

**Cultural Review** of the  
**Adult Custodial Corrections System**

# **SAFER PRISONS, SAFER PEOPLE, SAFER COMMUNITIES**

*Final report of the Cultural Review of  
the Adult Custodial Corrections System*

December 2022

# **Cultural Review** of the **Adult Custodial Corrections System**

**Provided to the Minister for Corrections on 1 December 2022**

We acknowledge Aboriginal and Torres Strait Islander people as the First Peoples and Traditional Owners and custodians of the land and waterways upon which we depend. We acknowledge and pay our respects to ancestors of this country, Elders, knowledge holders and leaders – past, present and emerging.

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## Foreword

What happens in Victorian prisons and correctional centres is, for many people, out of sight. The community rarely gets to see into the dynamic safety and security demands of correctional environments, the multifaceted role custodial officers play, and the increasingly complex needs of people in custody.

Despite the limited visibility of the adult custodial corrections system, it is a critical part of the state's justice system – staffed by more than 5,000 corrections staff and accommodating some 6,600 people in custody in 16 locations across the state, of varying capacity, character and specialisation.

In recent years, inquiries and investigations by Victoria's independent integrity bodies have uncovered worrying integrity and corruption issues within the adult custodial corrections system – including excessive use of force, inappropriate strip searching, and concerns about the transparency and fairness of prison disciplinary hearings and the treatment of people with cognitive impairment and disability in custody.

Custodial corrections systems were not historically developed around principles of transparency and fairness, nor with rehabilitation and longer-term community safety in mind. While much has changed in corrections environments in the last few decades, they remain, in part, places that are influenced by a punitive orientation and that can be devastatingly unsafe both for the staff who work there and the people in custody who live there.

This is particularly so if you are an Aboriginal person in custody. At the time of writing a coronial inquest is taking place into the tragic death of Veronica Nelson who died in custody while in remand at the Dame Phyllis Frost Centre. Over the course of the Cultural Review of the Adult Custodial Corrections System (Cultural Review) there have been two further deaths of Aboriginal people in custody. In the thirty-one years since the 1991 Royal Commission into Aboriginal Deaths in Custody, 517 Aboriginal people have died in custody.<sup>1</sup>

The Cultural Review was a vital opportunity to examine the culture that exists within Victoria's prisons and correctional centres – not just the workplace culture experienced by staff, but also the broader corrections culture which shapes how the rights of people in custody are upheld, their interactions with corrections staff, and how they are supported to rehabilitate and reintegrate upon release.

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<sup>1</sup> Australian Institute of Criminology, 'Deaths in custody in Australia' (Web Page, 30 August 2022), <https://www.aic.gov.au/statistics/deaths-custody-australia>.



Aboriginal peoples are over-represented in the justice system, and most of our people who are incarcerated are in prison for crimes of poverty. The numbers of Aboriginal deaths in custody is overwhelming – our people should not die in custody (we do not have the death penalty in Australia). I remember all those months ago when the government contacted me and told me that they want to undertake a review of the culture in the adult custodial corrections system and they would like me to be on the Expert Panel. I was very happy at this news, and I remember I felt a sense of hope that change could come. We need a corrections system that also focuses on rehabilitation and human rights.

**Aunty Jill Gallagher AO,  
Expert Adviser**

Over the course of the Cultural Review, we visited every prison and correctional centre in Victoria and heard from more than 1,700 participants about their experiences living and working within the system. 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. It is not surprising that this tension strongly influences the culture within the system.

At each location, many corrections staff told us about why they are motivated by their roles; but this enthusiasm was often tempered by the risks to health and safety many encountered in their day-to-day work. Many staff described high levels of workplace stress and our workforce survey painted a picture of a workforce under significant pressure. Some staff described a workplace culture that has a high tolerance for bullying, discrimination and sexual harassment, and the need for purposeful and values-based leadership. Others spoke of limited training and unclear pathways to progress their

careers. A consistent theme in these conversations was the weaknesses in the systems and processes that limit staff's ability to support real and meaningful change for the people in their care.

People in custody told us about their vulnerability to mistreatment and their fear of speaking up for fear of the consequences that might come their way. In some circumstances, they recognised the complaints mechanisms available to them but questioned the ability of these mechanisms to effect change. They worried that speaking up might compromise their placement, safety or parole – we heard the best way to survive prison is to 'keep your head down'. People in custody described variable experiences when interacting with corrections staff – while they perceived many staff as fair and willing to help, they felt others ignored requests, lacked empathy or deliberately withheld assistance. Cursory case management, inadequate healthcare and disrupted access to programs and education were also common experiences.

Many of these issues were exacerbated for groups vulnerable to unfair treatment, such as women, LGBTIQ+ people, older people, people with disability and people from culturally and linguistically diverse backgrounds. In many instances, systems and processes made little accommodation for the specific needs of these groups, and the goodwill of individual staff was no substitute for the system-level resources needed to meet their needs.

Alongside these challenging experiences, we must also recognise the concerted efforts of many people in the adult custodial corrections system to bring about change at an individual, local and system level. We have been pleased to encounter encouraging examples of good practice, proactive efforts and a genuine commitment to do better from people at all levels within the system. This report highlights some of these positive examples through the analysis and recommendations.

Our research draws a clear connection between the values and motivations of staff, their understanding of their role, capability and wellbeing, and outcomes for people in custody. We have been particularly concerned by the high levels of workplace stress and trauma and fear of violence, and how these cumulative experiences can diminish the capacity of some staff to carry out their role with empathy, professionalism and integrity.

We examined cultural safety from the perspectives of both Aboriginal staff and Aboriginal people in custody. It is clear that Aboriginal staff play a central role in supporting cultural safety within prisons and correctional centres – but they are stretched thin and need more support and more recognition of the value that they bring, both operationally and strategically. Notwithstanding a number of initiatives over the last few years, Aboriginal people in custody described a widespread lack of understanding of cultural safety and limited support to maintain connections to culture and family. Recognising the over-representation of Aboriginal people in Victoria's adult custodial corrections system, these are critical issues.



I know that cultural reform can only be achieved with leadership and enduring commitment. The leadership has to come from all levels, not just from those in senior positions. During the Cultural Review, I saw operational mentors leading new recruits, supervisors leading their teams, and general managers setting the tone for their prisons. Change will only be achieved when these leaders talk the change that is needed, walk the change that is needed, and are supported in doing this. Bad behaviour has to be called out, and the right behaviour has to be demonstrated and rewarded. Achieving enduring cultural change will be an enormous challenge, but corrections staff are well used to dealing with challenges. The outcomes will often be truly life changing.

**Tim Cartwright APM,  
Expert Adviser**



Behind the wall is a forgotten place where correctional officers go every day and deal with matters that society generally does not know about. Like any workplace, respectful relationships, a safe working environment and appropriate training are critical to the overall success of this area of the justice system. Failing to be vigilant with these important aspects results in both a financial and human cost which is unacceptable.

**Greg Smith AM**  
Expert Advisor

We see the Cultural Review as a first step in building transparency. The recommendations we propose in this report foreground ideas of safety and equality, integrity, respect and cultural safety. We recommend a clear articulation of the system's purpose and legislative framework, and strengthened oversight, scrutiny and transparency. We recommend amplifying the role of lived experience in policy and strategy and ensuring shared responsibility for cultural safety and responsiveness. We recommend better access to independent advice and support for people in custody, better access to healthcare, improved complaints pathways and a refreshed approach to recruitment, pre-service training and ongoing professional development.

Collectively, these recommendations strive to achieve a clear purpose for the adult custodial corrections system. This, in turn, will support staff capability, leading to effective leadership and improved accountability. These are necessary precursors to improved safety across the system and, finally, the right conditions for longer-term positive change.

Supporting people in custody to make positive change in their lives in a respectful environment with a rehabilitative culture is an opportunity to strengthen community safety with social, economic, safety and health outcomes for the whole community.

Handwritten signature of Tim Cartwright APM in black ink.

**Tim Cartwright APM**  
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**Kristen Hilton**  
Review Lead

## Acknowledgements

An independent review of the Adult Custodial Corrections System of this scope has not previously been undertaken in Australia. The depth and breadth of this Review has taken many months of research and engagement and could not have been accomplished without the contributions of many people with experience of the Victorian custodial system. These many perspectives have informed this report and will be crucial to ensuring a safer, more connected and more humane corrections system.

We acknowledge the Traditional Owners of the lands throughout what is now Victoria, where this Cultural Review has been conducted and where Aboriginal live and work within the adult custodial corrections system.

We pay our respects to their Elders, past, present and emerging. Aboriginal Victorian Traditional Owners maintain that their sovereignty has never been ceded. The strength, resilience and pride of Aboriginal Victorians, their cultures, communities and identities continue to grow and thrive today despite the impact of colonisation, overincarceration of Aboriginal people and ongoing experiences of racism and discrimination.

The Expert Panel acknowledges the dedication and strength of Aboriginal people who have worked and continue to work across the adult custodial corrections system and is grateful for their generous and open engagement with the Cultural Review. The Expert Panel is also grateful for the engagement of many Aboriginal people currently living in prisons across Victoria who shared their stories and experiences with the Review. The Expert Panel has been moved by their stories of survival, rehabilitation and the practice of their culture while in custody.

We want to particularly acknowledge and thank the individuals who shared their direct experiences and stories of living and working in Victoria's adult custodial corrections system. We heard from many current and former staff and people in custody, as well as their loved ones, about the uniqueness of the prison environment and the challenges this environment presents. Many of the stories we heard were difficult to retell and we acknowledge that for some, those stories will be difficult to read. It is these stories that illuminate the case for change.

Conducting a review of this nature is challenging in the best of circumstances; this work was undertaken during the COVID-19 pandemic which impacted all of us in different ways and also presented particular logistical hurdles for the sixteen prison sites that hosted our visits over many weeks. The impact of COVID19 led to long periods of lockdowns and quarantine for people in custody, the cessation of face to face visits and lack of access to usual supports. We also saw firsthand the

additional pressures experienced by custodial staff during this time and are grateful for the time and space staff made for us during our visits. We were given open access to all parts of the corrections system and learned much about the challenging and complex roles staff perform. We were moved by many of the stories we heard from staff and from people in custody who overall, share a common goal for a safer environment.

We would also like to extend our thanks to the many individuals and organisations who shared their expertise in all facets of the adult custodial corrections system through expert interviews and organisational submissions. It was heartening to hear from so many experts within the Department of Justice and Community Safety and those externally who have a vested interest in improving outcomes for people living and working in the system. Your input was essential for building a thorough understanding of the complexity, challenges and opportunities within the system.

The Review could not have conducted its' work without the support of the executive leadership team across DJCS including leaders across Corrections Victoria, Corrections and Justice Services and the Office of the Secretary. We are particularly indebted to the former Secretary of the DJCS, Rebecca Falkingham, the current Acting Secretary, Peta McCammon, Deputy Secretary, Ryan Phillips and the Corrections Commissioner, Larissa Strong and her dedicated operations leadership team for their insights and commitment led by Deputy Commissioner Melissa Westin. We also acknowledge the regular support provided to the Cultural Review by Assistant Commissioner Andrew Reaper. Ambitious cultural change requires unequivocal support across leadership and we extend our gratitude to those who have shown support and enthusiasm for our proposed reforms.

Over the course of the Review, we have requested comprehensive data sets, policies, plans and other information to assist with our research and understanding of the system. We thank those DJCS staff who spent considerable effort and time supporting the Review team with these requests.

We also acknowledge the advice and assistance provided by the Victorian Public Sector Commission, Yulang Indigenous Evaluation and Victoria's integrity bodies, the Victorian Ombudsman and the Independent Broad based Anti-Corruption Commission - much of their previous excellent work has informed this Review.

We also thank the Review team: Amy Rogers, Claire Marshall, Josephine Parkinson James Aitken, Peter Davies, Claire Pieters, Kate O'Brien, Jaimie Taunoa, Jessica Chandler, Peter Vivian-Taylor, Joanne Thompson, Erin Haynes, Shayne Morrall, Martha Floros, Jonathon West, and Vonita Mansoor. We have been so grateful for the level of care and consideration you have given throughout every phase of the Cultural Review. We have been wonderfully supported and challenged by you. The team have collectively displayed individual and collective care for all those we spoke to.

Finally, to everyone who has been a part of or had an interest in the work of the Review, we thank you. Your experiences, hopes, knowledge and ideas have shaped our vision for a more humane, safe and positive custodial environment.

## Help and support

This report discusses sensitive topics that some readers may find distressing. The table below includes contact details for services that can offer support or help you make a complaint about your experiences.

<p><b>Human rights complaints for people in prison</b></p>	<p><b>Victorian Ombudsman</b> Investigates breaches of human rights in Victoria including for people in prison. Phone (03) 9613 6222 Website <a href="http://ombudsman.vic.gov.au">ombudsman.vic.gov.au</a></p>
<p><b>Integrity and corruption reports</b></p>	<p><b>Independent Broad-based Anti-Corruption Commission (IBAC)</b> Investigates serious corruption in the Victorian Public Sector. Phone 1300 735 135 Email <a href="mailto:info@ibac.vic.gov.au">info@ibac.vic.gov.au</a> Website <a href="http://ibac.vic.gov.au">ibac.vic.gov.au</a></p>
<p><b>Discrimination and sexual harassment complaints and support</b></p>	<p><b>Victorian Equal Opportunity and Human Rights Commission</b> Investigates complaints about discrimination and human rights breaches in Victoria. Phone 1300 292 153 Email <a href="mailto:enquiries@veohrc.vic.gov.au">enquiries@veohrc.vic.gov.au</a> Website <a href="http://humanrights.vic.gov.au">humanrights.vic.gov.au</a></p> <p><b>Australian Human Rights Commission</b> Investigates complaints about discrimination and human rights breaches from in all parts of Australia. Phone 1300 656 419 Website <a href="http://humanrights.gov.au">humanrights.gov.au</a></p> <p><b>Victorian Civil and Administrative Tribunal (VCAT)</b> Manages cases of unlawful discrimination, sexual harassment, victimisation or vilification. Phone 1300 018 228 Website <a href="http://vcat.vic.gov.au">vcat.vic.gov.au</a></p>
<p><b>Workplace bullying and other workplace claims</b></p>	<p><b>WorkSafe Victoria</b> Regulates workplace bullying and other workplace safety issues in Victoria. Advice: 1800 136 089 Emergencies: 13 23 60 Website <a href="http://worksafe.vic.gov.au/bullying-workplace">worksafe.vic.gov.au/bullying-workplace</a></p>

	<p><b>Fair Work Commission</b> Deals with workplace relations matters, including anti-bullying claims. Phone 1300 799 675 Website <a href="http://fwc.gov.au">fwc.gov.au</a></p> <p><b>Fair Work Ombudsman</b> Support to understand workplace rights and responsibilities in Australia. Phone 13 13 94 Website <a href="http://fairwork.gov.au">fairwork.gov.au</a></p>
<b>Reporting crimes</b>	<p><b>Victoria Police</b> To report alleged crimes and emergencies. Assistance 131 444 Emergency 000 Website <a href="http://police.vic.gov.au">police.vic.gov.au</a></p>
<b>Union support</b>	<p><b>Community and Public Sector Union</b> Represents workers to ensure they are safe at work and have fair rights, pay and conditions. Phone 1300 137 636 Website <a href="http://cpsu.org.au/contact">cpsu.org.au/contact</a></p> <p><b>Victorian Trades Hall Council</b> Union group focused on advancing workplace gender equality and the rights and safety of working women. Phone (03) 9659 3533 Website <a href="http://unionwomen.org.au">unionwomen.org.au</a></p>
<b>Legal support and advice</b>	<p><b>Victoria Legal Aid</b> Free legal services to support people with legal problems including people in prisons. Phone 1300 792 387 Website <a href="http://legalaid.vic.gov.au">legalaid.vic.gov.au</a></p> <p><b>Victorian Aboriginal Legal Service</b> Free legal information, referrals, advice and casework assistance for Victorian Aboriginal and Torres Strait Islander Peoples on a range of legal issues. Phone (03) 9418 5999 or 1800 064 865 (toll free) Website <a href="http://vals.org.au">vals.org.au</a></p> <p><b>Djirra</b> Culturally safe and accessible family violence and legal services for Aboriginal people. Phone 1800 105 303 Website <a href="http://djirra.org.au">djirra.org.au</a></p> <p><b>Disability Discrimination Legal Service</b> Victorian independent community legal centre that specialises in disability discrimination legal matters. Phone (03) 9654 8644 Website <a href="http://ddlsaaustralia.org">ddlsaaustralia.org</a></p>



	<p><b>Fitzroy Legal Service</b>  A free legal advice service, run each evening from Fitzroy Town Hall.  Phone 9419 3744  Website <a href="http://fls.org.au">fls.org.au</a></p> <p><b>St Kilda Legal Service</b>  Free legal assistance for people living in Port Phillip, Stonnington and Bayside.  Phone (03) 7037 3200  Website <a href="http://skls.org.au">skls.org.au</a></p> <p><b>Law and Advocacy Centre for Women</b>  Advice on criminal matters bail applications and options for victims of crime.  Phone 03 9448 8930  Email <a href="mailto:info@lacw.org.au">info@lacw.org.au</a>  Website <a href="http://lacw.com.au">lacw.com.au</a></p>
<p><b>Crisis and general mental health support</b></p>	<p><b>Lifeline</b>  24-hour telephone crisis support for mental health support and emotional assistance.  Phone 13 11 14  Website <a href="http://lifeline.org.au">lifeline.org.au</a></p> <p><b>Beyond Blue</b>  24-hour free information and support to help people work through mental health issues.  Phone 1300 224 636  Website <a href="http://beyondblue.org.au">beyondblue.org.au</a></p> <p><b>Suicide Call Back Service</b>  A nationwide service providing 24/7 telephone and online counselling to people affected by suicide (including if you are feeling suicidal, worried about someone or have lost someone to suicide).  Phone 1300 659 467  Website <a href="http://suicidecallbackservice.org.au">suicidecallbackservice.org.au</a></p> <p><b>Headspace 'Connect with a Clinician'</b>  National youth mental health foundation with clinicians available.  Phone 1800 650 890  Website <a href="http://headspace.org.au/eheadspace/connect-with-a-clinician">headspace.org.au/eheadspace/connect-with-a-clinician</a></p> <p><b>Blue Knot Foundation</b>  Counselling for people who have experiences childhood trauma including child sexual abuse; and support for people with a disability who have experienced abuse, neglect, violence or exploitation.  Phone 1300 657 380  Website <a href="http://blueknot.org.au">blueknot.org.au</a></p>
<p><b>Women's counselling and support services</b></p>	<p><b>1800 Respect</b>  24-hour sexual assault and domestic violence counselling and support service.  Phone 1800RESPECT (1800 737 7327)  Website <a href="http://1800respect.org.au">1800respect.org.au</a></p>

	<p><b>WIRE 24-hour Women’s Support Line</b> Free support, referral and information for Victorian women, non-binary and gender-diverse people. Phone 1300 134 130 Website <a href="http://wire.org.au">wire.org.au</a></p> <p><b>Centre Against Sexual Assault (CASA)</b> Confidential support and intervention for victim-survivors of sexual assault or sexual harassment. Phone 1800 806 292 Website <a href="http://sacl.com.au">sacl.com.au</a></p> <p><b>Multicultural Centre for Women’s Health Information Line</b> Telephone service specifically for women from migrant and refugee backgrounds on health topics including women’s health, occupational health, and safety (including sexual harassment), and women’s safety and wellbeing. Phone 1800 656 421</p>
<p><b>Men’s counselling and support services</b></p>	<p><b>Mensline</b> National phone and online support service for men that includes video counselling. Phone 1300 789 978 Website <a href="http://mensline.org.au">mensline.org.au</a></p>
<p><b>LGBTIQ counselling and support services</b></p>	<p><b>Switchboard (for LGBTIQ+ people)</b> Peer-driven support services for LGBTIQ+ people, and their families, allies and communities Phone 1800 184 527 Website <a href="http://switchboard.org.au">switchboard.org.au</a></p> <p><b>Q Life</b> Australia-wide anonymous, LGBTIQ+ peer support and referral for people wanting to talk about a range of issues including sexuality, identity, gender, bodies, feelings or relationships. Phone 1800 184 527 Website <a href="http://qlife.org.au">qlife.org.au</a></p> <p>WIRE 24 hours Women’s Support Line Free support, referral and information for Victorian women, non-binary and gender-diverse people. Phone 1300 134 130 Website <a href="http://wire.org.au">wire.org.au</a></p>
<p><b>Aboriginal services</b></p>	<p><b>Victorian Aboriginal Health Service</b> A dedicated health service to address the specific medical needs of Victorian Indigenous communities. Phone (03) 9403 3300 Free 24-hour counselling 1800 959 563 Email <a href="mailto:ysns@vahs.org.au">ysns@vahs.org.au</a></p> <p><b>National Indigenous Postvention Service</b> Supports individuals, families, and communities affected by suicide or other significant trauma. Phone 1800 805 801 Website <a href="http://thirrili.com.au/postvention-support">thirrili.com.au/postvention-support</a></p>

**Brother to Brother 24-Hour Crisis Line**

Phone support for Aboriginal men who need someone to talk to.  
Staffed by Aboriginal men including Elders.

Phone 1800 435 799

Website [dardimunwurro.com.au/brother-to-brother](http://dardimunwurro.com.au/brother-to-brother)

**Victorian Aboriginal Legal Service**

Free legal information, referrals, advice and casework assistance  
for Victorian Aboriginal and Torres Strait Islander Peoples on a  
range of legal issues.

Phone (03) 9418 5999 or 1800 064 865 (toll free)

Website [vals.org.au](http://vals.org.au)

**Djirra**

Culturally safe and accessible family violence and legal services for  
Aboriginal people.

