that he didn’t want to go into a transitional facility because “there were too many drugs”.

“W” was released later in the year, didn’t get accommodation or into rehab and was back in prison less than a month after release.

ACSO wish to thank Warrigunya and the participants in this consultation for sharing these truths with us, and for allowing ACSO to share these truths with the Yoorrook Commission.

Throughout 2021-22, ACSO’s Queensland team undertook a cultural enhancement project aimed at improving our program’s service delivery through a culturally appropriate lens. The project sought to improve how ACSO assists our clients to improve their cultural strength as a protective factor to help reduce offending, provide participants with the opportunity to engage in culturally tailored supports and strengthen connection to culture and identity, family and community. The project incorporated a clear design for inclusion of First Nation client voices, local Elders, cultural liaison officers and multiple Indigenous community agencies. While the project related to ACSO’s post-release services in Queensland (not Victoria), many of the feedback shared by Aboriginal participants is applicable across all states that ACSO operate in and highlights the ways in which Australian criminal justice systems are not culturally appropriate by design and can often serve to perpetuate Indigenous disadvantage through its process driven approaches and constrained, output focused resourcing.

“No one comes, and if they do, they holding a pen and paper like they’re gonna do one of those assessments on us. So I just stay at the back and wait for them to leave”.

“I can’t read. I don’t know how to write neither. I trust that you’re telling me the truth. With the other white workers, I just say whatever so I don’t get into trouble and get it over with”.

“I don’t understand most of what the parole officer says. I just get better and knowing what they’re saying each time I get parole cos I know from the last time I got sent back to jail”.

“Don’t even really have a chance to think about what sort of future we could have cos we’re always just tryna finish parole. It’s like life on the outside is parole.”

“If I go out back West I can’t do all the things they want me to do. But if I go to a boarding house I won’t last. If I go back home [out West] then I’m not stressing out all the time. I know where everything is, no one looks at me funny and family are there”.

Throughout the project, ACSO also asked participants and relevant community members about the improvements they would like to see. It is clear from this consultation that Aboriginal persons impacted by and working across our correctional systems are clear on what needs to change and are best placed to direct what this change looks like. It should be noted that ACSO's consultation was specific to the delivery of our post-release services and as such, did not extend to possibilities of substantive criminal justice reform, rather, simple and achievable changes which could be made within the current system, with adequate resourcing and informed, culturally responsive practice:

"Clients need a culturally appropriate environment for accommodation".

"Most of us Indigenous people need help once released. We don't have a place or house of our own to reside in. Maybe have a program to help us on how to live in a house or unit on our own or with family. How to pay rent, budget, shop for things and how to keep our place clean and tidy. For a lot of us blackfullahs jail is the only house we've lived in, its different to community where we started."

"It would help if there were some pictures."

"On the Re-Entry Plan replace 'exit planning' with something positive and make it clear at the start we can trust ya, but it's a program for three months or we'll think you dropped us. If anything, it's really important to know that if we open up or trust someone, that will be respected. The trust will be broken for good if the communication is stopped without reason or ends suddenly. Even if we stuff up and go back to jail, would be good if you could let us know we can have another go or pick up where we left off if we get there again".

Don't go directly to what you want to ask. Use a circular model and bring the conversation in. Use all of the conversation to bring you to a better and fuller understanding".

Conclusion

As noted in our submission, ACSO sees the impacts of colonisation and compounding trauma on Aboriginal Victorians in our work every day. We see persistently high rates of Aboriginal participants facing disadvantage and disenfranchisement across all domains, including housing, education, health and employment, as well as the ongoing stigma and discrimination faced by participants in accessing services or achieving progress in these domains. Once this disadvantage has culminated in contact with our justice system, it is incredibly difficult for Aboriginal persons to break free from this cycle, which is perpetuated by the continued limited service responses after release from prison, and in the limited availability of housing, particularly housing which is culturally appropriate.

ACSO, like others, do not offer a simple solution to the wicked problem of Indigenous peoples contact with Victoria's justice system. Instead, we urge those involved to look broadly at changes required right across our systems and society, which perpetuate trauma and disadvantage and so often lead in a straight path to the revolving door of the criminal justice system. ACSO gives space for the voice of Aboriginal Victorians as collected by the Yoorrook Justice Commission, to design and lead self-determined solutions.

Successive attempts at paternalistic intervention since European colonisation have failed. The voice of the Yoorrook Commission must be heard, with deep respect, and must be acted upon.

ACSO thanks the Yoorrook Commission for its important work and for the opportunity to share some of the voices of Aboriginal people impacted by and interacting with our service. We look forward to substantive, Aboriginal led systemic change across Victoria and Australia more widely.

ⁱ Elliott Johnston (1991), *National Report of the Royal Commission into Aboriginal Deaths in Custody*, Canberra: Royal Commission into Aboriginal Deaths in Custody.

ⁱⁱ Aboriginal and Torres Strait Islander Social Justice Commission & Aboriginal and Torres Strait Islander Commission (1996) *Indigenous deaths in custody 1989 -- 1996*. Canberra.

ⁱⁱⁱ Beacroft, L., Lyneham, M. & Willis, M. J., 'Twenty years of monitoring since the Royal Commission into Aboriginal Deaths in Custody: an overview by the Australian Institute of Criminology', 2011, *Australian Indigenous Law Review* 15 (2011) v.1.

^{iv} Cunneen, C., 'Two Decades of Penal Expansionism and its Effects on Indigenous Imprisonment', *Australian Indigenous Law Review*, v. 15, No. 1, pp. 8-17, 2011

^v Australian Bureau of Statistics, *Prisoners in Australia*, 2021, cat. no. 4517.0 (2021).

^{vi} Justice Health and Corrections Victoria (2015) *Aboriginal Social and Emotional Wellbeing Plan*, Melbourne.

^{vii} Bryant, C. & Willis, M. (2008) *Risk factors in Indigenous violent victimisation*, AIC Reports – Technical and Background Paper, 30, Australian Institute of Criminology, Canberra.

^{viii} Productivity Commission (2020) *Overcoming Indigenous Disadvantage: Key Indicators 2020*, Australia.

^{ix} Shepherd, S., Ogloff, J., Shea, D., Pfeifer, J., & Paradies, Y. (2017). Aboriginal prisoners and cognitive impairment: the impact of dual disadvantage on Social and Emotional Wellbeing. *Journal of Intellectual Disability Research*, 61(4), pp. 385-397.

^x Ogloff, J., Patterson, J., Cutajar, M., Adams, K., Thomas, S. & Halacas, C. (2012) *Koori Prisoner Mental Health and Cognitive Function Study – Final Report*, Centre for Forensic Behavioural Science, Monash University & Victorian Institute of Forensic Mental Health, Victorian Aboriginal Community Controlled Health Organisation, Victoria.

^{xi} Sherwood, J. (2013), 'Colonisation - it's bad for your health: the context of Aboriginal health', *Contemp Nurse*. 2013 Dec;46, v.1

^{xii} Sentencing Advisory Council (2013) *Comparing Sentencing Outcomes for Koori and Non-Koori Adult Offenders in the Magistrates' Court of Victoria*, Victoria.

^{xiii} Australian Community Support Organisation, *ACSO's Submission to the Parliamentary Inquiry into Victoria's Criminal Justice System* (2021), [5bf9fc_e6a8ffd4c3b047ddaa4456c113e096bc.pdf \(filesusr.com\)](https://filesusr.com/files/5bf9fc_e6a8ffd4c3b047ddaa4456c113e096bc.pdf)

^{xiv} Ibid.