Phone 1800 105 303

Website [djirra.org.au](http://djirra.org.au)



## Acronyms and abbreviations

ABI	Acquired brain injury
ACCO	Aboriginal community-controlled organisation
ACCHO	Aboriginal community-controlled health organisation
ACT	Australian Capital Territory
ADHD	Attention deficit hyperactivity disorder
AEA	Aboriginal engagement adviser
AJA	Aboriginal Justice Agreement
AJC	Aboriginal Justice Caucus
AJF	Aboriginal Justice Forum
ALO	Aboriginal liaison officer
ASO	Aboriginal services officer
ASD	Autism spectrum disorder
AWO	Aboriginal wellbeing officer
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders
BWC	body-worn camera
Charter	Charter of Human Rights and Responsibilities
CALD	Culturally and linguistically diverse
CCO	community correction order
CISO	Corrections independent support officer
CJS	Corrections and Justice Services
CMRC	Case Management Review Committee
Corrections Act	<i>Corrections Act 1986</i>
COG	Custodial Officer Grade
CPSU	Community and Public Sector Union

CPT	Case planning transition
Cultural Review	Cultural Review of the Adult Custodial Corrections System
CVIU	Corrections Victoria Intelligence Unit
CVRP model	Corrections Victoria Reintegration Pathways model
DHHS	Department of Health and Human Services
DJCS	Department of Justice and Community Safety
DPFC	Dame Phyllis Frost Centre
EAP	Employee Assistance Program
Equal Opportunity Act	<i>Equal Opportunity Act 2010</i>
ERG	Emergency Response Group
FIS	Forensic Intervention Services
FMH	Forensic Mental Health
HR	Human resources
HiPP	World Health Organization Health in Prisons Project
IBAC	Independent Broad-based Anti-Corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
ICCPR	International Covenant on Civil and Political Rights
IPV	Independent Prison Visitor
JARO	Justice Assurance and Review Office
JHREC	Justice Human Research Ethics Committee
JIMS	Justice Information Management System
JLTC	Judy Lazarus Transition Centre
KEX	Kiosk Express System
KPI	Key performance indicator
LJW	local justice workers
LGBTIQ+	lesbian, gay, bisexual, trans and gender diverse, intersex, queer and others ('+') whose gender identity or sexual orientation is not represented by the letters
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners

MAP	Melbourne Assessment Prison
MRC	Metropolitan Remand Centre
NACCHO	National Aboriginal Community Controlled Health Organisation
NDIS	National Disability Insurance Scheme
NPM	National Preventive Measure
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
OSTP	Opioid Substitution Therapy Program
PDP	professional development plan
PIMS	Prisoner Information Management System
PPE	Personal Protective Equipment
PTSD	post-traumatic stress disorder
QCCC	Queensland Crime and Corruption Commission
RACGP	Royal Australian College of General Practitioners
RAJAC	Regional Aboriginal Justice Advisory Committee
SDO	Service delivery outcome
SDRF	Self-Determination Reform Framework
SESG	Security and Emergency Services Group
SIAPC	State-wide Indigenous Art in Prisons and Community
SMP	Sentence Management Panel
Special Report on Corrections	<i>Special Report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molara</i>
RTO	registered training organisation
Tac-ops	tactical operations
TOG	Tactical Operations Group
Use of Force Report	<i>Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison</i>
VAAF	Victorian Aboriginal Affairs Framework
VACCA	Victorian Aboriginal Child Care Agency
VACCHO	Victorian Aboriginal Community Controlled Health Organisation

VAGO	Victorian Auditor-General's Office
VALS	Victorian Aboriginal Legal Services
VEOHRC	<i>Victorian Equal Opportunity and Human Rights Commission</i>
VPS	Victorian Public Service
VPSC	Victorian Public Sector Commission
WHO	World Health Organization
WHO Framework	World Health Organization Prison Health Framework
Winnunga AHCS	Winnunga Nimmityjah Aboriginal Health and Community Services
WPCC	Western Plains Correctional Centre
Yilam	Naalamba Ganbu and Nerrlinggu Yilam



# Glossary

<b>Adult custodial corrections system</b>	The adult custodial corrections system is a part of the state's justice system – staffed by more than 5,000 corrections staff and accommodating some 6,600 people in custody in 16 locations across the state, of varying capacity, character and specialisation.
<b>Centurion</b>	Centurion is an intelligence information platform used by custodial staff to upload information reports related to a person in custody or other corrections staff or view information about people in custody, staff and other persons such as visitors.
<b>Commissioner's Requirements (CRs)</b>	Commissioner's Requirements are operational policy documents which prescribe the requirements of corrections staff who work in either the public or private prison system when conducting their daily duties.
<b>Corrections Act</b>	The <i>Corrections Act 1986</i> (Vic) is the legal framework for the operation of the adult custodial corrections system.
<b>Corrections and Justice Services (CJS)</b>	Corrections and Justice Services is a business unit within the Department of Justice and Community Safety with oversight and responsibility of Corrections Victoria (including prisons and Community Correctional Services), Justice Health, Youth Justice, and other justice services.
<b>Corrections staff</b>	Corrections staff includes both custodial officers and other corrections staff who ordinarily work in a Victorian prison or correctional centre and are employed privately or by Corrections Victoria and DJCS.
<b>Custodial staff</b>	We refer to custodial staff as those staff who are employed as Custodial Officer Group (COG) staff members.
<b>Corrections Victoria</b>	Corrections Victoria is a business unit within Corrections and Justice Services with oversight and responsibility for the Adult Custodial Corrections System and Community Correctional Services (including parole).
<b>Department of Justice and Community Safety (DJCS)</b>	The Department of Justice and Community Safety (DJCS/the department) is the Victorian government department which has oversight and responsibility of the Adult Custodial Corrections System.
<b>Deputy Commissioner's Instructions (DCIs)</b>	Deputy Commissioner's Instructions are operational policy documents which prescribe operational instructions for corrections staff working in Victoria's public prisons.

<b>Front-end</b>	Front-end prisons accept direct receptions into custody and house the majority of people on remand. The Cultural Review considers front-end prisons to include Melbourne Assessment Prison, Metropolitan Remand Centre, Port Phillip Prison, Dame Phyllis Frost Centre and Ravenhall.
<b>Intersectionality</b>	'Intersectionality' refers to the ways in which different aspects of a person's identity can expose them to overlapping forms of discrimination and marginalisation.
<b>Independent Prison Visitors (IPVs)</b>	IPVs are a group of community members who volunteer their time on a monthly basis to observe how the state's prison system is operating.
<b>Justice Assurance and Review Office</b>	JARO (Justice Assurance and Review Office) is a business unit with the DJCS and provides internal assurance and conducts reviews to support accountability and oversight of the adult custodial corrections system and the youth justice system.
<b>Justice Incident Management System (JIMS)</b>	JIMS is the DJCS's system for reporting and investigating injuries, hazards, and other incidents. Staff can raise a matter in the JIMS if they believe an issue is causing a risk to health or safety.
<b>Local operating procedures (LOPs)</b>	Local operating procedures are operational policy documents which prescribe operational procedures for corrections staff specific to the location in which they ordinarily work. Each prison in Victoria has its own local operating procedures.
<b>Operating instructions (OIs)</b>	Operating instructions are operational policy documents which prescribe operational instructions for corrections staff working in Victoria's private prisons.
<b>Parole</b>	Parole relates to a period of a person in custody's imprisonment which can be served in the community under supervision and with set conditions.
<b>People in custody</b>	Refers to people who are remanded or sentenced to a term of imprisonment in an adult custodial facility.
<b>Permits</b>	Permits can be granted to people in custody for the purposes of leaving the prison facility they are accommodated at to attend medical appointments, work, participate in sport in the community or to attend a funeral.
<b>Pre-service training</b>	Refers to the eight-week period of training a custodial officer receives prior to commencing casual or full-time work in a prison.
<b>Prisoner Information Management System (PIMS)</b>	PIMS is an electronic database used to record key information about people in custody.

<b>Private prison</b>	A private prison is a prison which is privately operated under contract by the government to a private corporation. In Victoria there are two private prison operators - G4S Australia and New Zealand (which operates Port Phillip Prison) and the GEO Group Australia Pty Ltd. (which operates Fulham Correctional Centre and Ravenhall Correctional Centre)
<b>Public prison</b>	A public prison is a prison which is operated by Corrections Victoria - a government department business unit.
<b>Recidivism</b>	Recidivism refers to the rate at which people return to custody within two years of their release.
<b>Remand</b>	Refers to people in custody who have a 'remand' status, meaning they have not yet received a sentence of imprisonment.
<b>Security and Emergency Services Group (SESG)</b>	The SESG is a group of custodial staff that provides state-wide support to Corrections Victoria prison locations providing support services including K9 services, emergency management and response, high security escorts, urinalysis, security reviews and holds a number of training portfolios.
<b>Sentenced</b>	Refers to people in custody who have received a term of imprisonment.
<b>Tactical Options</b>	Tactical Options (tac ops) refers to the options used by custodial staff to manage or control people in custody or other persons to ensure the security and safety of a prison, people in custody and other persons.
<b>Victim-centric</b>	A 'victim-centric' approach prioritises the victim-survivor's wishes, safety, and wellbeing. It seeks to ensure victims are treated in a compassionate, sensitive and non-judgemental manner, engaging the complainant in the response process while minimising the risk of re-traumatisation.



## Executive summary

Victoria's adult custodial corrections system plays a critical yet largely invisible role within the justice system. The system is responsible for the safe management and care of thousands of people, many of whom will only spend a short period of time in custody.

Many excellent staff are dedicated to ensuring the adult custodial corrections system is safe, secure and supports positive outcomes for individuals and the community. Yet their work largely takes place in a closed, often punitive environment, that is not fully orientated towards supporting rehabilitation. Safety is further compromised by a workplace culture that demonstrates high tolerance for sexual harassment, racism, bullying and integrity risks.

Our Terms of Reference direct us toward improving safety and culture within the adult custodial corrections system for both staff and people in custody. Our recommendations recognise that increasing workforce capability, safety and respect and embracing a shift to a more open, humane and rehabilitative culture for people in custody are mutually reinforcing. Together they represent a generational opportunity to reorient all elements of the custodial system towards reducing recidivism and contributing to long term community safety.

The Victorian adult custodial corrections system has been undergoing a process of cultural transformation over the last two decades, marked not least symbolically by the closure of HM Prison Pentridge in 1997. Since that time, rehabilitation and reducing recidivism have become a clearer focus of the system. This transition has broadly been in step with other Australian jurisdictions – it reflects international law and research that recognises that incarceration *is* the punishment and that people in custody should not be subjected to any further unnecessary restrictions or hardship.

There is a growing understanding that punitive custodial conditions do not make prison environments, workplace conditions or the community safer. On the contrary, capricious decision making, inhumane treatment, harsh infrastructure and lack of adequate health support create more volatile places to work and to live and fail to support a safe re-entry into the general community.

Despite progress to elevate rehabilitation and reducing recidivism as primary objectives, cultural change across the Victorian adult custodial corrections system remains incomplete. There is a clear gap between the intention of policies and programs and their operational translation.

'There is still that old mentality, that you know, "They're just prisoners. They've broken the law, they're bad people, so we should treat them [badly]".'

**Person in custody**

The recommendations emerging from the Cultural Review of the Adult Custodial Corrections (Cultural Review) seek to more comprehensively embed a rehabilitative purpose in a volatile and often very challenging environment.

Reorienting the adult custodial corrections system to more effectively addressing recidivism will require significant government investment – in humane and appropriate infrastructure, in the capability and value of staff, in effective and sustainable approaches to supervised community participation, community transition and in quality healthcare.

Importantly, a more embedded rehabilitative culture does not diminish the criticality of 'good order and security.' Rather, it requires recasting the notion of safety or dynamic security as being entirely interdependent on respect, transparency, integrity, psychosocial and physical safety, the establishment of therapeutic relationships and access to relevant supports. In other words, a rehabilitative culture is not established after 'good order and safety' – it is fundamental to it.

Enhanced staff capability, safety and wellbeing are preconditions for a more rehabilitative culture – but also the product of it. Our recommendations recognise that centring the complex needs and rehabilitation of people in custody, within a context which mirrors, as far as possible, 'community life', is the most effective way to improve staff safety and create the right conditions for them to do their best work.

## Understanding custodial culture

This review is a 'cultural review'. We have interpreted our task as examining the historical, social, attitudinal and systems influences that shape the way in which things get done in the adult custodial corrections system – where power sits and what is valued. Our recommendations are intentionally specific and disruptive. We recognise the desire for and progress towards cultural change, and call out the attitudes, behaviours and conduct that impede it.

See *Chapter 2. Context and climate*

There is little question that working within the adult custodial corrections system is a highly challenging and complex role. Many corrections staff feel under pressure, undervalued, and inadequately prepared to meet the challenges required of them. Their work and dedication are rarely understood by the community, and the closed nature of prisons heightens their vulnerability to workplace bullying, sexual harassment and integrity concerns.

'The community, they believe that the main challenge of working in a prison is dealing with prisoners, but for me to be honest with you, it was more of a challenge just to fit in the culture of corrections'.

**Staff member**

Collectively, these issues have contributed to a workplace culture where staff do not always feel safe and supported. For some people, stress, occupational violence, trauma and capability impede their capacity to adopt a therapeutic approach to engaging with people in custody. Other staff leave the workforce due to a workplace culture that undervalues their skills and contribution.

'We help the guys, we assist them, we get them onto programs. We try and get them to service providers. A lot of the custodial staff here, especially those that have been prison officers [for decades]. They don't respect that, that don't see that. There's the name calling "Care bears", "crook lover", that kind of thing. But there is [also] the: "you can't help them. I don't know why you bother with programs".'

**Staff member**

These detrimental attitudes and behaviours are likely to persist where workplace change is within an institutional context that remains largely the same. Power dynamics derived from traditional male-dominated, command and control (uniform and rank) structures, perceptions of authority and social norms of 'mateship' and silence, continue to heavily influence the custodial culture and daily experiences of staff and people in custody.

The 'character' of the system also reflects deeper value judgements and community attitudes about what should happen within prisons. Prison systems were designed for security, but it is impossible to spend time in some prisons and not feel that they are also designed to be places of punishment, over and above the loss of liberty.

These problems are long standing but not unique to Victoria. They are the legacy of a system that was not designed to care for, humanise or prepare individuals to safely transition back to the general community.

There is now a unique opportunity for Victoria to take the lead on system and cultural transformation to deliver safer prisons, safer people and safer communities.

## Case for reform

There is a strong ethical, legal and economic imperative for reform of the adult custodial corrections system.

See Chapter 3  
Enabling cultural  
change

The custodial population has grown exponentially over the last decade, with a 58 per cent increase in the overall prison population and 209 per cent increase in the number of people on remand.<sup>2</sup> The number of Aboriginal people in custody grew 148 per cent between 2010 and 2020, with 431 per cent growth for Aboriginal people on remand.<sup>3</sup>

The most recent Victorian Budget allocated over \$1.5 billion for the supervision and support of people in custody.<sup>4</sup> While there are other factors contributing to prison growth, particularly the growth of the remand population, the increasing investment required over recent years highlights the importance of curbing prison population growth and reducing recidivism.

## Addressing the economic cost of recidivism

The Productivity Commission reports that, in Victoria, it costs close to \$150,000 for a person to be held in custody for one year.<sup>5</sup> Despite the significant costs associated with the administration of custodial sentences, 37.7 per cent of people sentenced to custody in Victoria will return to prison within two years.<sup>6</sup>

On the current track, prison growth will continue unsustainably. This is because custodial environments can be criminogenic – meaning people who have spent time in custody will be more likely to engage in further offending. Where people return to custody, it also extends and compounds the indirect costs of imprisonment on individuals, families and communities. Rehabilitation may also become more difficult if people become more enmeshed in the criminal justice system.

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<sup>2</sup> Corrections Victoria (2022) 'Monthly prisoner and offender statistics 2021-22'.

<sup>3</sup> Department of Justice and Community Safety (Corrections Victoria) 'Infographic: Profile of people in prison', Available at [Infographic Profile of people in prison 2020.pdf \(corrections.vic.gov.au\)](https://www.corrections.vic.gov.au/infographic-profile-of-people-in-prison-2020).

<sup>4</sup> Victorian Budget Paper 3 (Service Delivery) 2022/23. Available at <https://s3.ap-southeast-2.amazonaws.com/budgetfiles202223.budget.vic.gov.au/2022-23+State+Budget+-+Service+Delivery.pdf>. This represents a 10 per cent increase in the investment in prisoner supervision and support from the 2021/22 budget. This is largely due to the specific investment in the new Western Plains Correctional Centre.

<sup>5</sup> Productivity Commission (2021) *Australia's Prison Dilemma*, 59. Note: this includes capital costs. Excluding capital costs, the 2019–20 net operating expenditure for keeping a person in custody for a year was \$117,895.

<sup>6</sup> DJCS recently changed the counting rules for the rate of recidivism. This has resulted in a reduced rate of recidivism for Victoria but aligns the calculation of rate of recidivism with other jurisdictions in Australia. See further <https://www.corrections.vic.gov.au/measuring-recidivism-in-the-victorian-system>.



In this context, it is important to reflect that our custodial system houses a very complex population. The complexity of needs has also grown within the prison population – with a significant number of aging people, people with disability and people with co-morbidities and complex trauma.

More people are 'churning' through the system through a combination of increased number of people entering custody, the growth in the proportion of people on remand, people being sentenced to time served and released from remand, and the number of people spending a short time in custody under sentence. In June 2022, of the 6,568 men and women in custody in Victoria, 2,769 were on remand.<sup>7</sup>

It well understood that there are significant challenges in delivering a rehabilitative approach to people who are only in custody for short periods of time:

'Imprisonment disrupts many of the pro-social factors that mitigate against offending behaviour such as connection to culture and country, accommodation, employment, and positive relationships with friends, family and the community. This means that when released from remand or a short sentence, people can have more criminogenic needs and be more likely to offend than they would have been prior to imprisonment.'<sup>8</sup>

**Victorian Government Submission to the Inquiry  
into Victoria's Criminal Justice System**

As the prison population increases, the custodial environment also becomes more difficult for staff to manage, more unsettled and less able to respond to individual rehabilitative needs. Prison population growth creates a self-fulfilling cycle in which rehabilitation becomes increasingly challenging and more costly.

While our recommendations to reform the system are aimed at reducing recidivism through action *within* the adult custodial corrections system, a coordinated and strategic effort across the Victorian Government is required to alleviate pressure on the system through better prevention, criminal justice reform, diversion and support upon release.

See Chapter 1.  
About the Review

## Acknowledging progress

We recognise the significant goodwill of many across government and within custodial locations who are committed to achieving a safer, more secure and humane prison system. The vision for change was articulated by many system leaders and corrections staff we spoke to – individuals who are clearly motivated by their desire to improve the experiences and safety of their colleagues and positively influence the life trajectory of the people in their care:

<sup>7</sup> Corrections Victoria Monthly Prisoner and offender statistics - June 2022.

<sup>8</sup> Victorian Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, Inquiry into Victoria's Criminal Justice System (1 September 2021)

'We are trying to shift that balance away from the old-fashioned way of "we're we are here just to lock you up" mentality, to a more progressive "we're here to impact rehabilitation, make a difference, change thinking, have some contribution to the outcomes that we expect from a prison system".'

**Staff member**

Since we provided the interim reform directions to the Minister in December 2021, we have seen significant effort and focus on preparing for cultural reform. Action has also commenced to improve use of force reporting, the oversight of separations regimes and other integrity issues. New processes for internal assurance and reporting on corrections risks have also been adopted within the Department of Justice and Community Safety (DJCS).

## About the Review (Part 1)

### Conducting the Cultural Review

The Victorian Government announced the Cultural Review in June 2021 as an opportunity to examine and identify solutions to reform the adult custodial corrections system with the vision for a safer, fairer, more modern and more capable system, free from breaches of integrity and workplace harm.

Recent inquiries and investigations by the Independent Broad-based Anti-Corruption Commission (IBAC) and the Victorian Ombudsman had identified significant cultural issues within the system, and we were tasked with further interrogating these issues through a systems lens. Further, we also aimed to identify reforms to improve cultural safety for Aboriginal staff and Aboriginal people in custody.

A panel of three independent advisers were appointed to lead the project with the Review Lead – Kristen Hilton, former Victorian Equal Opportunity and Human Rights Commissioner.

The three expert advisers were:

- ▶ Greg Smith AM, former Deputy President of the Fair Work Commission
- ▶ Jill Gallagher AO, former Victorian Treaty Advancement Commissioner and CEO of the Victorian Aboriginal Community Controlled Health Organisation
- ▶ Tim Cartwright APM, former Victoria Police Deputy Commissioner and Victoria's inaugural Family Violence Reform Implementation Monitor.

## Terms of Reference

The Cultural Review's Terms of Reference focused on culture, safety and inclusion, and integrity within Victoria's adult custodial corrections system. Examining both private and public corrections facilities, we considered two streams of inquiry – promoting the wellbeing and safety of staff within the adult custodial corrections system, and ensuring the system is safe for people in custody and promotes rehabilitation.

The experiences of people in Victoria's community corrections and youth justice systems, within police cells or custody, and specific COVID-19 arrangements were outside of our Terms of Reference.

## Our approach

Commencing in August 2021, the Cultural Review developed our research methodology in line with ethics requirements of the Justice Human Research Ethics Committee (JHREC).

Several guiding principles underpinned our approach including taking a consultative approach, prioritising lived experience; ensuring a trauma-informed approach; and ensuring culturally safe engagement for Aboriginal participants.

Our research also took a systems approach – recognising the adult custodial corrections as a network of publicly and privately operated prisons. We focused on identifying system-level issues and influences and situating these within the broader justice and social services context.

Our approach aimed to contribute to the extensive body of knowledge on the adult custodial corrections system by building upon existing research and progressing relevant recommendations and reform initiatives outlined in investigations, inquiries and audits by Victoria's independent integrity bodies and other independent reviews into workplace equality within key statutory authorities.

## Engagement and research

Over the course of the Cultural Review, we conducted extensive research and engagement with corrections staff and people with lived experience of custody. Collectively, this input played a critical role in building our understanding of the system, how operational requirements shape the workplace culture and the opportunities for change.

Over the course of the Cultural Review, some 1,716 individuals shared their experiences and expertise. These participants included:

- ▶ current and former corrections staff (54 per cent)
- ▶ people currently in custody, or who had been previously, along with family members and support people (41 per cent)
- ▶ a wide network of stakeholders, advocates and experts.

The qualitative and quantitative insights gained during our engagement helped identify systemic issues, common experiences and best-practice examples. This data was triangulated against data from DJCS, research and insights from stakeholders, experts and advocates.

### **Site visits**

We spent one to four days at each custodial location between November 2021 and April 2022. We engaged directly with corrections staff and people in custody, as well as spending time with prison general managers and their executive teams. We conducted confidential interviews, focus groups and yarning circles, and gathered written and oral submissions, as well as engaging informally with corrections staff and people in custody. At each site, we spent time with people in custody and corrections staff at a range of units including protection, medical, management and high needs or disability units. We also visited prison industry across most sites.

### **Specific cohorts**

Throughout the engagement period, we sought opportunities to engage with members of the cohorts identified in our Terms of Reference including women, people with disability, older people, people from culturally and linguistically diverse (CALD) backgrounds, LGBTIQ+ people and young people.

While visiting custodial sites we met with people with disability, their mentors and staff working with specialised units. We also held focus groups with specific cohorts including with CALD people, older people, younger people and LGBTIQ+ people. Around 40 per cent of the people in custody who shared their experiences represent these groups.

### **Aboriginal participants**

We also invited participation from Aboriginal people living and working in the adult custodial corrections system. In total, 212 Aboriginal participants shared their experiences with us, comprising 17 Aboriginal staff and 214 Aboriginal people in custody. Yarning circles were held at most locations and were facilitated by Expert Panel member Aunty Jill Gallagher AO and other Aboriginal team members working on the Cultural Review. [See Part 1. Introduction](#)

Participants consented to the use of de-identified personal stories they shared in this report. We have identified quotes and studies that seek to highlight common themes while upholding participants' confidentiality and privacy.

### **Workforce survey**

We engaged ORIMA Research to conduct an online anonymous workforce survey for corrections staff. In total, 799 corrections staff registered for access and 615 responded to the survey.

### About Victoria's adult custodial corrections system

- ▶ There are 15 prisons in Victoria, comprising minimum-, medium- and maximum-security locations. Twelve of these locations are publicly operated while the remaining three are operated by private companies on behalf of the State of Victoria.
  - There are two dedicated facilities for women in custody – the Dame Phyllis Frost Centre and Tarrengower Prison.
  - There is a single community-based transition facility, the Judy Lazarus Transition Centre, which provides intensive transitional programs and a supervised pathway to the community for up to 25 men who are assessed as having high transitional needs.
  - Melbourne Assessment Prison, Dame Phyllis Frost Centre and Ravenhall Correctional Centre have dedicated mental health units. Loddon Prison, Dame Phyllis Frost Centre and Port Phillip Prison have dedicated units for people with cognitive impairment.
- ▶ According to Corrections Victoria's Monthly Prisoner and Offender Statistics report, in the month of June 2022, there were 6,569 people in custody.
- ▶ Fifty-eight per cent of people in custody in June of 2022 had received a custodial sentence while 42 per cent were on remand. Non-Aboriginal people made up 89 per cent of all people in custody while Aboriginal people made up 11 per cent. Men made up 95 per cent of people in custody and women 5 per cent.
- ▶ More than 1,400 people in custody work in prison industries, according to Corrections Victoria's Prison Industries Strategic Plan.
- ▶ There are 5,131 custodial staff working in the adult custodial corrections system, with 3,586 employed at public locations and 1,545 employed within the three private prisons.
- ▶ In public prisons men make up 62.5% of the workforce and women make up 37.5%, while across the private prisons at Port Phillip Prison and Fulham Correctional Centre the gender difference is similar. At Ravenhall Correctional Centre the workforce gender balance is more even with 53.6 per cent of the workforce being men and 46.4 per cent being women.
- ▶ 62.5 per cent of general manager roles in the public prisons are occupied by men, while 37.5 per cent are occupied by women.

While our work produced an extensive evidence base to support our findings and recommendations, our engagement and research activities were subject to some of limitations including the unavailability of some data – due to datasets and information management systems being incomplete, inconsistent record-keeping and datasets being difficult to extract and disaggregate to support meaningful analysis. DJCS is aware of these issues, and our recommendations highlight the criticality of investment in IT and information management systems.

While we acknowledge the breadth of programs offered across the adult custodial corrections system – as our focus was on custodial culture – we did not undertake a full programmatic review evaluating the benefits and limitations of specific programs.

## Key outcomes

Our recommendations for cultural reform include various reinforcing actions targeted towards achieving ten long term outcomes.

See Chapter 3  
Enabling cultural  
change

These include:

1. A more purposeful, integrated and transparent system underpinned by a modern Corrections Act that priorities rehabilitation, rights and safety
2. A system that is better able to publicly measure, evaluate and report on its progress and outcomes
3. A more diverse workforce that is more developed, better supported, valued and aligned around a common purpose
4. Leadership that is accountable, role models ethical behaviour and decision making and has the capability to lead cultural change
5. A culture that is shaped by a commitment to integrity, fairness and openness and has the best possible systems in place to identify, prevent and respond to the unique risks in the custodial environment
6. A safer, more inclusive and equal workforce where sexual harassment, bullying, discrimination, racism and victimisation are unequivocally prevented and acted upon
7. A culturally safer custodial environment for Aboriginal people in custody where their specific needs, rights, identities, histories and humanity are recognised and protected
8. A custodial environment that is person-centred and trauma-informed, developed around responding to the complex needs of people in custody to enable their rehabilitation and safest transition back into the general community
9. A public model of health for people in custody that recognises the importance of equivalency of healthcare and outcomes
10. A more open custodial system that is better connected to the community and integrated with other critical social supports, services and families.

## Systems (Part 2)

Underpinning the adult custodial corrections system is an array of legal and policy instruments, strategies, operational guidance and information management systems. Aligning these complex inputs is a key step in creating a corrections culture that prioritises safety and integrity and recognises the individual needs of people in custody.

### Embedding system purpose in legislation and regulation

One of the weaknesses of the current legislation is that it does not reflect the key principles or objectives of a contemporary custodial system – including recognising the role of positive change, wellbeing and rehabilitation in reducing recidivism. Similarly, the Corrections Act does not explicitly recognise human rights standards or acknowledge the cultural rights of Aboriginal people, the principle of self-determination or the injustices experienced by Aboriginal people in Victoria which have led to their over-incarceration.

#### Outcome 1

A more purposeful, integrated and transparent system underpinned by a modern Corrections Act that priorities rehabilitation, rights and safety.

We recommend a new Corrections Act and regulations.

'[We need] a new Act rather than an attempt at another renovation of the existing Act, which starts with human rights and understands that human rights is central to what a Corrections Act needs to operate within or on, I think is really important.'

#### Expert interview

The new legislative framework, with key principles and minimum safeguards and standards, should guide policy development and ethical decision-making.

See Chapter 4 System purpose in legislation and regulation

### Enhancing oversight and monitoring

Robust and transparent internal and external oversight and monitoring are essential to the health of any prison system. The current internal oversight and monitoring arrangements for prisons in Victoria provide limited transparency and are hampered by inadequate data systems.

See Chapter 5. Oversight and monitoring

'We could do far better in terms of the oversight from an internal perspective. And it's not all about resources, some of it's about data as well. But also recognising that as operators of a system we do need a level of control and ability to detect themes and respond to those themes from inside.'

#### Expert interview

We identified opportunities to better resource internal system performance monitoring, enhance risk identification and management practices, and to review and update service delivery outcomes as part of better measuring the health and performance of the adult custodial corrections system. We also recommend that DJCS ensure consistent oversight measures across private and public prisons and address integrity risks in performance reporting as priority actions.

To enhance external independent oversight, we recommend a dedicated independent statutory Inspectorate of Custodial Services, with two inspector roles – an Inspector of Adult Custodial Services and an Aboriginal Inspector of Custodial Services<sup>9</sup> – with the mandate to conduct regular monitoring and inspection visits to all Victorian prisons and correctional centres. They may also play a role in undertaking reviews of deaths in custody and other critical incidents where, due to the seriousness of incident, reporting publicly is in the public interest.

We also recommend that DJCS takes priority action to designate a National Preventive Mechanism for Victoria and commence monitoring in accordance with the Optional Protocol to the Convention Against Torture.

We recognise the critical role of Independent Prisoner Visitors (IPVs) and make recommendations to enhance their independence and impact.

‘I think the “eyes-in” piece is missing. The Independent Prison Visitor scheme is the closest we’ve got [to an independent corrections inspectorate]. ... How do you get eyes in? I think it’s a constant struggle for the department to really know what’s going on the ground...’

Expert interview

## Improving data capability and information management systems

The adult custodial corrections system does not currently have adequate or complete datasets, systems or processes to support continuous improvement or provide an understanding of the profile and complex needs of people in their care. There are few requirements for consistent data recording across the system, particularly in relation to private prisons, which do not maintain the same information and data as public prisons.

### Outcome 2

A system that is better able to publicly measure, evaluate and report on its progress and outcomes

Some information about people in custody and operational practices is held locally in paper-based records, significantly limiting visibility of risks and accountability.

Other data is held in an array of systems, some of which are outdated, lacking functionality or not adequately integrated, preventing DJCS from easily analysing and disaggregating critical data to identify trends.

See Chapter 6. Data capability and information management systems

<sup>9</sup> This recommendation is made subject to discussion with the Aboriginal Justice Caucus and Aboriginal community in Victoria.



'We are hindered by the lack of a really good, solid data system where we could tailor the reports that are produced, as opposed to manually sourcing the data.'

**Expert interview**

A foundational recommendation of the Cultural Review is that DJCS invest in a fit-for-purpose data system that supports integrated case management and throughcare, enables monitoring and central oversight of risks, and equips system leaders with the information required to make informed policy and operational decisions. DCJS should also standardise data-recording requirements and information-sharing across the public and private system, noting that there are currently few contractual requirements related to the capture and sharing of data with DJCS.

## Involving system users in policy and operational changes

Listening to and learning from those with lived experience of the adult custodial corrections system must become fundamental to corrections policy and operations. Lived experience should also be considered a key metric of system performance.

One of our primary observations is that while there is considerable and thoughtful policy and strategy development which reflect contemporary corrections practices much of the challenge lies in how these policies and the intentions behind them are understood and implemented by staff and experienced by people in custody. In many instances there is a critical disconnect.

*See Chapter 7.  
Involving system  
users in policy and  
operational changes*

We recommend that DJCS establish a system-wide reference group consisting of those with lived experience of the adult custodial corrections system – including people currently in custody and those who have been in custody in the past –to provide advice on key policy development and implementation and an insight into how policies and practices are experienced.

'We don't have a lived experience kind of system in our training – we have it in mental health and it's everywhere else, but justice seems to be the last kind of bastion when it comes to that. Why not bring lived experience, why not bring a prisoner to explain how it felt to them, why not bring a family member into the prison officer training, and why not simulate the experience for them, in an appropriate way of course, so that they get – I don't think if you knew how it felt you would ever do it.'

**Staff member**

## Workforce (Part 3)

The 'on the ground' corrections workforce are the keepers of culture – they play a central role in influencing custodial culture, and they are also impacted by it. The ability of the corrections system to embed long term cultural and capability change will hinge on a 'paradigm shift' for the role of a custodial officer that mirrors the explicit legislative shift to a focus on rehabilitation, integrity and transparency.

Our conversations with corrections staff across the system confirmed that the workforce overwhelmingly feels undervalued, unsafe and underprepared for their work. In comparison to other frontline and emergency services organisations such as Victoria Police, Ambulance Victoria and the Australian Defence Force, the custodial workforce receives less comprehensive training, less support and supervision and less public recognition for the contribution they make to the community. These are workplaces with similar organisational drivers that also contribute to a high level of risk, stress and exposure to vicarious trauma – alongside workplace harm such as sexual harassment, discrimination and bullying.

### Outcome 3

A more diverse workforce that is more developed, better supported, valued and aligned around a common purpose.

Our recommendations for the workforce are designed to improve working conditions and career opportunities for all corrections staff, both custodial and VPS – and aim to support a more unified workforce that embraces diversity of skill and background.

## Recognising the contribution of the workforce

While it is not particularly visible, the custodial workforce performs a complex, multifaceted function that makes a significant contribution to the criminal justice system and community safety. Properly recognising this work is critical to attracting, retaining and motivating a high-performing workforce.

'It's almost a secretive job ... It's like everything inside the walls stays inside the walls, and people outside have no clue what goes on in here.'

**Staff member**

The lack of wellbeing support for the corrections workforce has reinforced the view of many staff that their contribution to the criminal justice system and community safety is undervalued by the Victorian community.

'I don't think there's enough insight of the community as to what happens in prison. I think the perception of what happens in prison is a lot of we lock people up and throw away the key. I don't think a lot of the community understand that there's so much personal interaction with men and women inside jail.'

**Staff member**

In an effort to better acknowledge the contribution of the many staff who do important and difficult work, we recommend DJCS develop new ways of recognising and celebrating excellent custodial practice and sharing positive stories to improve public understanding and perceptions about corrections work. This will also help motivate, retain and attract the right staff.

## Supporting the wellbeing of the workforce

There is a close link between the wellbeing and safety of staff and their ability to create a therapeutic environment for people in custody<sup>10</sup> – it is extremely challenging for staff to build motivational and respectful relationships with people in custody where they feel at risk of physical or verbal abuse.

See [Chapter 8: Wellbeing](#)

The daily work of managing serious and complex offenders can be isolating and sometimes traumatising for corrections staff, with international research confirming that many people in these roles experience high levels of stress, burnout, vicarious trauma and post-traumatic stress disorder (PTSD).<sup>11</sup> These experiences can contribute to a level of hypervigilance within the corrections workforce, which can impact the ability of staff to respond proportionally to custodial risks.

Corrections staff described regular experiences of occupational violence including threats and physical and psychological abuse. According to WorkCover data, claims for mental injury account for 30 per cent of all claims from Corrections Victoria in the last financial year. People working at front-end and maximum-security locations are most at risk, accounting for 70 per cent of mental injury claims.

‘A good day is when no one gets assaulted or threatened.’

Staff member

Despite very high levels of reported wellbeing concerns and mental health risks, and low levels of help seeking behaviour, the current approach largely relies on staff connecting themselves with support services. Staff need a more proactive and prevention-focused approach with early intervention support including the introduction of supportive mandatory debriefing and reflective practice.

<sup>10</sup> Nina Fusco et al, (2020), ‘When our work hits home: trauma and mental disorders in correctional officers and other correctional workers’ in *Front Psychiatry*, vol. 11, page 1

<sup>11</sup> See for example, Steiner, Benjamin, and John Wooldredge. "Individual and environmental sources of work stress among prison officers." *Criminal Justice and Behavior* 42.8 (2015): 800-818.; Nina Fusco et al, ‘When Our Work Hits Home: Trauma and Mental Disorders in Correctional Officers and Other Correctional Workers’ *Front Psychiatry*. 2020; 11: 493391.



A third of respondents (33%) were not confident they would receive support from their supervisor or manager if a critical incident occurred at work.



35% of respondents had been warned by a doctor, counsellor or psychologist that they may be at risk of a stress-related illness due to their work.

Negative impact on physical health

55%

Negative impact on family life

45%

More than half of respondents (55%) said work had had a negative impact on their physical health in the last two years, while 45% said it had negatively impact their family life.

We recommend that DJCS develop and resource a Corrections Workforce Mental Health and Wellbeing Action Plan which targets the psychosocial drivers of psychological harm in the custodial workplace. The plan should be developed in consultation with corrections staff, experts in workplace mental health and the Community and Public Sector Union and should evaluate the accessibility and effectiveness of current wellbeing supports.

## Improving the capability of staff

All corrections staff, whether 'in uniform' or supporting other functions, require significant training, professional development and support. Through our engagement with corrections staff, we observed a disconnect between the level of complexity and expectations of custodial roles and the level of training, skills and support they receive.

See Chapter 9.  
Capability

The recent focus on values-based recruitment and enhanced screening processes for staff are a step in the right direction. However, the lack of clarity around the purpose of the adult custodial corrections system and a dominant workplace culture that values traditional 'security and good order' skills over a person-centred skillset is creating a cultural clash.

'It's all about the uniforms. If you're not in uniform, you don't count. That's part of the cultural problem... if you're not in uniform, you're seen as a care bear.'

Staff member

We heard about many new recruits with an interest in case management leaving the workforce because they felt unsupported and at times, demoralised by their peers.

Recruitment systems, induction and progression processes must ensure that harmful cultural norms and practices are not perpetuated at a local level and that the existing workforce understands the value of this skillset and a workforce with diverse skills, backgrounds and expertise. This is a significant mindset shift for some in the corrections workforce.

'You've got two types of people that come in as a prison officer: you've got people that want to lock them up and people that want to help.'

**Staff member**



84% of respondents said they felt fully or mostly trained in maintaining security and good order.

Almost a quarter (23%) said they had received little or no training in case management. Almost one in three (29%) said they had received little or no training in supporting the mental health and wellbeing of people in custody.

Just over a third (34%) said they had received little or no training in reducing recidivism and promoting rehabilitation.

In addition to recruiting a capable and more diverse workforce we recommend a whole-of-workforce capability uplift to reinforce acceptable standards of conduct and ensure all staff are supported with skills and capabilities that reflect the requirements of an evolving, modern custodial workplace.

We found it remarkable that despite the intensity of the role, new custodial recruits receive only six weeks training. Most staff we spoke to reported being well trained in maintaining security and good order, but they felt less skilled in case management and responding to the diverse needs of people in custody.

We recommend a new and expanded pre-service training model of six months including an additional four weeks' placement at several custodial locations. This model would provide a diversity of experience across the adult custodial corrections system and address existing gaps and imbalances in the program. The pre-service program should also include specialist training to support the complex needs of specific cohorts and a period of structured mentoring on location.

To complement the pre-service training and ensure opportunities for capability uplift extend to existing staff, we also recommend a much stronger focus on high-quality ongoing professional development. We recommend that adequate time to undertake professional development is built into rostering and workforce planning. As it currently stands, people in custody are often 'locked down' to facilitate staff training.

## Improving leadership accountability and capability

Excellent leaders who role model expected standards of conduct, actively support the wellbeing and professional development of their team, and drive organisational change are critical to creating a more respectful, safe and inclusive custodial environment. Throughout the Cultural Review, we met with and were impressed by many corrections leaders who were actively driving change.

### Outcome 4

Leadership that is accountable, role models ethical behaviour and decision making and has the capacity to lead cultural change

'I have had leaders that are role models, leaders that I am inspired by and that are genuine in their intentions and with high integrity. I can see the impact of the work they do and it is very rewarding to see positive meaningful outcomes.'

**Staff member**

Overall, we found there is a need to improve strategic leadership and alignment across the adult custodial corrections system and to improve the capability and accountability of local leadership. We recommend the creation of a new dedicated role of Assistant Commissioner, Workforce and Integrity, to lead workplace cultural reform and assist with bridging the gap between organisational intent and change 'on the ground'.

Throughout our engagement, we heard that many operational leaders did not have adequate people-management training or leadership skills, and that some leaders had progressed despite failing to demonstrate public sector values. We heard that length of service and operational expertise were overvalued during promotional processes and that progression was not always merit based.

See Chapter 10.  
Leadership

'[I would like to see] less favouritism towards staff who continuously get away with things because of who they know or the length of time they have been in the job compared to newer staff who are trying to do that right thing.'

**Staff member**

While we understand DJCS has introduced new training programs for leaders, we heard that people-management skills were not being prioritised or tested during recent progression processes.

'I don't believe that anybody in the leadership team has enough understanding or training to be able to address the wellbeing of staff and understanding what people's needs might be in order to address those.'

**Staff member**

We recommend the development of a mandatory program of ongoing professional development for current operational leaders with a focus on the skills and capabilities required for people leadership, tailored to the custodial context. We also recommend a pathway for emerging leaders in the adult custodial corrections system to identify, incentivise and accelerate promising staff through clear development and progression pathways.

Recognising the complexity of custodial leadership roles and high level of accountability required, we recommend that DJCS undertake a detailed review of the role requirements for general managers and the current employment conditions attached to this role.

## Conduct (Part 4)

Many corrections staff act with integrity and professionalism toward their colleagues and the people in their care. However, we have observed a troubling culture resistant to change that is enabling and sometimes sanctioning poor staff conduct, resulting in significant and long-term harm.

While we found that workplace harm and integrity risks are more likely to be reported and acted upon than in the past, poor conduct persists and in some locations is tolerated.

### Outcome 5

A culture that is shaped by a commitment to integrity, fairness and openness and has the best possible systems in place to identify, prevent and respond to the unique risks in the custodial environment

'As a woman you can experience sexualised comments from both staff and prisoners. As a woman you need to ensure you are witnessed in calling out that behaviour to a prison as you can have the perception of inappropriate relationship. But nobody wants you to call the behaviour out if it's a staff member they turn a blind eye.'

**Staff member**

Staff told us that they are reluctant to report issues due to a fear of reprisal and victimisation. These concerns endure even where local leaders have made an effort to create a more responsive and safer environment in which to raise issues.

'I have witnessed racism, sexual and professional harassment, and bullying at work. I spoke to the individuals that I witnessed receiving the poor behaviour and did my best to make them feel valued and supported. I did not report it as I consider my management would label me as a troublemaker or whinger and then I would be the target of harassment.'

**Staff member**

As a result of the fear of reporting and experiences of victimisation, the true extent of workplace harm and integrity concerns is likely higher than reported. Lack of appropriate data and information management systems further obscures real rates of harm across the adult custodial corrections system.

## Addressing workplace harm

Workplace harm is widespread across all custodial locations, with rates of sexual harassment, bullying and discrimination higher than in other public sector workforces. Nearly two-thirds of respondents to our workforce survey had experienced workplace harm, and three-quarters had witnessed it occurring in their workplace during the last five years.

Workplace harm damages the culture and morale within workplaces – and has wide ranging impacts on individual's wellbeing. Almost four out of 10 respondents who had experienced workplace harm told us that they were considering leaving their role because of their experience of harm.

### Outcome 6

A safer, more inclusive and equal workforce where sexual harassment, bullying, discrimination, racism and victimisation are unequivocally prevented and acted upon.

'There's quite a toxic underlying culture. That culture is so disruptive to people – it's why people leave the job'

Staff member

We heard how workplace harm has impacted the psychological safety and wellbeing of many staff, and that staff receive limited support to manage these psychosocial hazards.

'The amount of people who have put their hand up and reported harassment and bullying, the majority are no longer in the job and it's a fear ... We treat the victims very poorly, staff side with perpetrators.'

Staff member

Some staff, including women, lower-ranking staff, VPS and administrative staff, LGBTQTI+ staff, staff from culturally and linguistically diverse backgrounds and Aboriginal staff are more likely to experience workplace harm in the custodial workplace.

'They do things like masquerading insults as a joke – all your typical misogynistic traits are unfortunately rife – the gossip, the innuendo ... it's schoolyard stuff. If you remember back to year nine at high school – it's that, on steroids.'

Staff member



52%

Bullying was the most common unwelcome behaviour described by respondents – more than half (52%) had experienced it and even more (64%) had witnessed it.



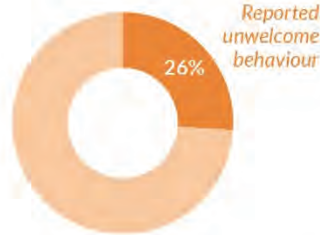
Discrimination was experienced by 36% of respondents and witnessed by 40%.

17%

Sexual harassment was experienced by 17% of respondents and witnessed by 32%.

Alarming, senior staff and operational leaders were identified as perpetrators at a disproportionately high rate – contributing to a culture that minimises complaints and sanctions poor behaviour.

See Chapter 11. Workplace harm



When respondents experienced unwelcome behaviour, only a quarter (26%) formally reported it. The most common responses were to keep a private record of the incident (45%) or to avoid contact with the perpetrator where possible (41%).

1 in 5 respondents who experienced unwelcome behaviour didn't make a formal complaint because they doubted it would make a difference (21%) or they lacked confidence in the process and available support (19%).

We recommend the development of a safe workplace education model that identifies and responds to the drivers of workplace harm and integrity issues in the adult custodial corrections system. The model should be tailored to the corrections workforce, enable staff to identify harmful workplace conduct, understand reporting and complaint pathways and build active bystander skills.

## Addressing integrity risks

There are a range of cultural factors within the custodial environment that contribute to or enable integrity risks – including the closed nature of the environment, an over-reliance on command-and-control structures, a fear of retaliation and the power dynamics between staff and people in custody.

See Chapter 12.  
Integrity.

In our workforce survey, 39 per cent of respondents had witnessed integrity issues or inappropriate behaviour by staff toward people in custody in the last five years. Staff are reluctant to report integrity issues or inappropriate conduct for fear of reprisal and their belief it will be covered up. The reliance of custodial staff on their colleagues for their everyday safety fuels a culture where it is not only socially unacceptable but sometimes dangerous to report the conduct of colleagues.

### Unlawful use of force

We echo the concerns of the Victorian Ombudsman in the recent *Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison* (May 2022) and recommend a revised framework for the use of force – providing clarity and guidance on recording force incidents; types of force used and associated assessment thresholds; changes to the reporting of service delivery outcomes and incorporation of reflective practice into the routine consideration of all use of force incidents to support a culture of continuous improvement.

DJCS has limited visibility of unlawful use of force across the system despite its recent focus on reducing force through additional internal reviews and audits. Recognising the importance of a robust internal audit function, we support additional resourcing for the Systems Performance Branch of Corrections Victoria, to enhance its understanding of integrity risks and capacity to address them.

### Body-worn cameras

The introduction of body-worn cameras has reduced some integrity risks across the adult custodial corrections system; however, they are under-utilised and have, in some instances, been misused. We recommend additional body-worn cameras and CCTV coverage alongside safeguards to increase accountability for the use of body-worn cameras and CCTV-monitored areas. We also recommend additional CCTV cameras and longer retention periods for surveillance footage to aid investigations and review processes.

'[The staff] immediately physically assault the prisoner and handcuff the person, beat them – all while either in the absence of or while obscuring body worn cameras or CCTV cameras in the units.'

Person in custody

## Strip-searching and restrictive practices

In recent years, the introduction of body-scanner technology at the Dame Phyllis Frost Centre in tandem with reforms across the women's system and changes to strip-searching policies have reduced the number of searches undertaken. This progress reflects the move toward a more trauma-informed approach within the women's system. We understand that additional body-scanner technology was introduced to some locations during the Cultural Review period.

DJCS has also been focusing recently on other integrity risks such as the use of separation which is subject to detailed authorisation and oversight arrangements. We welcome these changes but note a number of people in custody reported that these practices are still occurring regularly and, in some cases, for improper or unnecessary reasons.

The use of seclusion, restraint and restrictive practices require an enhanced level of central oversight, supported by central data collection and training to ensure policies are operationalised in a way that protects the human rights of individuals, their mental health and dignity.

'I have spent 7 days in a cell with no mattress, curtain, one tampered with meal a day, but I did have a cup to drink water with. I had no toilet paper. I was tormented by [other] inmates all day [outside] my door saying they are getting in to kill me. The staff allowed this. And laughed at this behaviour. The staff were not at all caring of me. In fact, the opposite. They set me up to be assaulted. Also, to have 'shit' thrown all over me. As a protective inmate, they made me run out in the mainstream run out yards as well. That 7 days changed me forever!'

**Person in custody**

We also recommend the Systems Performance Branch revise its investigations framework and expand its audit function to review a greater range of practices for integrity risks against existing policies and guidelines, and the Charter of Human Rights and Responsibilities over a period of 12 months. This audit should inform policy development as part of proposed reforms to the Corrections Act (noting that the new legislative framework should include safeguards and reporting requirements in relation to the use of seclusion, restraint and restrictive practices).

## Responding to and prevention of unlawful and harmful conduct

It is clear that staff have low levels of confidence in existing complaints and reporting systems, fearing victimisation or reprisal, or that responses will be ineffective.

'There is no one in this prison I would trust to complain or report to currently.'

**Staff member**

Current complaints and reporting processes, including investigations, are not person-centred or trauma-informed and do not adequately support the wellbeing of parties involved. Staff cited concerns with a lack of action, significant delays in processes, a lack of communication, feeling unsafe and unsupported. Respondents

also felt the process was unnecessarily long, stressful and unfair. Many of these processes apply DJCS-wide. Other concerns, such as issues of a lack of confidentiality; conflicts of interest; inaction; gossip; and social exclusion and bullying were identified at the local custodial level.

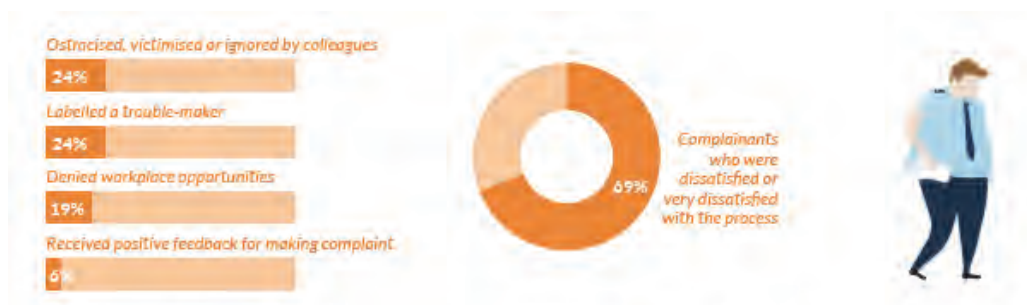
'I have experienced sexual harassment ... I was firm and clear to him that I will report if he ever did it again. To be honest reporting, a staff member for sexual harassment would leave me in a worse position. It would not be safe, and you would be gossiped about.'

Staff member

We recommend DJCS create a single complaints and reporting policy document that is widely promoted and accessible, alongside a guideline tailored to the corrections workforce. This should include the development of service standards and benchmarks to measure the performance of the complaints system.

### Local capacity and expertise

At present, local responses to complaints and reports of workplace conduct are inconsistent and lack both oversight the confidence of the workforce. We recommend that DJCS better resource and play a more active role in supporting local teams to respond to complaints and reports, building their capability, and providing central oversight of the process.



Almost a quarter of respondents who had made a formal complaint about workplace harm were ostracised, victimised or ignored by colleagues (24%) or labelled a trouble-maker (24%), and almost one in five (19%) were labelled trouble-makers. Only 6% received positive feedback for speaking up.

7 in 10 respondents (69%) who made a complaint were dissatisfied or very dissatisfied with the process. In contrast, only 8% said they were satisfied or very satisfied. 18% of workplace complaints took more than 12 months to resolve.

Unwelcome behaviour caused nearly 4 in 10 respondents (37%) to consider quitting their job.

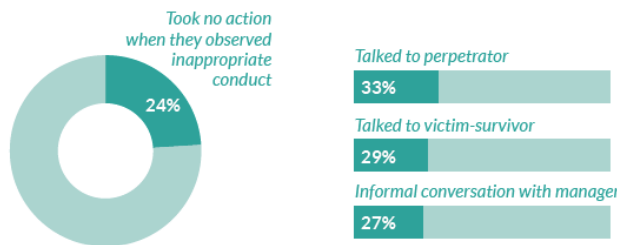
'People don't have much confidence in [the reporting process], and they feel really devalued and disheartened about the whole process, which in turn stops them from following that process down the line.'

Staff member

We recommend additional senior human resources staff be employed at each custodial location with specialist skills in complaint handling and sensitive dispute resolution. These roles will help propel cultural reform by building the capability of operational leaders to resolve complaints and identify and address drivers of workplace harm.

**Investigations of workplace harm and misconduct**

We acknowledge the complexity of many complaints and the need to conduct investigations thoroughly, affording procedural fairness in line with legal requirements. Despite this, we identified opportunities to revise the investigations framework used by DJCS and the government more broadly to ensure a more efficient, effective and balanced approach to investigating complaints of misconduct.



A quarter of respondents (24%) took no action when they observed inappropriate conduct directed towards their colleagues or people in custody. Nearly 1 in 4 respondents took no action because they feared negative impacts on their own career or safety. Nearly 1 in 5 were concerned about negative consequences for the victim-survivor.

Where respondents did take action, a third (33%) talked to the perpetrator, while a similar number talked to the victim-survivor (29%) or had an informal conversation with their manager (27%).

**Being the subject of a complaint**

Around 14% of respondents had been the subject of a complaint of inappropriate behaviour at work.

Respondents were generally critical of the complaints process they had undergone – 68% did not feel safe or supported during the process; 67% did not feel adequately informed about the status of the process; and 63% did not feel the process was fair. More than half of respondents felt the process was drawn out (55%) and their confidentiality was not upheld (56%).

We also recognise the value of restorative justice practices as a part of an organisational response to workplace harm and occupational violence.

**Victim-centric responses**

Essential to a safe and trauma-informed complaints and reporting process is having a single consistent point of contact for parties and access to impartial, confidential and timely advice and support. Our recommendations emphasise the need for additional end-to-end support, advice, information and counselling given the serious wellbeing risks for staff involved in a complaints process. We understand this is also an area of current focus for DJCS.

We were dismayed to find that people in custody do not always have a voice during audit processes and misconduct investigations. We heard they are not always provided with information and updates, counselling and legal referrals to ensure their safety, wellbeing and support where they may have experienced harm while in custody. As a result of making a complaint, they may be at heightened risk of victimisation or reprisal. We recommend an internal process with safeguards, and support, be developed to address these gaps.

'We've got one prisoner who actually reported one of the officers because she did something inappropriate, and now nobody does anything for him. And if I do, then I'm a crook lover, not me, just doing my job.'

Staff member

### Preventing workplace harm

Focused prevention efforts are also needed to ensure that leaders have the right capability to create safe and respectful workplaces and are held to account for unlawful and unwelcome workplace behaviours. Under the *Equal Opportunity Act 2010*, organisations must take proactive steps to prevent as well as respond to workplace sexual harassment, discrimination and victimisation. This requires DJCS to actively identify and manage risks, ensure managers and supervisors receive appropriate training and have the knowledge of how to prevent and address workplace harm and integrity risks.

See [Chapter 13. Response and prevention](#).

Managers and supervisors must also hold themselves and others accountable for their behaviour, and this expectation must be reflected in relevant position descriptions, role requirements and key performance indicators and processes.

'Our leadership team needs a lot more education and training in regard to handling professional matters, as in our own staff, and having a challenging conversation. They just don't have the skills.'

Staff member

We recommended better targeted and more regular messaging for the workforce articulating expected standards of behaviour to help drive a clear narrative for cultural reform and ensure that people know where to report if they experience harm or witness integrity issues.

'The inability to self-reflect and fend off the influences of disgruntled, jaded, and bitter staff swiftly muddles the morals of new recruits who subsequently lean into the culture of punishing prisoners, as opposed to acting with the professionalism that our role demands.'

Staff member

Finally, to rebuild the trust of the workforce and acknowledge occupational violence and workplace harm, DJCS should establish a restorative justice scheme for corrections staff who have experienced occupational violence, workplace harm, including bullying, sexual harassment, racism, discrimination and victimisation in custodial workplaces. The scheme should be based on the Victoria Police Redress and Restorative Justice Scheme.

## Aboriginal cultural safety (Part 5)

The adult custodial corrections system may never be culturally safe for Aboriginal people. Addressing the unacceptable over-representation of Aboriginal people entering and returning to custody must be an overarching and urgent goal for Victoria's justice system.

"Our criminal legal system was developed in a time where everyone accepts there was endemic racism. So, it's not surprising that we have chronic over representation of Aboriginal and Torres Strait Islander people at every stage of that system, not the least of which is the corrections system. So, by definition, the way that the corrections system operates is not culturally safe."

**Victorian Aboriginal Legal Service**

Our work through the Cultural Review reiterates what many previous reviews and inquiries have found – that the system is not working and that it is having devastating, intergenerational impacts on Aboriginal people and communities.

Aboriginal people continue to die in custody. Over the period of the Review, two Aboriginal men died in custody, and we saw devastating testimony during the coronial inquest into the passing of a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman at the Dame Phyllis Frost Centre in January 2020.

The adult custodial corrections system must do more to support and engage Aboriginal people in custody and directly contribute to their rehabilitation and lower levels of recidivism. This requires new ways of working, a renewed focus on wellbeing and healing, partnership, learning and accountability.

The recommendations we make in this report are consistent with and seek to accelerate the changes outlined in the Aboriginal Justice Agreement - *Burra Lotjpa Dunguludja*.

### Outcome 7

A culturally safer environment for Aboriginal people in custody where their specific needs, rights, identities, histories and humanity are recognised and protected

## Strengthening accountability for cultural safety in the custodial system

The vision for a more culturally safe system and the way in which that vision is monitored must be led by Aboriginal community. The accountability for ensuring that vision is realised, sits squarely with government.

We recommend the Aboriginal community lead the development of a framework for improving cultural safety, in collaboration with DJCS. This framework should identify principles and approaches for programs and services that will support Aboriginal health and wellbeing. It should provide outcomes and measures for monitoring cultural responsiveness and cultural safety and holding government to account. Consistent with the principles of self-determination, accountability for implementation of the framework sits squarely with DJCS – and should be embedded within the accountabilities of all staff.

See Chapter 14  
Strengthening  
accountability for  
cultural safety in the  
custodial system

There is also an opportunity to increase the support and coordination provided across the system through a new role of Assistant Commissioner, Aboriginal Services, to amplify the efforts of the Aboriginal workforce and support the delivery of services to Aboriginal people in custody. We note that there are currently no senior custodial roles (above VPS 5) held by Aboriginal people within in the Victorian adult custodial corrections system, although Naalamba Ganbu and Nerrlinggu Yilam (the Yilam) play a critical role with DJCS.

Creating more leadership opportunities for Aboriginal people across the adult custodial corrections system will elevate the efforts and perspectives of the Aboriginal workforce however, it is critical that cultural safety is understood as the responsibility of all leaders and staff and a core competency of corrections roles.

## Essential foundations for a more culturally safe and responsive custodial system

There are institutional and cultural barriers that continue to influence the experiences of cultural safety within the adult custodial corrections system and operate as barriers to lasting change. These barriers are reinforced by a custodial workplace culture that continues to demonstrate a high tolerance for racism and discrimination and deflects responsibility for providing support to Aboriginal people to the Aboriginal workforce.

We recommend immediate priority action to better support and realise cultural rights and safety for Aboriginal people. This includes updating the Corrections Act with a new positive duty to proactively take steps to increase cultural safety and uphold cultural rights for Aboriginal people in custody. This positive duty should guide policy and operational decision-making and should be paired with an enforcement mechanism in legislation held by the proposed Aboriginal Inspector for Custodial Services.

'It is critical that the Victorian Government recognises the importance and value of culture for Aboriginal and Torres Strait Islander people. Culture is not an "add on". It is not a "nice to have" luxury'<sup>12</sup>

Djirra

Additional and ongoing training, linked to performance processes, for a culturally safe and responsive adult custodial corrections system is urgently required across both the public and private system. We recommend DJCS work in partnership with the Aboriginal Justice Caucus, Aboriginal community- controlled organisations and people with lived experience of custody to develop a new training package.

'[Staff] actually have no cultural training whatsoever after their squad. They only do ... a day or two of cultural awareness training while they're in squad, and then nothing after that. So, they have [a] lack of cultural understanding, lack of cultural beliefs of Aboriginal people, and just respect for Aboriginal culture in general.'

Staff member

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<sup>12</sup> Djirra, Submission to the Cultural Review (December 2021)



To ensure the training helps staff build a deeper understanding and ability to respond to cultural needs, the training should include self-reflection and an examination of unconscious bias, the impact of interpersonal and structural racism and discrimination on Aboriginal people, key human rights instruments and the outcomes of the Royal Commission into Aboriginal Deaths in Custody.

There are also opportunities for DJCS to engage more deeply with Aboriginal Elders and Respected Persons, both centrally and at each custodial location, to build their knowledge and inform the delivery of more culturally safe and responsive services. Other foundational elements of a culturally responsive system include expanded opportunities for Aboriginal people in custody to connect with community and culture. Central to this is ensuring adequate and accessible cultural spaces at each custodial location.

## The experiences of Aboriginal people in custody

While the experiences of Aboriginal people across the adult custodial corrections system varied, we heard about the universal benefit of having access to Aboriginal Wellbeing Officers and opportunities to practice culture and maintain connections with Country and community. While there are a number of cultural programs, we heard that there is inconsistency of access to the programs and that a person's access to cultural programs may be interrupted due to movement around the system. We also observed significant differences in the cultural spaces available across custodial locations and recommend that new and existing facilities meet minimum standards for cultural facilities and spaces.

See Chapter 15  
*Essential foundations  
for a more culturally  
responsive system*

### Health Services

Throughout the Cultural Review, we heard persistent concerns about the quality and cultural safety of health services available to people in custody. Aboriginal people will have better outcomes where health services are delivered by Aboriginal people. We recommend that Aboriginal people should be offered additional health checks and healthcare management plans provided by an Aboriginal community-controlled health organisation, funded by the Victorian Government.

See Chapter 16 *The  
experiences of  
Aboriginal people in  
custody*

In short, the healthcare system within the adult custodial correction system requires an overhaul – with particular attention to the needs of Aboriginal people. This model should involve a transition to a community-led model of care with funding provided to expand access to healing centres. We understand there are plans underway to establish a Healing Unit at the Dame Phyllis Frost Centre, to support a holistic approach to health, wellbeing and rehabilitation for Aboriginal women.

### Support for Aboriginal Women

There continue to be significant gaps in the level of cultural, health and transition support provided to Aboriginal women. We recommend that Aboriginal women have access to additional opportunities to support healing, engage in cultural practices and build or maintain their connections with family, community, Country and culture through rehabilitation and transitional support. This is critical to mitigate the often-

disproportionate impact of shorter sentences and remand periods on women and their families (55 per cent of Aboriginal people in custody are unsentenced, compared with 45 per cent of non-Aboriginal people).

We heard that there is a need for Aboriginal women to be assessed for post-traumatic stress disorder by a suitably qualified health professional soon after entering custody. We recommend a thorough examination of the health, antenatal and postnatal, housing and other needs of Aboriginal women to inform service delivery and transitional support.

### **Culturally appropriate rehabilitation programs and support**

In Part 6 we recommend DJCS develop a community-based transitional centre for Aboriginal people, based on the model of support provided at the Judy Lazarus Transition Centre and culturally appropriate models of transitional support such as the Wulgunggo Ngalu Learning Place.

Culturally safe and responsive throughcare, case management and transitional planning should be provided to all Aboriginal people in custody. Evidence suggests the best model for culturally responsive transitional care is one based in community with access to Aboriginal Elders and Respected Persons, family members and community supports. We identify several opportunities to expand the culturally safe services and programs available to Aboriginal people in custody, through partnership with Aboriginal community-controlled organisations and as part of an expanded program for temporary leave and community permits.

### **Creating a safer workplace for Aboriginal staff**

Aboriginal people working within the adult custodial corrections system, experience distinct challenges including racism, discrimination, high workloads, heavy cultural load, and burnout. Despite the specialist and challenging role played by the Aboriginal workforce, Aboriginal staff do not receive enough support for their social, cultural and emotional wellbeing.

There is a high level of attrition among Aboriginal staff due to these challenges, resulting in persistent vacancies in key Aboriginal roles across the system. It is critical that DJCS fill these roles, but equally important that it takes action to create a culturally safe workplace and comply with existing laws to prevent and respond to racial discrimination. DJCS must do more to comply with its duty under the Equal Opportunity Act to prevent and respond to racial discrimination.

See Chapter 17  
Creating a safer  
workplace for  
Aboriginal staff

Ensuring supervisors and managers have the skills they need to support Aboriginal people working in the adult custodial corrections system should be a priority for DJCS, alongside building capability in cultural safety across the whole workforce. This has been the focus of some important work led by the Yilam in recent years, but additional system-wide effort and resourcing is required.

We recommend the development of an Aboriginal Workforce Plan focused on supporting the cultural safety and wellbeing of Aboriginal staff, while addressing barriers to workforce participation and retention.

Within the adult custodial corrections system, Aboriginal wellbeing officers play a critical role in supporting Aboriginal people in custody. But we are concerned that these roles are not sufficiently recognised or supported to succeed and that people in these roles are vulnerable to burn out and vicarious trauma. DJCS must review the role of the Aboriginal wellbeing officers including their pay, conditions, line management, support, ratios, training and career pathways.



'The lack of support in the role ... there's no team, there's no-one to rely on, there's no-one to help out ... If you take annual leave you came back to a mountain-load of work ... I think on any given day we've got in between 80 to 100 Aboriginal fellas ... we've got a priority to do the 24-hour welfare checks. And if you don't stay on top of that, you're chasing your tail constantly.'

**Staff member**

## People in custody (Part 6)

Victoria has a set of frameworks and a variety of programs dedicated to supporting individuals to meet their rehabilitative goals and community reintegration. However, there are many structural and environmental barriers that limit the effect of this work – such as inadequate data and information management systems, high caseloads, poor physical infrastructure and long waitlists for access to programs and support.

'Better outcomes for prisoners are a better outcome for community. Simple as that. If we're rehabilitating people, stopping them offending, it's better for the community. People spend less time in prison, better for the community. Less violence, less crime, less victims out in the street, plus the [government] spend less money.'

Staff member

At the heart of our recommendations to support people in custody is reorientating the system towards a more therapeutic model of care, to rehabilitate individuals, through program and services and introducing elements of 'normal' life into the prison experience to build self-care and sufficiency and support their successful transition back to society.

'It is a catchcry of modern governments that "the safety of the community is our first priority". Accepting that to be so, the protection of the community ... requires that offenders ... be given access to the support services and specialised treatment on which their rehabilitation depends.'

Court of Appeal<sup>13</sup>

### Meeting the complex needs of people in custody

Custodial environments are inherently traumatising and unsafe for many people – especially Aboriginal people, women and LGBTIQ+ (including transgender women), people with histories of abuse, and other people with specific characteristics and experiences that may create additional vulnerability, such as a disability, cognitive impairment or mental health condition.

See Chapter 18  
*Meeting the complex needs of people in custody and supporting rehabilitation*

Many features of the custodial system were forged in a more punitive system and today they are incompatible with a more therapeutic approach that prioritises supportive interactions, rehabilitation and positive change.

We were particularly concerned about the very high numbers of people in prison with an intellectual disability or cognitive impairment who are at significant risk across many locations with staff unable to meet their care and needs. Prisons demand order and rule compliant behaviour which can be impossible environments for people with disability, making them more vulnerable to punitive outcomes, separation and the use of restrictive practices.

We also saw that physical facilities and access to healthcare pose significant challenges for the growing population of older people in custody. Again, capability

<sup>13</sup> Director of Public Prosecutions v Codey Herrmann [2021] 11 VSCA 160.

within the system is an issue – we observed many dedicated staff and people in custody caring for older people in custody without adequate training.

The number of people in custody from culturally and linguistically diverse backgrounds is growing, and there is a need to better understand their religious, cultural and linguistic needs. Lack of targeted support for these groups means individuals often rely on other people in custody from their cultural group to help bridge language gaps and help them participate.

LGBTIQ+ people in custody experience additional challenges including safety and health concern. Trans people, in particular, are vulnerable to violence and assault, and there is a lack safe and appropriate placement options, resulting in unacceptably high risks to their safety and wellbeing.

### Embedding person-centred approaches

While DJCS has developed some of the building blocks for collaborative and integrated case management, it has not yet embedded case management or a 'person-centred' approach as core business across every custodial site. A person-centred approach recognises that rehabilitation requires attention to every interaction, not just the delivery of case management. It requires attention to the environment and custodial routine, alongside empathetic and respectful interactions to support a person's sense of dignity and self-worth.

**Outcome 8**  
A custodial environment that is person-centred and trauma-informed, developed around responding to the complex needs of people in custody to enable their rehabilitation and safest and transition back into the general community.

'My role is basically, if anyone asks, it's usually holding the hope for men until they're ready to hold it for themselves'  
**Staff member**

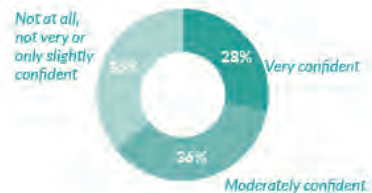
We observed and heard about a divided workforce – with those genuinely committed to doing good case work frequently labelled 'care bears' and others resistant to or unwilling to meaningfully engage with people in custody, intent on dehumanising and exerting power and displaced control over people in custody.



44% of respondents feel they always or mostly have a positive influence on the lives of people in custody.



A third of respondents (33%) felt staff and people in custody get along well or very well, and 79% felt people in custody are respected always or most of the time.



While just over a quarter of respondents (28%) felt very confident with case management, more than a third (36%) said they were not at all, not very or only slightly confident performing this role.

Some custodial staff told us they do not have the time and tools required to deliver quality case management for people in custody, including access to infrastructure and devices, and rostered time to meet with people in custody assigned to them, prepare case notes, and attend Case Management Review Committee meetings.

'The department cannot be serious about case management if they don't give us the tools to document the interactions that we have.'

Staff member

We recommend embedding person-centred approaches across the system, to enable enhanced and integrated case management and more effective support for rehabilitation. This should unite all people working within the system to work in a more aligned and collaborative way.

Another opportunity to embed person-centred care is through actively encouraging people in custody to build connections with family, friends and community – essential to preparing for their transition back into the general community. We recommend several initiatives to ensure people in custody can maintain, build and repair relationships including:

- ▶ more accessible and less costly telephone calls and other web-based communication and technology options
- ▶ subsidised family visitor programs
- ▶ additional funding for culturally safe, community-led programs to help people from culturally and linguistically diverse backgrounds reintegrate into their family and community.

We also support increased access to home visits for eligible people toward the end of their sentence, to both strengthen family and community connections and enable people to experience supervised periods of 'normality' prior to their release. Some of these initiatives are already available; however, they require additional resourcing and expansion to be accessed by a far greater number of people preparing to exit custody.

See Chapter 19  
*Embedding person-centred approaches*

## Supporting fair, transparent and ethical decision-making

While many staff act with respect and professionalism, we found evidence of other staff making unreasonable decisions that are lacking in transparency and fairness, providing little incentive for good behaviour. At times this can be a reaction to the confronting and sometimes aggressive behaviours of people in custody. Other times, decisions are made that are at best cursory and at worst, intentionally punitive and retributive and harmful.

We found that an overly compliance-focused culture within the system's command-and-control hierarchy discourages corrections staff from making ethical, individualised decisions concerning people in custody. As a result, we heard from staff that they lack the confidence and authority to lawfully exercise their discretion, particularly where their decision represents a departure from the 'usual' or 'default' way of working. Related to this, we heard that some staff make decisions that are so closely focused on compliance that they produce disproportionate or nonsensical results.

'[At minimum-security location] you get strip-searched and urine at least once a week for months, and even though somebody like me had no history of drug use [you are still searched] ... The thing that got to me was that half the staff didn't want to do it either.'

#### Person formerly in custody

A particular case shared with us and recently profiled in the media involved a menstruating woman who had her clothes removed and was forced to hold a sanitary pad in place with her hands (her underwear withheld) for 24 hours in an observation cell. Regardless of the at-risk assessment made, we consider this example illustrative of a broader culture which tends to default to applying policy without regard for individual circumstance or application of the Charter of Human Rights and Responsibilities (the Charter).

Staff require training, skills and support to use their discretion to make ethical decisions. Opportunities for reflective practice, collaborative decision-making and constructive questioning of local practices could help staff build confidence in taking a more nuanced approach and applying the Charter appropriately.

To better support staff in their decision-making, we recommend DJCS develop an ethical decision-making framework, drawing on the proposed new legislative purpose, principles and human rights. This recommendation aims to bridge the gap between policy and practice and will enliven the important role of the Charter in custodial settings, as a framework for sound decision-making by public authorities.

### Disciplinary processes

Ensuring appropriate consequences for poor behaviour by people in custody helps create an environment where staff feel safe at work. Custodial leaders described the importance of fair and consistent disciplinary processes and how they strive to balance reasonable proportionate outcomes for people in custody with the interests of staff.

Following the Victorian Ombudsman's recent recommendations regarding prison disciplinary hearings,<sup>14</sup> we propose a minor offence strategy with a framework for fair and proportionate penalties, diversionary case management, restorative justice approaches and other evidence-based strategies. This recommendation supports a safe and more secure custodial environment while providing an incentive for behavioural reform. The strategy should, when coupled with training on ethical decision-making, lead to better outcomes and a more settled prison environment.

When people in custody are involved in disciplinary processes, many do not have sufficient support, representation or understanding of the process to enable them to participate fully. Our recommendations aim to enhance support and ensure procedural fairness for people who may otherwise have limited understanding of and ability to participate in these processes. We also recommend better access to cultural support for Aboriginal people participating in disciplinary processes.

<sup>14</sup> Victorian Ombudsman, *Investigation into Good Practice When Conducting Prison Disciplinary Hearings* (2021).

Through our engagement, we identified significant barriers for people in custody to access complaints processes and support where they have concerns about their conditions or treatment in custody. To meet the needs of people in custody and provide support where decisions may not be fair, we recommend DJCS establish an independent advice and support service for people in custody. This service should provide a combination of legal advocacy and non-legal referrals to support services and integrity bodies.

See Chapter 20  
Supporting fair,  
transparent and  
ethical decision-  
making

## Improving health outcomes for people in custody

People in custody enter prison with higher and more complex healthcare needs than the general Victorian community, yet they do not currently receive healthcare equivalent to that available in the community, which can damage their physical and mental health and prospect of rehabilitation. Current coronial processes involve direct inquiries into recent deaths in custody and the adequacy of health responses and health care.

The concept of equivalency of healthcare means that people in custody not only have available health services of the same nature and standards as in the community, but that they can meaningfully access and derive the same outcomes as in the community.

To embed equivalency of healthcare in the adult custodial correction system, DJCS must consider not only what health *services are offered, but how* they are accessed, continuity of care, timeliness of access, follow up and the user experience. The prevalence of comorbidities and complex health needs among people arriving in custody mean that the standard of healthcare in prisons must be more proactive and intensive than what is available in the community.

**Outcome 9**  
A public model of health for people in custody that recognises the importance of equivalency of healthcare and outcomes.

Through our engagement, we identified barriers that prevent people in custody from accessing healthcare and having their complex health needs met in the custodial environment. In particular, we heard that people being moved between custodial locations frequently disrupted their access to and continuity of healthcare. These barriers may be exacerbated for Aboriginal people, people with particular needs and experiences, such as people with disability, transgender and gender-diverse people, older people and women where existing services may not be responsive to their needs.

Effectively addressing the health needs of people in custody is frequently a prerequisite for addressing any underlying behaviours of concern – for example, we know there is a connection between mental health, pain management, and drug and alcohol addiction issues, yet we heard that people in custody face significant waitlists for counselling and mental health support.



'A lot of people in here feel like hurting themselves ... We know that if you self-harm there is going to be assistance. I can't go up to the officer's station and say "I really need to see someone, I really need to talk to someone – like a psychologist" because they won't do anything. People can really hurt themselves. But it is very hard to get early intervention services or preventative services.'

### Person in custody

The mental and physical health of people in custody should not deteriorate as a result of their imprisonment. Our recommendations to prevent the unnecessary use of management regimes and restrictive practices in response to behaviours associated with disability and mental health-related issues aim to protect the health and wellbeing of people in custody.

The quality and management of custodial health care has been subject to recent attention through the coronial inquest into the passing of a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman at the Dame Phyllis Frost Centre.

Health services are currently outsourced to a private provider, which is inconsistent with best practice and results in inconsistent and delayed healthcare for people in custody. We recommend a transition to a public health model for custodial healthcare, to improve the quality and clinical oversight of health services provided to people in custody and enable continuity of care.

To enable this transition, DJCS should work with the Department of Health to develop and publish clinical standards and a model of care for custodial healthcare. Successful implementation of a public health model will also require further training for corrections and health staff, to encourage collaboration and build capability to improve health outcomes for people in custody.

To address gaps in healthcare facilities, we recommend an audit to ensure existing facilities are adequate and to identify where new clinical and therapeutic spaces may be required to enable safe access to healthcare.

Monitoring and reporting on healthcare service outcomes will be important to ensure the system is working as intended. We recommend improvements to data and information management systems and the publication of an outcomes framework for reporting on the health outcomes of people in custody.

See Chapter 21  
Improving health  
outcomes

## Connecting people to programs, and opportunities to support rehabilitation and positive change

Limited access to offence-specific programs for people in custody is impacting their rehabilitation and opportunities for parole. The way people in custody are moved through the system can interrupt their participation in programs and education, access to training and employment opportunities, and their connections to the general community. This situation is worse for people on remand and serving short sentences – they have more limited opportunities to participate in programs and education, and many leave custody without engaging in programs to support positive change.

See Chapter 22  
Connecting people to  
programs, and  
opportunities to  
support rehabilitation  
and positive change

DJCS should consider the needs of different cohorts in custody and the best mode of delivering offence-specific interventions to them. This includes Aboriginal people, people with cognitive disability, trans and gender-diverse people, and people with personal histories of trauma, victimisation and abuse. These programs must be available to all people in custody, regardless of where they are accommodated, and should be delivered in ways that will best engage participants.

'I would really like to see less funding going into building prisons for men, because there is a multitude of them, and have something closer to the city for women that can replicate a reintegration back into normal life so that women can stop being disadvantaged, regardless of their age.'

Person in custody

Some of the most respectful and motivating relationships we observed were between people in custody and vocational, industry and education staff. Many of these interactions spotlighted the importance of access to education, training and employment for people in custody – to ensure meaningful engagement and build the skills (including digital literacy skills) they require when they re-enter the general community.

While there are many positive examples of meaningful work and education programs, we recommend DJCS assess the work and education opportunities provided across the system against the skills, capabilities and qualifications required for participation in the modern workforce.

We also urge DJCS to expand exiting industry and community permit schemes as practical ways to build 'real life' work experience, training and continuity of education and employment upon release.

DJCS should also ensure current arrangements for wages within commercial industry arrangements are appropriate and fair given the protections against modern slavery at international law.

## Improving access to transition and reintegration support and connections to social services sector

There are significant gaps in the delivery of transition support for people in custody. Many people may 'fall through the cracks' and not receive effective support to help to live independent lives in the general community – and not return to prison.

Limited capacity means that very few people can access residential transitional support or have any meaningful access to community-based visits, programs, education or employment to prepare them for life in the community. There is no residential transition support for women approaching the end of their sentence.

**Outcome 10**  
A more open custodial system that is better connected to the community and integrated with other critical social supports, services and families

There are currently insufficient opportunities for people in custody to build skills, connections and relationships, while supervised, in the community, yet there are models and existing programs that could be expanded to enable more people living in low-medium security prisons to access community-based employment and education – and other transitional support.

We recommend DJCS expand access to residential transitional programs modelled on the Judy Lazarus Transition Centre, including a dedicated transition centre for women; a dedicated community-led, culturally safe transition centre for Aboriginal people leaving custody; and additional transition centres for men.

'Community readiness has to be a priority at the prison ... I know it might be hard but you're just going to get people going back. As soon as they haven't got any money to eat, they're going to commit a crime. [Some are] in a sort of a helpless, hopeless situation.'

**Person previously in custody**

As noted above, there are significant opportunities to mainstream and strengthen transitional support within existing minimum-security settings – for example, through expanding access to community permits so eligible people in custody can:

- ▶ participate in community-based employment, training and education
- ▶ strengthen family and community connections
- ▶ establish connections with services in the community they will return to.

In recognition of the growing number of people on remand and sentenced to time served being released directly into the general community, DJCS should consider expanding the range of programs provided to people on remand, including interventions to address underlying issues such as substance use disorders. People should be able to participate in these services and supports without prejudicing the finalisation of their legal issue.

*See Chapter 23  
Improving access to  
transition and  
reintegration support  
and connections to  
social services sector*

## Our recommendations

### Sustained effort, investment and transparency is required

Successful responses to recent major workplace cultural reviews have relied heavily on the commitment and vision of organisational leaders, and we urge the Victorian Government to invest the same level of commitment to organisational change in response to this review. An investment in staff capability, safety and wellbeing will lead to improved performance, service delivery and more positive outcomes for the community.

Drawing on other recent workforce reform initiatives, we propose a sequencing of effort, commencing with foundational recommendations.

This includes our recommendation that the government should publish this final report – including making key findings and recommendations available to the corrections workforce and key stakeholders – along with its response and proposed implementation schedule.

### **PART 1** Introduction

#### **Recommendation 1.1** **Transparency and** **accountability for** **implementation**

The Department of Justice and Community Safety should publish and disseminate the key findings and recommendations of this report, ensuring they are available to the corrections workforce and key stakeholders.

The response should specify how the department will implement the Cultural Review's recommendations against an implementation schedule.

**PART 2****Systems and governance****Recommendation 2.1****A new legislative framework for the adult custodial corrections system**

The Victorian Government should introduce a new legislative framework to shape a more modern adult custodial corrections system with a focus on rehabilitation, safety and human rights.

This new legislative scheme should:

- a) articulate the purpose and objectives of the adult custodial corrections system, identifying safety and rehabilitation as primary purposes
- b) set out principles and values to support clarity and consistency in decision-making within the adult custodial corrections system, including a specific decision-making framework for supporting Aboriginal people in custody
- c) include an express statutory statement that the loss of a person's liberty is the punishment, in line with the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)
- d) adopt and reflect contemporary international human rights standards relating to people in custody including the United Nations Declaration on the Rights of Indigenous Peoples and Mandela Rules
- e) provide guidance on the minimum facilities required at all new prison locations, including minimum standards for cultural spaces and facilities to support cultural practice
- f) introduce safeguards to prohibit routine strip-searching and certain restrictive practices, specifying that they must only be used as a last resort and must not be used punitively or for improper purposes, along with requirements for the public reporting of data relating to the use of strip-searching, seclusion and other restrictive practices, and use of force
- g) expressly recognise the historical legacy of colonisation as set out in the Aboriginal Justice Agreement, the factors contributing to over-representation of Aboriginal people in the criminal justice system, and the strength and resilience of Aboriginal communities
- h) recognise the right to self-determination and include a positive duty to ensure cultural safety for Aboriginal people in custody
- i) be flexible enough to support the key aspirations and outcomes of the Victorian Treaty process
- j) support increased connection and collaboration with the social services system
- k) establish an independent statutory Inspectorate of Custodial Services reporting publicly to Parliament.

**Recommendation 2.2**  
**Revised service delivery outcomes and public reporting**

The Department of Justice and Community Safety should review and revise the service delivery outcomes (SDOs) used in the adult custodial corrections system, to reflect the amended purpose of the system and better identify, monitor and measure indicators of overall system performance and safety within custodial environments.

Revised SDOs should draw on the World Health Organization's 'Healthy Prison' test and provide a full picture of workplace safety, cultural issues and outcomes for people in custody.

To support increased transparency, the Department of Justice and Community Safety should:

- a) publish detailed SDOs and other key performance indicators for the adult custodial corrections system
- b) report against these SDOs and key performance indicators for both private and public prisons in its annual report tabled in the Victorian Parliament.

**Recommendation 2.3**  
**A new independent Inspectorate of Custodial Services**

The Government should establish a new independent statutory Inspectorate of Custodial Services, with roles of Inspector of Adult Custodial Services and Aboriginal Inspector of Adult Custodial Services to provide monitoring and inspection of the adult custodial corrections system.

These new independent statutory roles should:

- a) be established in legislation and be fully independent of any government department or the direction or control of a Minister
- b) report publicly to the Parliament of Victoria
- c) have broad powers to regularly inspect and report on public and private custodial locations, including through unannounced visits
- d) have powers to make recommendations to relevant public and private agencies to improve the adult custodial corrections system
- e) undertake thematic and systemic reviews of issues within the adult custodial corrections system
- f) develop specific custodial inspection standards based on international human rights law, including specific culturally safe inspection standards
- g) administer the Independent Prison Visitor Scheme, including the Koori Independent Prison Visitor Scheme
- h) administer a 'Healthy Prison' survey adopting the World Health Organisation's methodology, to inform their understanding of the custodial culture and issues
- i) conduct regular liaison and monitoring visits and have discretion to provide informal advice, feedback and information to the relevant Minister and department

	<p>j) have discretion to conduct reviews of critical incidents and deaths in custody when systemic and serious human rights issues are raised, and it determines that a review and public report would be in the public interest</p> <p>k) be properly resourced with necessary staff to support these functions.</p> <p>Subject to consultation with Aboriginal Justice Caucus, the Aboriginal Inspector of Adult Custodial Services may have a role in reviewing and responding to certain critical incidents involving Aboriginal people, and reviewing compliance with the proposed statutory duty to ensure cultural safety for Aboriginal people in custody.</p>
<p><b>Recommendation 2.4</b> Priority action to implement OPCAT in Victoria</p>	<p>Noting previous recommendations and reports to Parliament, the government should take priority action in Victoria to designate National Preventive Mechanism functions and commence monitoring in accordance with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as practicable.</p>
<p><b>Recommendation 2.5</b> An expanded and newly constituted Independent Prison Visitor (IPV) Scheme</p>	<p>The Department of Justice and Community Safety should strengthen and expand the role of the Independent Prison Visitor Scheme to introduce additional diversity and coverage and increase transparency and independent oversight of the adult custodial corrections system. This should include:</p> <ul style="list-style-type: none"> <li>a) appointment of additional Independent Prison Visitors to enable: <ul style="list-style-type: none"> <li>– assignment of at least two Independent Prison Visitors to each custodial location</li> <li>– assignment of at least two Aboriginal Independent Prison Visitors to each custodial location.</li> </ul> </li> <li>b) appointment of Independent Prison Visitors for a period of four years and a maximum of two terms</li> <li>c) a requirement for Independent Prison Visitors to visit their allocated custodial location at least once a month and report on their observations and findings</li> <li>d) a requirement for prison management and the Department of Justice and Community Safety to respond in writing to each report from an Independent Prison Visitor, noting any action being taken in response to concerns raised</li> <li>e) provisions allowing for the publication in annual reports of Independent Prison Visitors' observations and findings and actions taken by the Department of Justice and Community Safety in response to those observations and findings</li> <li>f) transitioning responsibility for the Independent Prison Visitor Scheme to the new Inspectorate of Custodial</li> </ul>

	<p>Services and providing support through a dedicated secretariat function</p> <p>g) Revisions to the Corrections Act 1986 should specify the eligibility requirements and the roles and responsibilities of Independent Prison Visitors, considering diversity and experience including people of diverse ages, skills and experience and from culturally and linguistically diverse backgrounds, people with disability, people with lived experience of incarceration and LGBTIQ+ people.</p> <p>The application of this recommendation to the Koori Independent Prison Visitor Scheme should consider any recommendations from the review of the scheme underway currently as part of the Aboriginal Justice Agreement 4.</p>
<p><b>Recommendation 2.6</b> <b>Enhanced data capability and information management systems</b></p>	<p>The Department of Justice and Community Safety should invest in improving data capability and information management systems across the adult custodial corrections system. These changes should enable a more joined-up, efficient, person-centred approach to case management and system-wide risk identification and accountability by:</p> <ul style="list-style-type: none"><li>a) rationalising and updating existing information management systems to ensure they capture clear and accurate information about the risks and needs (including the health needs) of people in custody; workforce demographics, workforce training, and complaints and reporting data</li><li>b) reviewing and reconciling the gaps in datasets and collection methodologies outlined in this report</li><li>c) adopting centralised information management systems to replace locally held paper-based files and registers to track and monitor restrictive practices and support a whole-of-system view of integrity risks</li><li>d) building staff data capability through training and reviewing and updating requirements for record keeping and consistency in quality, form and completeness at an operational level</li><li>e) development of a central dashboard to support real-time reporting of demographic information and integrity-related performance indicators.</li></ul> <p>Improvements should include an examination of record-keeping, data capability and information management systems within private prisons, to ensure consistency and information-sharing.</p>



**Recommendation 2.7**  
**A lived experience reference group and charter for the adult custodial corrections system**

The Department of Justice and Community Safety should establish a reference group of people with lived experience of custody (including both people currently in custody, and those who have previously been in custody) alongside other experts, to provide advice on the development and implementation of key policies and ensure opportunities for system users to shape the adult custodial corrections system.

The reference group should be supported and properly resourced by the Department of Justice and Community Safety, including appropriate remuneration for members of the reference group.

The reference group should co-design a Lived Experience Charter to establish the arrangements for safe and supported participation by people with lived experience.

**PART 3**  
**Workforce**

**Recommendation 3.1**  
**A Custodial Mental Health and Wellbeing Action Plan**

The Department of Justice and Community Safety should develop and resource a Custodial Mental Health and Wellbeing Action Plan. The action plan should clearly address the psychosocial drivers of psychological harm in the custodial workplace and create objectives for change, including:

- a) creating a culture of support and recognition for staff that acknowledges the operational challenges of their roles and the safety risks in the custodial workplace
- b) responding to, and developing initiatives to eliminate, reduce or, where not practicable, mitigate, psychosocial risks in the custodial workplace including exposure to traumatic incidents or content, managing challenging behaviours and occupational violence
- c) introducing supportive mandatory debriefing and reflective practice for all corrections staff at regular intervals, with increased mandatory debriefing for staff in high-risk and reception environments
- d) ensuring individual mandatory debriefing immediately following staff exposure to a critical or traumatic incident – this should not be connected to performance management
- e) increasing the mental health literacy of the workforce and their understanding of how to promote their own psychological wellbeing, reduce stigma, and identify where and how they can access support
- f) developing clear measures to improve and support employee wellbeing and mental health across their work lives, including ongoing and regular support for employees who disclose that they have a wellbeing or mental health issue that requires additional assistance, and increased access to appropriate mental health providers including but

	<p>not limited to a specialist employee assistance program for corrections staff</p> <ul style="list-style-type: none"> <li>g) building the confidence, capability and accountability of leaders to create and maintain mentally healthy workplaces</li> <li>h) identifying and improving the physical components of workplaces that support wellbeing, including built infrastructure that facilitates a safe workplace</li> <li>i) ensuring that there are adequate facilities for the workforce, including for staff who are breastfeeding or require prayer rooms.</li> </ul> <p>The action plan should be developed in consultation with staff and the Community and Public Sector Union and ensure that it meets new psychological health regulations under the Occupational Health and Safety Act 2004.</p>
<p><b>Recommendation 3.2</b>  <b>Recognition of the work of the corrections workforce</b></p>	<p>The Department of Justice and Community Safety should develop a public engagement and communications strategy to enhance the visibility of the corrections workforce and increase the Victorian community's understanding of the adult custodial corrections system and the people working within it.</p> <p>The strategy should recognise the critical role of the corrections workforce in the justice system and emphasise the range of professional opportunities across a custodial career.</p> <p>This public engagement and communications strategy should reflect a renewed recruitment approach focused on a more diverse and capable workforce and a clear commitment to ensuring the corrections workforce is safe and supported in their roles.</p>
<p><b>Recommendation 3.3</b>  <b>Staff experience and expertise informs system delivery</b></p>	<p>The Department of Justice and Community Safety should increase opportunities for corrections staff to contribute their ideas and experiences as part of system governance, to improve service delivery, build closer connection between system planning and operations, and support staff wellbeing.</p> <p>These processes should complement consultation obligations and procedures under the Victorian Public Service Enterprise Agreement.</p>

<p><b>Recommendation 3.4</b>  <b>A more diverse and capable workforce that is aligned to system purpose and values</b></p>	<p>The Department of Justice and Community Safety should review recruitment and screening processes for the custodial workforce, to help build and retain a more diverse, capable and values aligned workforce.</p> <p>This review should ensure recruitment and screening processes:</p> <ul style="list-style-type: none"> <li>a) better align selection criteria for custodial roles with the requirements of a modern and diverse custodial workforce that reflects system purposes of safety and rehabilitation</li> <li>b) include a stronger emphasis on communication, interpersonal skills and ethical decision-making</li> <li>c) actively promote cultural and gender diversity and embed conscious inclusion initiatives at each stage of the recruitment process, to attract candidates from diverse backgrounds and ensure support during the recruitment process and across their employment</li> <li>d) more rigorously assess candidates' alignment with all Victorian Public Sector values including integrity, respect, human rights and accountability.</li> </ul>
<p><b>Recommendation 3.5</b>  <b>A more diverse workforce through the promotion of lateral entry pathways and prior skills recognition</b></p>	<p>The Department of Justice and Community Safety should create a program for lateral entry across the adult custodial corrections system, to increase the diversity of skills and experience in the custodial workforce. The program should have a particular emphasis on lateral entry for new recruits and leadership positions across both custodial and Victorian Public Service roles within the adult custodial corrections system.</p> <p>The lateral entry program should recognise prior experience and education in relevant fields across government and the social services sector and provide access to accelerated training and development programs where appropriate.</p> <p>The lateral entry program should emphasise the value of attracting candidates with the specialist skills required to meet the needs of people in custody, including experience in supporting mental health, trauma-informed practice, diverse cohorts, case management, addiction and substance misuse.</p>

<p><b>Recommendation 3.6</b> <b>Clear expectations for the workforce to deliver enhanced, integrated case management</b></p>	<p>The Department of Justice and Community Safety should clarify and better support the case management expectations of the custodial workforce, by:</p> <ul style="list-style-type: none"><li>a) ensuring that there is a clear emphasis in position descriptions and performance development plans on the rehabilitative purpose of the system and the skill set required to carry out integrated case management functions</li><li>b) ensuring that there is sufficient dedicated and senior expertise at each location to lead the implementation of an enhanced approach to integrated case management including through staff support, professional supervision and training</li><li>c) in addition to this senior expertise, reviewing the functions and classification of the offender management supervisor role to ensure:<ul style="list-style-type: none"><li>– the role has sufficient seniority to lead and influence changes to case management practice across the custodial workforce</li><li>– lateral entry pathways are available to increase the skills and capability of these roles</li></ul></li><li>d) ensuring that ongoing training provided to offender management supervisors:<ul style="list-style-type: none"><li>– includes trauma-informed practice</li><li>– is supported by expert guidance on meeting the complex needs of people in custody</li><li>– reflects the principles and purpose of the adult custodial corrections system.</li></ul></li></ul>
<p><b>Recommendation 3.7</b> <b>Investment in the skills and capability of new recruits</b></p>	<p>The Department of Justice and Community Safety should develop a new pre-service training model that identifies and builds the skills and capabilities of the custodial workforce so that they are better able to create a safe, humane and fair custodial environment focused on positive outcomes for people in custody.</p> <p>The pre-service training program should ensure that sufficient time is provided to cover the breadth of the role and help trainees understand the complex needs of people in custody. Across the first year of their employment, recruits should undertake six months of training including:</p> <ul style="list-style-type: none"><li>a) initial pre-service training of four months delivered at the Centre for Custodial Practice</li><li>b) six weeks of placement comprised of two weeks at two different custodial locations and security ratings, and two weeks at the trainee's permanent location</li><li>c) an additional two weeks training at the Centre for Custodial Practice after a period of site-based work at their permanent location.</li></ul>

	<p>The new expanded pre-service training should include specific components on:</p> <ul style="list-style-type: none"> <li>d) the purpose of the adult custodial corrections system and the role of corrections staff in promoting safety, respect and rehabilitation</li> <li>e) the profile and experiences of people involved in the criminal justice system, including the social determinants of offending and health, informed by the specific lived experience of people who have been in custody</li> <li>f) an integrated approach to case management</li> <li>g) increased attention to communication and interpersonal skills, dynamic security and de-escalation practices as part of ongoing safety, security and tactical operations training</li> <li>h) specialised training to support key cohorts, with additional and continuing training for those working in specialised units, including disability awareness, mental health, trauma-informed practice and Aboriginal cultural safety.</li> </ul> <p>Training should be followed by a period of structured mentoring and support at each location, with rigorous selection criteria to ensure that mentors demonstrate high standards of behaviour and reflect the Victorian Public Sector Values.</p> <p>To ensure the pre-service training meets standards of best practice and meets the needs of the community, the workforce and people in custody, the Department of Justice and Community Safety should consult broadly with experts, community organisations and the relevant unions, and include the voices of corrections staff and people in custody in the development and delivery of the revised pre-service training.</p>
<p><b>Recommendation 3.8</b>  <b>A Centre for Correctional Practice to improve the quality and consistency of workforce training and development</b></p>	<p>The Department of Justice and Community Safety should create a Centre for Correctional Practice to support increased coordination, quality and consistency in training content and practice across the adult custodial corrections system. This centre should facilitate:</p> <ul style="list-style-type: none"> <li>a) delivery of pre-service training</li> <li>b) coordination and delivery of ongoing professional development and specialisation training all correctional staff</li> <li>c) debriefing and reflective practice.</li> </ul> <p>The Centre for Correctional Practice should be staffed by experts in adult education, case management and trainers with expertise in delivering specialist care to priority and complex cohorts within the adult custodial corrections system.</p>

<p><b>Recommendation 3.9</b> <b>Improved professional development for the custodial workforce</b></p>	<p>The Department of Justice and Community Safety should review and develop ongoing professional development training, ensuring continuity with the new pre-service training, to support the development and renewal of essential skills within the corrections workforce and drive a culture of continuous learning.</p> <p>This training should:</p> <ul style="list-style-type: none"><li>a) include mandatory refreshers and ongoing training on key topics, including understanding the needs of vulnerable cohorts, de-escalation tactics, case management, and ongoing and specific training delivered by funded community organisations who work with diverse groups in the custodial environment</li><li>b) include monitoring of completion of mandatory refresher training, tied to professional development planning and progression requirements</li><li>c) include pathways for supported specialisation and higher qualifications which are reflected in classification structures</li><li>d) embed formal professional supervision and mentoring.</li></ul> <p>The Department of Justice and Community Safety should ensure that adequate time for regular professional development and ongoing training is adequately factored into workforce budget and rostering requirements across all locations.</p>
<p><b>Recommendation 3.10</b> <b>Review and completion of the Certificate III in Correctional Practice</b></p>	<p>The Department of Justice and Community Safety should review the Certificate III in Correctional Practice, to ensure the competencies it covers align with the purpose of the adult custodial corrections system and the capabilities required to work as part of a safe and humane system focused on rehabilitation.</p> <p>The department should promote and centrally track Certificate III completion rates to increase the current capability of the workforce.</p>
<p><b>Recommendation 3.11</b> <b>Custodial workplaces are resourced to accommodate training</b></p>	<p>The Department of Justice and Community Safety should assess current rostering practices, to ensure that individual prison locations can accommodate the professional development and training needs of staff. This assessment should be informed by current employment conditions and commitments in the Victorian Public Service Enterprise Agreement.</p> <p>Following this assessment process, locations should adjust current rostering and workplace planning to ensure they support staff training and professional development, and address the impact of current resourcing deficiencies on the wellbeing and workload of staff.</p>

**Recommendation 3.12**  
**Enhanced operational leadership role for supporting workforce, integrity and cultural reform**

The Department of Justice and Community Safety should create a new dedicated role of Assistant Commissioner, Workforce and Integrity. The core functions of this role should be to:

- a) provide leadership and accountability for workplace culture and reform, including implementation of departmental and public sector reforms within the custodial context
- b) provide advice and leadership to location-based staff on:
  - supporting workplace culture, integrity, conduct and reform issues
  - adopting best practice approaches to prevention, complaint handling, restorative practice and disciplinary processes
- c) oversee and analyse local data and trends relating to workforce and integrity issues
- d) report regularly to the Commissioner, Corrections Victoria, and the DJCS executive on key issues relating to workforce and integrity within the adult custodial corrections system.

**Recommendation 3.13**  
**Ongoing professional development for supervisors and managers within the system**

The Department of Justice and Community Safety should develop a training program for corrections leadership, to support the development and retention of effective leaders within the adult custodial corrections system.

The program should be based on the skills identified in the Victorian Public Service Capability Framework, with a focus on extending skills and competencies in key areas of people leadership.

This should build on existing training available within the Department of Justice and Community Safety and be specifically adapted to the custodial context. The training program should include:

- a) understanding the role and influence of leadership
- b) expectations for the highest standards of workplace behaviour, integrity, respect and compliance with human rights
- c) strategies and approaches for effective people management, including supporting regular staff development conversations, managing workplace and interpersonal conflict, taking effective action in response to unlawful workplace behaviour including appropriate early detection and resolution
- d) mental health first aid, including workplace wellbeing support.

The Department of Justice and Community Safety should also require all people with leadership responsibilities within the adult custodial corrections system to complete the Certificate IV in Correctional Practice.

	<p>The Department of Justice and Community Safety should ensure arrangements are in place to accommodate training within rostering requirements and provide leaders with access to paid study leave to support the completion of this qualification.</p>
<p><b>Recommendation 3.14</b>  <b>A development pathway for emerging leaders in the corrections workforce</b></p>	<p>The Department of Justice and Community Safety should create a development pathway for emerging leaders in the adult custodial corrections system. This program should include:</p> <ul style="list-style-type: none"> <li>a) processes to identify future leaders who demonstrate potential and model high standards of behaviour that support a safe, respectful and integrity-oriented workplace</li> <li>b) development programs, including mentoring and secondment opportunities</li> <li>c) clear routes for progression through the corrections workforce focussed upon a skill based classification structure.</li> </ul>
<p><b>Recommendation 3.15</b>  <b>Review of the general manager role</b></p>	<p>The Department of Justice and Community Safety should undertake a detailed review of the role requirements for general managers and their current employment conditions, to recognise the necessary skills required to support a safe workplace and a safe custodial environment.</p> <p>This review should consider the capability and experience that is required for the role, including risk management, continuous improvement, people leadership, business acumen and responsibility for ensuring a safe, humane and respectful custodial environment for all staff and people in custody.</p> <p>This review should consider:</p> <ul style="list-style-type: none"> <li>a) the key capabilities set out in the Victorian Public Service Capability Framework and Executive Classification Framework</li> <li>b) whether the current employment classification and conditions align with the skills and experiences required for general managers</li> <li>c) whether fixed-term executive employment may be a more appropriate classification to reflect the value of the work and attract candidates for general managers roles who have capability and experience in providing strategic leadership and accountability within the custodial setting</li> <li>d) clarifying the role’s accountability for key responsibilities and actions within the custodial environment, including the development of performance measures for:             <ul style="list-style-type: none"> <li>– providing a safe work environment, consistent with obligations under the Occupational Health and Safety Act 2004.</li> <li>– acting compatibly with the Victorian public sector Code of Conduct</li> </ul> </li> </ul>



- meeting required performance standards, including service delivery outcomes
- implications for other senior roles and classifications that may arise as a result of the review of the general manager role.

## **PART 4**

### **Conduct**

#### **Recommendation 4.1** **A 'safe workplaces' education model for the corrections workforce**

The Department of Justice and Community Safety should create a 'safe workplaces' education model that identifies and addresses drivers of workplace harm and integrity issues in the adult custodial corrections system.

The 'safe workplaces' education model should be compulsory and delivered face-to-face where possible. It should be delivered to all staff on a regular basis, including new recruits, Victorian Public Service staff working within prisons, supervisors and prison managers. The education model should:

- a) set out the values and behaviours expected of the Victorian public sector
- b) enable staff to identify harmful workplace values and conduct, understand the impact of harm and see their role in setting expectations – this should include harmful 'everyday behaviours' with a specific focus on racism
- c) increase staff knowledge of reporting and complaints pathways
- d) build active bystander skills, with clear information on the supports that will make it safe to speak up in the custodial workplace
- e) be regularly monitored and evaluated for effectiveness and impact.

#### **Recommendation 4.2** **Revised Service Delivery Outcome 7 (Assaults by staff)**

The Department of Justice and Community Safety should revise Service Delivery Outcome 7 (Assaults on prisoner by staff) to ensure that use of force incidents that do not reach the threshold of assault are captured, reported and measured as part of the service delivery outcome reporting process. Noting the risk of under-reporting and masking of assaults on people in custody, this revision should include additional categories of 'excessive' and 'inappropriate' use of force in line with the proposed revision of the use of force policy framework and use of force register.

<p><b>Recommendation 4.3</b> <b>Revised use of force framework</b></p>	<p>The Department of Justice and Community Safety should revise its use of force policy framework for custodial staff, to include:</p> <ul style="list-style-type: none"> <li>a) guidance on recording use of force incidents, including: <ul style="list-style-type: none"> <li>– a requirement to record the descriptive detail and category of type of force (such as ‘excessive’ or ‘inappropriate’)</li> <li>– recording whether the incident raised any other integrity concerns (for example, failure to activate body-worn cameras or provide surveillance footage)</li> <li>– associated assessment thresholds</li> </ul> </li> <li>b) clarification and guidance on the meaning of ‘excessive use of force’, ‘inappropriate use of force’ and ‘assault’, including examples of conduct that may contravene the law and Commissioner’s Requirements</li> <li>c) incorporation of reflective practice as part of informal and formal debriefing immediately after a use of force incident and following the outcome of an audit or investigation, to support learning and continuous improvement.</li> </ul>
<p><b>Recommendation 4.4</b> <b>Enhanced audit function to address unlawful use of force</b></p>	<p>The Department of Justice and Community Safety should increase the capacity of the Operations Directorate within the System Performance Branch of Corrections Victoria, to expand its monthly audit activities of use of force incidents to ensure the review of all use of force incidents across the adult custodial corrections system, improving oversight of integrity risks associated with the use of force.</p> <p>The Operations Directorate should prioritise monthly audits at front-end locations which accommodate people in custody with the most complex needs, including Metropolitan Remand Centre, Melbourne Assessment Prison, the Dame Phyllis Frost Centre, Ravenhall Correctional Centre and Port Phillip Prison, with all locations audited monthly within 12 months.</p>
<p><b>Recommendation 4.5</b> <b>Further action on Victorian Ombudsman’s use of force recommendations</b></p>	<p>The Department of Justice and Community Safety should accept and implement the Victorian Ombudsman’s recommendations from its <i>Report on Investigations into the Use of Force at the Metropolitan Remand Centre and the Melbourne Assessment Prison</i> (May 2022) including:</p> <ul style="list-style-type: none"> <li>a) Recommendations 1 and 2, to increase accountability for body-worn camera activation by adding fields to incident reporting template</li> <li>b) Recommendations 3 and 4, to improve CCTV coverage of use of force incidents in Victorian prisons and require custodial officers to use CCTV-monitored areas, such as holding cells, whenever possible while having conversations with people in custody about behaviour</li> </ul>

	<ul style="list-style-type: none"> <li>c) Recommendation 5, to review the effectiveness of current training programs for custodial staff in de-escalation techniques, including considering more frequent training</li> <li>d) Recommendation 6, to review the practice of securing people in custody to cell doors by placing a baton through their handcuffs while their hands are through the trap</li> <li>e) Recommendation 7, to review the information provided to people in custody during orientation about use of force to ensure they are receiving clear information about their rights and avenues for complaints.</li> </ul> <p>In addition to the above recommendations from the Victorian Ombudsman, the Department of Justice and Community Safety should amend the Commissioner's Requirements to extend the time that surveillance footage is kept from 7 day to 14 days, to ensure it is available for investigations into integrity issues.</p>
<p><b>Recommendation 4.6</b>  <b>Enhanced audit function and capacity building to address inappropriate use of seclusion, strip searching and restrictive practices</b></p>	<p>The Department of Justice and Community Safety should audit the use of strip-searching, restraints and other behaviour management techniques over a 12-month period against existing policies and practice guidelines and Victoria's Charter of Human Rights and Responsibilities, to improve oversight and analysis of integrity risks.</p> <p>This audit should inform the development of policy frameworks for the use of strip-searches, restrictive practices and behaviour management techniques, to ensure they align with proposed reforms to the purpose and direction of the <i>Corrections Act 1986</i>. This audit should build on the Victorian Ombudsman recent examinations of isolation and seclusion practices.</p>
<p><b>Recommendation 4.7</b>  <b>Enhanced investigations conducted by the Operations Directorate</b></p>	<p>The Department of Justice and Community Safety should revise the Operations Directorate's approach to audits and investigations into reports of possible misconduct towards people in custody. The revised approach should include:</p> <ul style="list-style-type: none"> <li>a) applying the evidentiary threshold of 'reasonably likely' in assessing the conduct, assessing systemic risk at a local level and making referrals to the Legal and Integrity Group for formal misconduct investigations</li> <li>b) considering the specific cultural barriers that operate within the custodial context that may explain a lack of objective evidence and give appropriate weight to the testimony of people in custody and the circumstances within which the conduct occurred</li> <li>c) ensuring all reported or identified conduct in contravention of the Victorian Public Sector Values and corrections policies are investigated in addition to the main allegation</li> <li>d) recording relevant data about the incident, outcomes and parties involved in a central database</li> </ul>

	<ul style="list-style-type: none"> <li>e) taking steps to ensure relevant people in custody (included alleged victims, complainants or witnesses) are:             <ul style="list-style-type: none"> <li>– offered the opportunity to be interviewed or submit their account of the events to an appropriate person independent of the custodial location</li> <li>– offered appropriate support and protection from victimisation during and after the investigation process</li> <li>– advised of the outcome and actions related to an incident report related to use of force.</li> </ul> </li> </ul>
<p><b>Recommendation 4.8</b>  <b>External training on integrity issues</b></p>	<p>The Department of Justice and Community Safety should partner with the Independent Broad-based Anti-corruption Commission and the Victorian Equal Opportunity and Human Rights Commission to review staff training to ensure it equips staff with the capability to prevent, identify and respond to integrity risks. The review should inform the new approach to ongoing mandatory training (delivered at a minimum every 12 months) and include:</p> <ul style="list-style-type: none"> <li>a) guidance on making decisions that comply with Victoria's Charter of Human Rights and Responsibilities</li> <li>b) acknowledgement of the unique risks in custodial settings, including the need to balance the rights and interests of people in custody with security and safety</li> <li>c) opportunities for reflective practice.</li> </ul> <p>The training should be centrally delivered at the proposed Centre for Correctional Practice and support implementation of the proposed ethical decision-making framework.</p>
<p><b>Recommendation 4.9</b>  <b>Streamlined, accessible, safe and consistent reporting, complaints and misconduct policies</b></p>	<p>The Department of Justice and Community Safety should streamline policy documents related to reporting, complaints and workplace misconduct into a single policy and set of guidelines to ensure consistency, clarity and accessibility. At a minimum, the guidelines, should:</p> <ul style="list-style-type: none"> <li>a) provide a comprehensive list of how, where and to whom a complaint or report can be made, including the available internal and external options</li> <li>b) options for making an anonymous report and confidential complaint or protected disclosure, including the differences between these options</li> <li>c) provide guidance to managers and supervisors on their responsibilities for responding to complaints and reports (including where reports are made anonymously)</li> <li>d) provide legal and behaviour-based examples of the inappropriate workplace conduct that staff may witness or experience and wish to report, including examples of sexual harassment, discrimination, bullying, victimisation and corrupt conduct demonstrating a spectrum of conduct</li> <li>e) include information about the process, including:</li> </ul>

	<ul style="list-style-type: none"> <li>– how a complaint or report will be managed according to the type and level of conduct</li> <li>– the steps involved</li> <li>– the roles and responsibilities of key staff</li> <li>– service standards that clearly set out timelines, what information they will receive and how their information will be handled</li> </ul> <p>f) provide guidance about when a complaint or report will be immediately escalated to a formal complaint or investigations process or referred to an external agency</p> <p>g) provide information about victimisation, including a clear statement that it is unlawful under Victoria's <i>Equal Opportunity Act 2010</i></p> <p>h) recognise the important role of bystanders in reporting misconduct and workplace harm</p> <p>i) outline support pathways for employees, bystanders/witnesses and managers including how complaints will be managed in a trauma-informed way</p> <p>j) be informed by consultation with the workforce, the Community and Public Sector Union and WorkSafe Victoria.</p> <p>Information about the policy and guidelines should be made widely available across custodial workplaces, in electronic and physical formats, through regular communications, training and education.</p>
<p><b>Recommendation 4.10</b>  <b>Complaints and reporting processes translated for the corrections workforce</b></p>	<p>The Department of Justice and Community Safety should develop a corrections-specific guideline for making a complaint or report about a workplace misconduct.</p> <p>The guideline should cover all conduct within the scope of the Department of Justice and Community Safety's Integrity Strategy and Department policies on workplace harm and misconduct.</p> <p>The complaints and reporting guideline should be incorporated into key corrections policy documents such as Commissioner Requirement's and local operating procedures to provide comprehensive information about acceptable conduct and the complaint and reporting pathways available.</p>

**Recommendation 4.11**  
**Complaints and reporting processes are revised to be accessible, efficient and person-centred**

The Department of Justice and Community Safety should revise its complaints and reporting processes for workplace misconduct to enhance the accessibility, efficiency, transparency and fairness of responses.

The revised complaints and reporting processes should:

- a) protect and prioritise complainants' safety and wellbeing, including through end-to-end support, advocacy, advice, information, and counselling
- b) ensure a consistent and fair approach across the adult custodial corrections system, using clear definitions of levels of conduct and delivering outcomes seen to be impartial, proportionate and consistent.
- c) facilitate a range of responses and outcomes, including to an anonymous report or a formal complaint, and flexible options for informal, alternative resolution where appropriate
- d) provide clear and accessible pathways that are well communicated and easily understood
- e) deliver responses that are timely and supported by regular communication to all parties about the status of the complaint and outcomes
- f) prioritise early intervention and flexible approaches wherever possible to resolve complaints and reports before they escalate, based on alternative dispute resolution and restorative approaches delivered by trained and supported staff
- g) ensure transparency and hold perpetrators accountable, with all parties having a clear understanding of the reasons for decisions and outcomes and the option to have the decision reviewed.

The Department of Justice and Community Safety should regularly prepare deidentified case studies from complaints and reports, including any action to address systemic issues raised in the complaint or report. These case studies should be shared with the workforce to demonstrate accountability and as a learning tool to educate all staff on acceptable conduct.

The Department of Justice and Community Safety should capture complaints and reports data (including for anonymous or confidential reports) and use it to inform risk management processes at both the local and system level.

To achieve these outcomes, the Department of Justice and Community Safety should measure the performance of the complaints system against service standards and, including timelines for key steps and actions and for the resolution of 'simple', urgent or priority complaints, satisfaction with the process and outcomes, and quality measurements.

<p><b>Recommendation 4.12</b> Local human resources capacity to support workplace reform and complaint handling</p>	<p>The Department of Justice and Community Safety should appoint a senior human resources advisor to each public prison.</p> <p>The position description and key selection criteria for these roles should require capabilities and experience to:</p> <ul style="list-style-type: none"> <li>a) provide local level human resources advice and support to the leadership team at each prison, to implement cultural reform and resolve complaints or reports of workplace harm</li> <li>b) support supervisors and managers to identify, manage and respond to workplace harm through both informal and formal processes</li> <li>c) support teams following complaints or investigations to identify and address drivers of harm, including through facilitating debriefing sessions and reflective practice, dispute resolution, support and counselling, communicating messages about acceptable workplace conduct, and distributing key resources to support learning and continuous improvement.</li> </ul>
<p><b>Recommendation 4.13</b> Revised and victim-centric investigations framework</p>	<p>The Department of Justice and Community Safety should adequately resource the Integrity and Reviews business unit with specialist corrections expertise to help it resolve complaints related to prisons and enable more effective and timely responses to complaints of misconduct.</p> <p>The revised investigations framework should:</p> <ul style="list-style-type: none"> <li>a) deliver more consistent and proportionate disciplinary outcomes</li> <li>b) review the approach to investigations to ensure the interpretation of Clause 25 of the Victorian Public Service Enterprise Agreement is consistent with a victims' centric approach</li> <li>c) ensure all allegations of misconduct related to an incident are investigated as separate allegations capable of each giving rise to disciplinary outcomes and as context to the main allegation</li> <li>d) update investigations processes to align with best practice principles for person-centred and trauma-informed responses</li> <li>e) develop a set of service delivery standards that can be used to measure the effectiveness of complaint and investigation processes.</li> </ul> <p>The Department of Justice and Community Safety should consult with the Community and Public Sector Union, VPSC and other parts of government in the development of the investigations framework.</p>
<p><b>Recommendation 4.14</b></p>	<p>The Department of Justice and Community Safety should introduce flexible and alternative dispute-resolution options –</p>

<p><b>Flexible dispute resolution and restorative practices</b></p>	<p>drawing on restorative justice practices, where appropriate – for responding to workplace harm and occupational violence.</p> <p>Dispute resolution and restorative practices may be facilitated by trained specialist staff and may be suitable in situations where:</p> <ul style="list-style-type: none"> <li>a) the conduct is less serious, there are no insurmountable power imbalances and both parties are willing to engage in a facilitated conversation to rebuild trust and address any behaviours of concern</li> <li>b) the complainant does not wish to participate in a formal investigation because the process may be re-traumatising or they are seeking an informal outcome such as an acknowledgment of harm, behaviour change and an apology</li> <li>c) a formal process is unlikely to result in a disciplinary outcome or address a plausible workplace risk – for example, because the evidence available will not meet the legal evidentiary threshold</li> <li>d) there is a need to restore trust and preserve the relationship between the complainant and employer and ensure the complainant is supported to continue their work safely, during or after an investigation or disciplinary process</li> <li>e) where the conduct the complainant experienced was repetitive, cumulative or poorly managed previously by the Department of Justice and Community, and there is a need to rebuild trust in the individual and/or workforce.</li> </ul>
<p><b>Recommendation 4.15</b> <b>End-to-end support for complainants</b></p>	<p>The Department of Justice and Community Safety should ensure that corrections staff have access to:</p> <ul style="list-style-type: none"> <li>a) a consistent point of contact within the department for reports and complaints of workplace harm</li> <li>b) impartial, confidential, timely information and advice about workplace harm and complaint pathways, and processes and procedures for both staff and managers</li> <li>c) continuous support throughout formal complaints processes to ensure the safety and wellbeing of impacted individuals.</li> </ul> <p>The Department of Justice and Community Safety should ensure there are dedicated staff for receiving reports and complaints and providing support to the corrections workforce. These staff should:</p> <ul style="list-style-type: none"> <li>a) have operational knowledge of Corrections Victoria and custodial workplaces</li> <li>b) have expertise in: <ul style="list-style-type: none"> <li>– promoting safe and inclusive workplace cultures</li> <li>– human resources</li> </ul> </li> </ul>



	<ul style="list-style-type: none"> <li>– victim-centric and trauma-informed complaint management</li> <li>– dispute resolution and restorative justice processes</li> </ul> <p>c) work with site-based management teams to build their capacity.</p>
<p><b>Recommendation 4.16</b>  <b>Establishment of a restorative justice scheme for corrections staff</b></p>	<p>The Department of Justice and Community Safety should establish and adequately fund a redress and restorative justice scheme for corrections staff who have experienced workplace harm, including bullying, sexual harassment, racism, discrimination and victimisation in the custodial workplace.</p> <p>The scheme should be based on the Victoria Police Redress and Restorative Justice Scheme.</p>
<p><b>Recommendation 4.17</b>  <b>Safety and support for people in custody involved in an integrity report</b></p>	<p>The Department of Justice and Community Safety should establish a procedure to ensure the safety of people in custody when they are the alleged victim and/or complainant in a complaint or report of misconduct, in recognition of the significant power imbalance experienced by people in custody.</p> <p>This procedure should:</p> <ul style="list-style-type: none"> <li>a) ensure a person in custody has the opportunity to attend an interview with an investigator independent of the correctional facility, or to otherwise provide their testimony in relation to the alleged misconduct</li> <li>b) provide an independent assessment of the person in custody’s support needs including identifying their risk of victimisation, health or wellbeing needs and whether their case management and rehabilitative goals can be met within the correctional facility where the alleged incident took place</li> <li>c) offer counselling services to the person in custody available at any time during the process</li> <li>d) provide a referral to enable the person in custody to seek independent legal advice and support regarding the allegation and meeting their justice needs</li> <li>e) ensure the person in custody receives regular updates and information on the status of the investigation including any outcome</li> <li>f) address any safety and justice needs of a person in custody where the allegation has been substantiated.</li> </ul> <p>In following the procedure, the Department of Justice and Community Safety should protect, as far as possible, the confidentiality and privacy of the person in custody, and take any action required to protect them from victimisation.</p>

**Recommendation 4.18**  
**A specific Corrections Victoria workplace harm and integrity risk management framework**

The Department of Justice and Community Safety should create a workplace harm and integrity risk management framework to identify, monitor and respond to risks and drivers of harmful and unlawful conduct in the custodial workplace.

This framework should align with the risk management principles, control processes and governance set out in the Department of Justice and Community Safety's Risk Management Framework and the approach to preventing, detecting, and investigating integrity risks in the department's Integrity Strategy.

The risk management framework should:

- a) consider site-based rates of complaints and reporting as a risk identification tool – noting that an increase in reports in the short term can be positive indicator of cultural change
- b) include ongoing analysis of workforce demographics
- c) identify current, ongoing and emerging risk factors and cultural norms driving workplace harm and integrity issues and create clear initiatives toward mitigating harm.

The workplace harm and integrity risk management framework must be supported by specific training and guidance for managers and supervisors on how to utilise and report against the framework. It should be linked to the proposed enhanced data systems and dashboard for monitoring system-wide risks.

**Recommendation 4.19**  
**Leadership knowledge on prevention of workplace harm and integrity risks**

The Department of Justice and Community Safety should develop tailored training for Corrections Victoria leadership, including local site-based managers and supervisors, to ensure that they have skills in preventing workplace harm and integrity risks. This training should help leaders:

- a) understand the law and departmental policy addressing misconduct and the measures that the Department of Justice and Community Safety is undertaking to prevent harm in the custodial workplace
- b) can identify the drivers and risk factors of workplace harm in the custodial workplace and understand the impact of harm on the safety, psychological wellbeing and capability of the workforce
- c) understand laws and regulations relating to integrity issues in the custodial workplace, and can identify integrity risks associated with use of force, strip searching, restraints and other behaviour management techniques
- d) can identify the indicators of workplace harm in their workplace, the specific drivers and risk factors of harm, and understand and can support the success of mechanisms in place to mitigate harm from occurring
- e) understand reporting, complaints and investigations pathways, and can support complaints through these processes

	<p>f) hold themselves and other accountable for meeting high standards of behaviour that align with the values of the Victorian public sector.</p>
<p><b>Recommendation 4.20</b>  <b>Clear responsibilities for safe workplaces in leadership role requirements</b></p>	<p>The Department of Justice and Community Safety should embed responsibility for preventing and responding to workplace harm in all position descriptions, role requirements and key performance indicators for corrections staff who have leadership functions, to support clear accountability for creating and maintaining safe and respectful workplaces.</p> <p>Embedding accountability in this way should:</p> <ul style="list-style-type: none"> <li>a) require leaders to role model the highest standards of workplace conduct and drive a culturally safe, integrity-oriented and respectful workplace</li> <li>b) be attached to promotional and higher-duties opportunities, with expectations commensurate with the seniority and responsibility of roles.</li> </ul>
<p><b>Recommendation 4.21</b>  <b>A messaging and communications strategy to create safer custodial workplaces</b></p>	<p>The Department of Justice and Community Safety and Corrections Victoria should develop an ongoing messaging and communications strategy for the corrections workforce that:</p> <ul style="list-style-type: none"> <li>a) sets out a clear commitment to prevent unlawful and harmful conduct and support complainants and create safe and respectful workplace for all custodial employees</li> <li>b) articulates the expected standards for behaviour for the workforce, affirming that workplace harm is unlawful, inconsistent with Victorian Public Sector Values, may substantiate misconduct and will not be tolerated</li> <li>c) provides information on the processes for reporting harm, including information on how to access complaints and reporting pathways.</li> </ul>

## **PART 5**

### **Aboriginal cultural safety**

#### **Recommendation 5.1**

**Clear accountability for delivering a more culturally safe environment and more culturally responsive services**

The Department of Justice and Community Safety should embed individual responsibility for creating a more culturally safe environment through the delivery of more culturally responsive services in key documents, policies and processes, to support clear accountability consistent with existing laws, standards and policies.

Accountability for the delivery of culturally responsive services should be articulated in all:

- a) position descriptions
- b) contracts
- c) departmental performance measurements

The performance measures should be developed in conjunction with the Aboriginal Justice Caucus and others as part of the development of a community-led framework for a more culturally safe custodial system.

#### **Recommendation 5.2**

**An outcomes framework to create a more culturally safe adult custodial corrections system in a process led by Aboriginal people**

The Department of Justice and Community Safety should work with Victoria's Aboriginal community to develop an outcomes framework for a more culturally safe adult custodial corrections system. The development of the framework should involve the Aboriginal Justice Caucus, Aboriginal community-controlled organisations, Aboriginal staff and Aboriginal people in custody and their families.

This process should be adequately funded. The outcomes framework should:

- a) identify principles and approaches to ensure programs and services support the health and wellbeing of Aboriginal people and help reduce reoffending by Aboriginal people
- b) identify the quantitative and qualitative data that the Department of Justice and Community Safety should collect and report on to demonstrate its accountability for delivering a more culturally responsive custodial system, including identifying culturally appropriate processes for collecting, maintaining and using this data consistent with data sovereignty principles
- c) identify clear outcomes and measures for assessing and monitoring the level of cultural responsiveness and experiences of cultural safety within the custodial system
- d) specify a clear and ongoing commitment from the Department of Justice and Community Safety to adequately resource partnerships with Aboriginal organisations that can support the delivery of a more culturally responsive custodial services.

**Recommendation 5.3**

**A new statutory positive duty to increase cultural safety for Aboriginal people in custody**

The Department of Justice and Community Safety should develop a positive duty to consider cultural rights and provide a culturally safe environment, in consultation with the Aboriginal community, as part of proposed reforms to the *Corrections Act 1986*.

The positive duty will require corrections leaders, staff and service providers to proactively ensure their services consider and respond to the cultural needs of Aboriginal people and uphold cultural rights through action in the following domains:

- a) **Knowledge** – Ensuring that staff understand the importance of cultural safety, responsiveness and rights within the workplace and the custodial system through comprehensive training and education on cultural awareness, unconscious bias, and systemic discrimination.
- b) **Prevention** – Ensuring all relevant legislation, policies and programs within the adult custodial corrections system support cultural responsiveness and contain guidance on preventing and responding to discrimination and racism.
- c) **Capability** – Ensuring that staff, managers, and leaders have opportunities to build their own cultural awareness and competence over time, and ensuring that staff, managers, and leaders consistently demonstrate culturally appropriate and respectful behaviour.

This positive duty should apply to, and be considered explicitly in, all strategic and operational decision-making associated with the operation of the adult custodial corrections system.

The positive duty should be supported by dedicated guidance material and mandatory training for all people working within the adult custodial corrections system, which all staff should complete within 12 months of its implementation. Mandatory refresher training should also be required.

Compliance with the positive duty will need to be measured regularly. Measurements should be developed in consultation with the Victorian Aboriginal community, including the Aboriginal Justice Caucus, the Victorian Aboriginal Community-Controlled Health Organisation, the Victorian Aboriginal Legal Service, and others.

An appropriate review and enforcement mechanism should be developed as part of the statutory development process. The Cultural Review considers that the proposed Aboriginal Inspector of Adult Custodial Services could have a role in monitoring and enforcing the positive duty.

**Recommendation 5.4**

**More Aboriginal people in leadership roles across the system**

The Department of Justice and Community Safety should create a new role of Assistant Commissioner, Custodial Operations, to be filled by an Aboriginal and/or Torres Strait Islander person.

**Recommendation 5.5**  
**Ongoing cultural safety education that is tailored for the custodial environment**

The Department of Justice and Community Safety should work with the Aboriginal Justice Caucus, Aboriginal community-controlled health organisations, other Aboriginal community-controlled organisations (including the Victorian Aboriginal Legal Service and Djirra) and people with lived experience of custody to develop new training to support a more culturally safe custodial environment

This training should be provided to all Departmental executives, operational leaders and managers and corrections staff.

It should be a contractual requirement for private prisons that all executives, staff, and management undertake equivalent training.

The training should be specifically developed for the adult custodial corrections system and focus on developing knowledge, capability and skills to provide a culturally responsive environment for Aboriginal people.

The new training program should:

- a) be mandatory for all existing corrections staff to complete within 12 months of the training being implemented; and for new staff to complete within one month of beginning their role
- b) require mandatory ongoing training every two years – completion of refresher training should be considered as part of ongoing performance development and professional supervision
- c) include tailored sessions for people in leadership roles across the corrections workforce
- d) include self-reflection and consideration of unconscious bias
- e) include specific attention to the impact of interpersonal and structural racism and discrimination on Aboriginal people and communities
- f) include specific attention to:
  - Victoria's Charter of Human Rights and Responsibilities
  - the United Nations Convention on the Rights of Indigenous Peoples
  - key recommendations of the Royal Commission into Aboriginal Deaths in Custody
  - the proposed outcomes framework developed through the community-led process
  - the proposed custodial standards for Aboriginal people in custody.

<p><b>Recommendation 5.6</b>  <b>Enhanced role for Aboriginal Elders to create an adult custodial corrections system that better responds to the needs of Aboriginal people</b></p>	<p>The Department of Justice and Community Safety should provide resourcing to appropriately engage a network of local Elders and Respected Persons to provide advice and share local cultural information with custodial leadership teams, and support connections to community for staff and Aboriginal people in custody.</p> <p>There should be opportunities for Elders and Respected Persons who are working with local prison leadership to share their knowledge and experiences with department executive leadership, to support knowledge transfer and improve cultural safety for Aboriginal people across the adult custodial corrections system.</p>
<p><b>Recommendation 5.7</b>  <b>Facilities provide adequate and accessible cultural spaces</b></p>	<p>Within two years of receipt of this report, all existing prisons must include a dedicated, permanent and accessible cultural space that is designated for cultural practices by Aboriginal people.</p>
<p><b>Recommendation 5.8</b>  <b>Safer health services and continuity of care for Aboriginal people</b></p>	<p>The Department of Justice and Community Safety should commission a Victorian Aboriginal community-controlled health organisation, peak body or Aboriginal consultancy service to develop a model of care for Aboriginal people in custody. The model of care should:</p> <ol style="list-style-type: none"> <li>a) be developed via a funded process in consultation with Aboriginal people in custody and their families, service providers, and stakeholder organisations with understanding of the needs of Aboriginal people in custody</li> <li>b) take into account intersectional issues that may affect Aboriginal people in custody</li> <li>c) recognise the diverse roles and supports that might contribute to holistic health and wellbeing support for Aboriginal people</li> <li>d) support equivalent healthcare outcomes and continuity of care for Aboriginal people</li> <li>e) be clear enough to provide guidance across the state, but flexible enough to account for the local adaptations that will be required to suit particular facilities and communities.</li> </ol>

<p><b>Recommendation 5.9</b> <b>Access to regular Aboriginal health checks</b></p>	<p>The Department of Justice and Community Safety should provide more comprehensive, regular and culturally safe access to health assessments and health checks by:</p> <ul style="list-style-type: none"><li>a) offering Aboriginal people in custody the regular MBS Item 715 health check that they would be entitled to in the community in recognition of particular health risks for Aboriginal people. This check is to be provided in addition to other standard health checks and assessments available to people in custody</li><li>b) ensuring that health assessment and screenings of Aboriginal people are conducted by an Aboriginal health provider or professional or where that is not possible by a non-Indigenous health professional supported by an Aboriginal person.</li></ul>
<p><b>Recommendation 5.10</b> <b>Culturally appropriate mental health screening tool for Aboriginal people</b></p>	<p>The Department of Justice and Community Safety should work with Aboriginal community-controlled health organisations and peak bodies to identify and validate a culturally appropriate screening tool to assess any mental health issues for Aboriginal people entering the adult custodial corrections system. The screening tool should be administered as part of ongoing mental health care for Aboriginal people in custody.</p>
<p><b>Recommendation 5.11</b> <b>A holistic approach to health, wellbeing and rehabilitation for Aboriginal women</b></p>	<p>The Department of Justice and Community Safety must engage specific expertise to develop and embed a holistic approach to meeting the health, social and wellbeing needs of Aboriginal women. This approach should:</p> <ul style="list-style-type: none"><li>a) recognise Aboriginal women are more likely to experience PTSD and other forms of trauma</li><li>b) provide a culturally safe environment to support healing and engage in cultural practices</li><li>c) include access to healing centres as part of a holistic approach to health and wellbeing.</li><li>d) ensure comprehensive and culturally safe assessment that includes examination of the health and wellbeing needs of Aboriginal women in custody, including her health, antenatal and postnatal care, housing requirements, placement of children, access to alcohol and other drug services, and thorough medical assessments and follow up plans.</li><li>e) sustain and develop connections with family, community, Country and culture to help them rehabilitate and transition back into the general community upon their release.</li></ul>



**Recommendation 5.12**  
**Culturally responsive**  
**throughcare, case**  
**management and**  
**transition planning**

The Department of Justice and Community Safety should increase the cultural support available for Aboriginal people to support rehabilitation, reintegration and an integrated and person-centred approach to case management.

This cultural support should include:

- a) specific health and wellbeing supports for Aboriginal people entering custody on remand
- b) increased involvement of Aboriginal people in case management planning, review and transition processes for Aboriginal people in custody, including Aboriginal Elders, family members and community supports
- c) continued access for Aboriginal people to culturally informed transition programs and facilities
- d) ensuring that all decision-makers give effect to the cultural rights when making decisions relating to an Aboriginal people in custody.

**Recommendation 5.13**  
**Aboriginal Workforce Plan**

The Department of Justice and Community Safety should develop an Aboriginal Workforce Plan to guide the recruitment, retention, supervision and career development for Aboriginal staff within leadership and operational roles in the adult custodial corrections system.

Development of the Aboriginal Workforce Plan should be led by Aboriginal people and involve consultation with Aboriginal staff and the Aboriginal community.

The Aboriginal Workforce Plan should include:

- a) an increase in the number of Aboriginal people in operational and system leadership for the adult custodial corrections system
- b) strategies to identify and address racism, discrimination and unconscious bias in recruitment and selection processes and decision-making
- c) action to eliminate barriers to workforce participation by Aboriginal people, including the processes for screening for conflicts of interest and criminal records
- d) ensuring that position descriptions reflect the specific expertise and experience of Aboriginal people, and the responsibilities they hold to community
- e) access to culturally safe management support and leadership
- f) support for lateral entry and secondment opportunities to support career progression for Aboriginal people across the Department of Justice and Community Safety and Aboriginal community-controlled organisations
- g) access to wellbeing support that is adapted to the custodial environment and the challenges for Aboriginal people working within prisons.
- h) support for system-wide and facility-based staff networks
- i) support for peer mentoring programs
- j) exit interviews with all Aboriginal staff leaving the adult custodial corrections system.

**Recommendation 5.14**  
**Providing effective line management and cultural supervision support to Aboriginal staff**

The Department of Justice and Community Safety should require all supervisors and managers to complete mandatory training to ensure they have the skills and cultural competency to provide culturally responsive supervision and management of Aboriginal staff.

This training should be facilitated by an Aboriginal person with support from Aboriginal staff.

In addition to regular workplace supervision, Aboriginal staff should have access to mandatory and regular cultural supervision provided by an Aboriginal person.

**Recommendation 5.15****Attracting, retaining and supporting Aboriginal wellbeing officers**

The Department of Justice and Community Safety should recognise the significant role responsibilities of the Aboriginal wellbeing officers and ensure that these roles have:

- a) appropriate pay and conditions to attract, retain and support Aboriginal people in these roles at all locations
- b) culturally competent management support to minimise the risks of vicarious trauma, excessive cultural load and individual burnout
- c) a workforce ratio model that:
  - provides at least one Aboriginal wellbeing officer at each location
  - includes workload guidance for Aboriginal wellbeing officers, including the number of Aboriginal people in custody an Aboriginal wellbeing officer can be expected to support – noting that the number may vary across security ratings, with additional capacity required at front-end prisons and those with high remand populations
  - facilitates the creation of additional Aboriginal wellbeing officer positions where the number of Aboriginal people in custody at a single location exceeds the capacity limits described in the workplace guidance
- d) increased staff support at intake where there is greater risk for Aboriginal people in custody and increased workload demands on Aboriginal Wellbeing Officers.
- e) access to elements of pre-service training provided to custodial officers on issues critical to the performance of Aboriginal wellbeing officer roles, including professional boundaries and case management.

**Recommendation 5.16****Ensure Aboriginal liaison officers have access to specialist training and support**

The Department of Justice and Community Safety require Aboriginal liaison officers to complete specialist training on Aboriginal culture and identity, communication styles and preferences before taking on the responsibilities of the role.

This should be in addition to any routine cultural safety training provided to custodial officers and should be refreshed on a regular basis.

## **PART 6**

### **People in custody**

#### **Recommendation 6.1**

##### **Investing in accommodation and infrastructure that supports individual needs and human rights of vulnerable cohorts**

The Department of Justice and Community Safety should ensure that accommodation, infrastructure and specialist staffing across the adult custodial corrections system meet human rights standards and better support the needs of vulnerable cohorts including people with disability, people with cognitive impairment, young people, trans and gender diverse people, older people and people with other physical, behavioural or wellbeing needs, noting:

- a) the significant number of people with cognitive disability living in custody and inadequate specialist accommodation
- b) inadequate youth-specific units across the system
- c) trans and gender-diverse people frequently being placed in management units or under restrictive regimes due to a lack of appropriate accommodation options that align with their gender identity
- d) that the conditions within and state of repair of some management units, particularly Swan 2 at the Dame Phyllis Frost Centre, are not fit-for-purpose or compliant with human rights standards and should be closed immediately.

Existing newer facilities should be repurposed in place of older facilities that do not meet appropriate standards.

#### **Recommendation 6.2**

##### **Embedding person-centred approaches to support rehabilitation**

The Department of Justice and Community Safety should embed person-centred approaches across the adult custodial corrections system that:

- a) reflect the updated purpose and principles of the revised legislation, including to support rehabilitation
- b) support regular, positive interactions between staff and people in custody
- c) ensure that there are sufficient resources for effective case management, including rostering arrangements
- d) link system performance measures for case management processes to individual outcomes (as part of the broader review of service delivery outcomes)
- e) better enable connections with family and community supports, including participation by family and community supports in case management and other custodial processes
- f) involve people in custody in decision-making and case-management discussions that affect them
- g) better integrate and connect with other services and supports provided to people in custody – these commitments should be specifically reflected in the revised legislation.

<p><b>Recommendation 6.3</b> Improved connections with family, friends and community supports</p>	<p>The Department of Justice and Community Safety should increase opportunities for people in custody to maintain and build connections and relationships with family and community supports.</p> <p>The Department should:</p> <ul style="list-style-type: none"> <li>a) ensure that placement decisions concerning people in custody take into account the location of existing family and community supports</li> <li>b) improve access to telephone calls for people in custody and reduce the cost</li> <li>c) introduce ongoing web-based communication options</li> <li>d) embed the use of tablets and other technology solutions that were successfully piloted during the COVID-19 pandemic</li> <li>e) introduce a subsidised visitors program to support families with the travel and accommodation costs associated with visiting people in custody</li> <li>f) expand funding for culturally safe, community-led programs to help people in custody from culturally and linguistically diverse backgrounds build, repair and maintain relationships with their families and communities.</li> <li>g) increase access to community permits for home visits for eligible people in custody.</li> </ul>
<p><b>Recommendation 6.4</b> A framework for fair, transparent and ethical decisions concerning people in custody</p>	<p>The Department of Justice and Community Safety should develop and implement an ethical decision-making framework to help corrections staff ensure they make decisions that are fair, transparent and compatible with the system purpose, principles and human rights.</p> <p>This should include examples of best practice decision-making and include prompts for corrections officers to consider individual circumstances, ensure procedural fairness and reflect on their decision-making to support continuous improvement.</p> <p>The framework should incorporate:</p> <ul style="list-style-type: none"> <li>a) an assessment of any decision that limits the human rights of a person in custody against the requirements in Victoria's Charter of Human Rights and Responsibilities</li> <li>b) consideration of a person's cognitive disability or other attribute that may limit their understanding of a decision or have a disproportionate impact on their wellbeing</li> <li>c) tools to identify and address unconscious bias, racism and any potential, perceived or actual conflicts of interest</li> <li>d) transparency, record-keeping and good communication with people in custody.</li> </ul>

**Recommendation 6.5**  
**Routine strip-searching phased out and replaced with technology**

The Department of Justice should phase out routine strip-searching of people in custody and replace this process with technology (such as advanced body scanners already available at some locations), enhanced intelligence capability and risk assessment, as part of proposed reforms to the *Corrections Act 1986*.

The phasing-out of routine strip-searching should ensure this practice:

- a) is only used as a last resort when it is absolutely necessary and where less intrusive measures have been exhausted
- b) is not used as a deterrent, punishment or for any other improper purpose
- c) should be informed by a specific and reasonable intelligence-based risk assessment
- d) considers any individual circumstances that may mean strip-searches pose additional wellbeing risks to the individual – for example, because of their age, disability or history of sexual victimisation or violence.

**Recommendation 6.6**  
**Clear guidance on the use of separations**

The Department of Justice and Community Safety should create clear guidance for corrections staff on the use of separations with a focus for staff on understanding the harmful effects of separation and the requirement to ensure the human rights of people in custody are not unnecessary limited.

This guidance should require that separation:

- a) is not used where less restrictive options are available
- b) considers any individual circumstances that may mean separation creates additional wellbeing risks to the individual – for example, because of their age, disability, mental health or history of trauma.
- c) should not amount to solitary confinement
- d) should not interfere with a person's access to services and supports, including family and community-based supports
- e) should be subject to regular independent review to assess whether it continues to be necessary
- f) where deemed necessary, its use and the reason is recorded.

Specific consideration should also be given and recorded in relation to the use of separation for Aboriginal and Torres Strait Islander people in custody.

Where a decision is made to separate a person in accordance with the updated decision-making guidance, the human rights and impact of the separation on the person should be actively considered and monitored. At a minimum, a person should be actively supported to access:

- a) regular medical and psychological care

	<ul style="list-style-type: none"> <li>b) daily wellbeing visits from peer mentors, corrections staff, disability support staff, Elders and Respected Persons and others</li> <li>c) independent review of the decision</li> <li>d) ongoing connection to programs, services and family and community-based supports</li> </ul> <p>Management units should be adequately resourced to enable people to be escorted to and supervised while accessing these supports and services.</p>
<p><b>Recommendation 6.7</b>  <b>Improved fairness, transparency and oversight of prison disciplinary processes</b></p>	<p>The Department of Justice and Community Safety should update prison disciplinary processes to make them fairer, more consistent and more transparent.</p> <p>The department should:</p> <ul style="list-style-type: none"> <li>a) include specific guidance on the purpose of prison disciplinary processes in proposed reforms to the <i>Corrections Act 1986</i>, including the requirement for procedural fairness</li> <li>b) include a merits review process for all disciplinary penalties (including those outside of the disciplinary hearing process) in proposed reforms to the <i>Corrections Act 1986</i></li> <li>c) ensure there is a dedicated team within the Department of Justice and Community Safety to conduct prison disciplinary hearings and related internal reviews, including staff with relevant operational and administrative decision-making expertise</li> <li>d) ensure that custodial and departmental staff with duties and responsibilities relating to disciplinary hearings have access to specific training on ethical decision-making, procedural fairness and restorative justice practices.</li> </ul>

<p><b>Recommendation 6.8</b> <b>Proportionate responses and outcomes in disciplinary processes</b></p>	<p>The Department of Justice and Community Safety should accept and implement the Victorian Ombudsman's recommendation to develop and implement a strategy to reduce the number of minor offences that proceed to hearing stage, including through a formalised and consistent minor offence process, behaviour management plans and other alternatives to disciplinary hearings.</p> <p>The Cultural Review recommends that the minor offence strategy should include:</p> <ul style="list-style-type: none"><li>a) clear differentiation between minor and serious prison offences, including a framework of penalties proportionate to the seriousness of the prison offence – this could include a suspended penalty option with requirements to participate in diversionary approaches (see below)</li><li>b) diversionary case management and restorative justice approaches for responding to minor prison offences, focused on resolving conflicts and promoting positive interpersonal relationships – this could include external facilitators leading dispute resolution conversations and the development of participant-led solutions</li><li>c) opportunities to limit indirect impacts of prison offences on parole, prison placement, segregation and access to visits, particularly for minor offences</li><li>d) appropriate training for all corrections staff in conflict resolution, trauma-informed practice and exercising fair and ethical discretionary decision-making in relation to the behaviour of people in custody.</li></ul>
<p><b>Recommendation 6.9</b> <b>Access to cultural support during disciplinary processes</b></p>	<p>The Department of Justice and Community Safety must ensure that independent cultural support is provided to Aboriginal people in custody for disciplinary processes in accordance with existing requirements. This should include the option for support to be provided by an Aboriginal Wellbeing Officer, Elder or Respected Person, family member or community member.</p>
<p><b>Recommendation 6.10</b> <b>Independent advice and support service for people in custody</b></p>	<p>The Department of Justice and Community Safety should establish a dedicated and independent advice service for people in custody, to give them access to timely independent advice and support in relation to their rights and legal issues.</p> <p>The service should provide a combination of legal advocacy and non-legal referrals. To meet the diverse and intersecting needs of people in custody, it should:</p> <ul style="list-style-type: none"><li>a) be available at all prison locations</li><li>b) deliver multidisciplinary and integrated advice, support and referrals</li><li>c) provide advice and advocacy in relation to prison processes, including disciplinary hearings</li></ul>



	<ul style="list-style-type: none"> <li>d) include culturally informed and responsive services for Aboriginal people in custody</li> <li>e) support people to understand their rights and relevant complaint pathways</li> <li>f) undertake research and advocacy based on the assistance it provides to people in custody.</li> </ul> <p>The Department of Justice and Community Safety should convene a working group to oversee the development of the service. The working group should include services working within the adult custodial corrections system, including Aboriginal and non-Aboriginal legal services, the Office of the Public Advocate, community services, and the Victorian Ombudsman. The needs and experiences of system users should also be included in the development of the service model.</p>
<p><b>Recommendation 6.11</b>  <b>Access to electronic request and complaints processes for people in custody</b></p>	<p>The Department of Justice and Community Safety should implement a centrally monitored electronic process for requests and complaints from people in custody, to increase efficiency and accountability. This should include resourcing the use of in cell technology solutions and communal kiosks to support people in custody to log requests or make an electronic complaint.</p>
<p><b>Recommendation 6.12</b>  <b>Recognising the right to equivalent standard of healthcare in the legislative framework</b></p>	<p>The Victorian Government should include the right to equivalent healthcare and health outcomes as a minimum standard in the proposed reforms to the <i>Corrections Act 1986</i>.</p> <p>The revised legislation should adopt relevant international standards for the delivery of healthcare and specify that:</p> <ul style="list-style-type: none"> <li>a) people in custody should enjoy the same standards of healthcare that are available in the community</li> <li>b) the adult custodial corrections system should aim to achieve the same healthcare outcomes for people in custody as in the community</li> <li>c) healthcare services should be provided free of charge to people in custody</li> <li>d) people in custody should have access to necessary healthcare services whether they are sentenced or on remand</li> <li>e) people in custody should have access to continuity of care, to the greatest extent possible.</li> </ul> <p>The right to equivalent healthcare and health outcomes should be reflected in all relevant operational policies, procedures and guidelines.</p>

<p><b>Recommendation 6.13</b>  <b>A public health approach to custodial healthcare</b></p>	<p>The Victorian Government should urgently implement an adequately resourced public health model for delivery and oversight of health services across the adult custodial corrections system.</p> <p>In line with other Victorian public health services, these new arrangements should:</p> <ul style="list-style-type: none"> <li>a) adopt best practice clinical oversight</li> <li>b) respond to the particular physical and mental health vulnerabilities of people in custody</li> <li>c) enable better continuity of care between the community and custodial environment.</li> </ul>
<p><b>Recommendation 6.14</b>  <b>Improved data systems and information management to support access to appropriate healthcare and better measurement of health and wellbeing outcomes</b></p>	<p>The Department of Justice and Community Safety should upgrade its data systems for managing health information to improve integration and facilitate access to current and accurate health information.</p> <p>These upgrades should ensure the DJCS can track, assess and validate equivalency of health outcomes for people in custody in accordance with the outcomes framework and the measurement of health outcomes under the future public health model for custodial healthcare delivery.</p> <p>The data systems should also support overall system monitoring and reporting on:</p> <ul style="list-style-type: none"> <li>a) health profile and needs of people in custody</li> <li>b) completion rates for health assessments</li> <li>c) missed appointments or disrupted access to medical care due to transfer between locations</li> <li>d) assessment of health outcomes based on a broad concept of health and wellbeing across the system.</li> </ul> <p>The Department of Justice and Community Safety should also consider the development of technological capability and systems to enable people in custody to contact health providers directly, including scheduling appointments and requesting medication.</p>
<p><b>Recommendation 6.15</b>  <b>Outcomes framework to support monitoring and reporting on equivalent health outcomes for people in custody</b></p>	<p>The Department of Justice and Community Safety should develop an outcomes framework to monitor and report on health outcomes for people in custody, as part of the development of a new public health model.</p> <p>The outcomes framework should:</p> <ul style="list-style-type: none"> <li>a) align with the integrated understanding of health and wellbeing in the Healthy Prison model and include clear accountability for defined health and wellbeing outcomes within the custodial system.</li> <li>b) be developed in consultation with people in custody, their families and carers, healthcare service providers, and the Victorian Aboriginal Community-Controlled Health Organisation. It should draw on the Victorian Public Health</li> </ul>

	<p>and Wellbeing Outcomes Framework as a starting point. should include goals, measures, strategies, accountabilities and resources required for successful implementation of the public health model for the adult custodial corrections system.</p> <p>c) recognise and respond to the specific health needs of women, older people, Aboriginal people, people from culturally and linguistically diverse backgrounds and LGBTQI+ people.</p> <p>The Department of Justice and Community Safety should report publicly against the outcomes framework and compare outcomes for people in custody with those of the Victorian community.</p> <p>Results of the self-reported experiences of people in custody through the Healthy Prison Survey should be included in the assessment of outcomes.</p>
<p><b>Recommendation 6.16</b> Enhanced reception processes to identify individual needs and risks</p>	<p>The Department of Justice and Community Safety should ensure that appropriately qualified and trained health practitioners perform rapid assessments of all people entering custody within 24 hours of their arrival, including screening for cognitive impairment and intellectual disability. A full preventive health check – based on Royal Australian College of General Practitioners guidelines – should be performed within a week of entry into the adult custodial corrections system.</p>
<p><b>Recommendation 6.17</b> Model of care and clinical standards for people in custody</p>	<p>The Department of Justice and Community Safety should work with the Department of Health to develop and publish a model of care and clear clinical standards for custodial healthcare, to ensure that people in custody receive timely, appropriate healthcare that meets their needs and supports public health outcomes identified in the outcomes framework.</p> <p>The model of care and clinical standards should be developed in consultation with people in custody, service providers and stakeholders with understanding of the specific health needs, experiences and considerations for different cohorts.</p> <p>The model of care and clinical standards should support people in custody with particular and intersectional needs, including:</p> <ul style="list-style-type: none"> <li>a) older people, including those with age-related conditions such as dementia or mobility</li> <li>b) transgender people in custody</li> <li>c) people with intellectual disability, acquired brain injury or other cognitive impairment</li> <li>d) women.</li> </ul>

<p><b>Recommendation 6.18</b> <b>Therapeutic spaces and environments to improve health outcomes for people in custody</b></p>	<p>The Department of Justice and Community Safety should conduct an audit of the physical design of existing health and clinical facilities across the adult custodial corrections system to ensure that people in custody can receive healthcare in a therapeutic and safe environment and do not experience barriers to accessing healthcare.</p> <p>This audit should assess current facilities against principles of:</p> <ul style="list-style-type: none"><li>a) human rights, including cultural rights and cultural safety</li><li>b) person-centred care</li><li>c) trauma-informed practice and therapeutic design</li><li>d) safety and risk monitoring.</li></ul> <p>This audit should be completed within 12 months of receipt of this report. In line with the audit's findings, any recommended upgrades to existing facilities and the establishment of new clinical spaces should be resourced and implemented.</p>
<p><b>Recommendation 6.19</b> <b>Collaborative and joined-up governance arrangements</b></p>	<p>The Department of Justice and Community Safety should partner with the Department of Health and health service providers to establish governance arrangements to support the proposed public health model for delivery and oversight of health services across the adult custodial corrections system. These governance arrangements should include:</p> <ul style="list-style-type: none"><li>a) regular operational service delivery meetings between custodial locations and health service providers</li><li>b) case review, debriefing and reflective practices that identify opportunities to improve the care provided to people in custody</li><li>c) joint training sessions between corrections staff and health staff to develop shared understanding of roles, approaches and responsibilities within the adult custodial corrections system</li><li>d) clear lines of accountability and responsibility for the delivery of primary health services within prisons, including escalation pathways for issues of concern.</li></ul>

**Recommendation 6.20**  
**Minimum training and capability requirements for healthcare providers**

The Department of Justice and Community Safety should specify staff training requirements in any contractual arrangements for the delivery of health services within the adult custodial corrections system, to ensure that staff delivering healthcare to people in custody have relevant knowledge of key health, social and wellbeing considerations for custodial environments.

Staff delivering healthcare should receive training on:

- a) social determinants of health
- b) social and environmental factors relating to offending behaviour
- c) addiction and substance use disorders
- d) Aboriginal cultural safety, with a focus on key issues for Aboriginal people in custody
- e) trauma-informed practice
- f) responding to mental health needs
- g) responding to cognitive impairment and disability
- h) responding to family violence
- i) responding to occupational violence and aggression.

Contractual arrangements should also require regular mandatory refresher training as part of ongoing professional development requirements.

**Recommendation 6.21**  
**Minimum training and capability requirements for custodial staff**

The Department of Justice and Community Safety should provide mandatory training for corrections staff on identifying behaviours, issues and risks that may require further health assessment, to support the safe management of people with complex or diverse needs in custody.

This training should include:

- a) addiction and substance use disorders
- b) mental health conditions
- c) cognitive impairment, including intellectual disability and acquired brain injury
- d) physical disability.







Building capability in these areas will help limit the use of behavioural management practices to manage health-related conditions.

The training should be embedded in the revised pre-service training and part of ongoing professional development. The Department of Justice and Community Safety should consider joint training sessions with healthcare providers to develop shared understanding and collaborative practices.

<p><b>Recommendation 6.22</b> <b>Offence-specific interventions are responsive to individual needs and circumstances</b></p>	<p>The Department of Justice and Community Safety should consider whether the timing and format of offence-specific interventions are responsive to individual need and provide alternatives to group-based interventions for people who cannot safely and/or effectively participate in group-based activities due to their individual circumstances.</p>
<p><b>Recommendation 6.23</b> <b>Increased connections to meaningful work and education programs to expand post-release opportunities</b></p>	<p>The Department of Justice and Community Safety should continue to expand the work and education opportunities available to people in custody to ensure they provide the skills, capabilities and qualifications to enable people to leave custody with expanded work and education opportunities.</p> <p>This should include:</p> <ul style="list-style-type: none"><li>a) expansion of industry schemes across the adult custodial corrections system to help people in custody secure stable and continuing employment upon release</li><li>b) ensuring that people in custody receive fair and appropriate remuneration for prison-based employment</li><li>c) expansion of the community permit scheme to help people in custody regularly access community work and education opportunities while they are in custody, and secure supporting stable and continuing employment upon release</li><li>d) expanded access to digital resources and technology to support digital literacy and inclusion</li><li>e) system-wide measures to track and report on the completion of education and training courses and qualifications by people in custody.</li></ul> <p>This should include consideration of whether there is equal opportunity in the work and education opportunities available to women in custody.</p> <p>Building on existing work within the system, particular attention should be given to building stable and well-remunerated industry and employment pathways for women leaving custody.</p>

<p><b>Recommendation 6.24</b>  <b>Intensive transitional support and access to community permits across custodial locations.</b></p>	<p>The Department of Justice and Community Safety should broaden access to the intensive transitional support available at Judy Lazarus Transition Centre across custodial settings. This should include increasing access to community permits across the adult custodial corrections system, commencing with eligible people at low- and medium-security prisons, to facilitate:</p> <ul style="list-style-type: none"> <li>a) community-based employment, training and education</li> <li>b) participation in family activities, home visits and daily routines</li> <li>c) participation in sport and recreation in the community</li> <li>d) access to health and other appointments and services in the community, including the use of warm referrals</li> </ul> <p>These opportunities should ideally be connected to the community that a person in custody is planning to return to. Specific attention should be given to the transitional needs of people with substance use disorders and mental health conditions to ensure they establish connections with services in the community they will return to.</p>
<p><b>Recommendation 6.25</b>  <b>Expanded access to residential transition programs</b></p>	<p>The Department of Justice and Community Safety should establish additional residential transition centres modelled on the Judy Lazarus Transition Centre, to provide better reintegration planning and support for more people in custody as they return to the community.</p> <p>The additional residential transition centres should include:</p> <ul style="list-style-type: none"> <li>a) a dedicated transition centre for women leaving custody</li> <li>b) a dedicated community-led transition centre for Aboriginal people leaving custody, developed in consultation with the Aboriginal community</li> <li>c) additional transition centres for men.</li> </ul>
<p><b>Recommendation 6.26</b>  <b>Enhanced rehabilitation transition support and planning to people on remand</b></p>	<p>The Department of Justice and Community Safety should consider further expanding access to programs for people on remand to ensure people released from remand and those sentenced to time served can receive essential rehabilitation and transition support before they are released back into the community.</p> <p>Specific and sufficient funding should be made available to health and community services organisations and Aboriginal community-controlled organisations to provide support and continuity of care for people on remand.</p> <p>People on remand should be able to participate in these programs without prejudicing the finalisation of their legal issue.</p>

# Navigating this report

<b>Part 1 Introduction</b> 	<b>Part 2 Systems</b> 	<b>Part 3 Workforce</b> 
<ul style="list-style-type: none"> <li>▶ How the Cultural Review was conducted, our methodology and engagement.</li> <li>▶ How the context and climate within the system impact culture.</li> <li>▶ How growth in the prison population and the increasing complexity of the prison population impact the climate of the adult custodial corrections system.</li> <li>▶ The critical role of the adult custodial corrections system within the broader social services system.</li> <li>▶ A snapshot of the state of culture.</li> <li>▶ Enabling culture change when implementing this report.</li> </ul>	<ul style="list-style-type: none"> <li>▶ A new legislative framework that articulates the purpose and key principles for the adult custodial corrections system.</li> <li>▶ Stronger transparency and accountability processes, including a new Inspectorate of Custodial Services.</li> <li>▶ Developing a culture of transparency and continuous improvement, based on better system data and the lived experience of system users.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Improved recognition, wellbeing support and workplace supervision for the custodial workforce.</li> <li>▶ A new approach to pre-service training at a new Centre for Correctional Practice and increased access to ongoing professional development including mandatory refresher training.</li> <li>▶ A program for lateral entry.</li> <li>▶ Supported pathways towards enhanced case management, including additional senior specialist roles.</li> <li>▶ Improved system and operational leadership capability and building the leadership pipeline.</li> </ul>
<b>Part 4 Conduct</b> 	<b>Part 5 Aboriginal cultural safety</b> 	<b>Part 6 People in custody</b> 
<ul style="list-style-type: none"> <li>▶ Understanding, preventing and addressing unlawful and harmful workplace conduct.</li> <li>▶ Targeted and tailored workplace harm training for the corrections workforce.</li> <li>▶ Changes to reporting, complaints and misconduct policies and processes, including stronger risk management processes.</li> <li>▶ Supporting the workforce through person-centred complaints processes.</li> <li>▶ A restorative justice model for the custodial workforce.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Increased accountability for cultural safety within the adult custodial corrections system, developed in consultation with the Aboriginal community in a community-led process.</li> <li>▶ Stronger recognition of cultural rights in legislation and operational frameworks to increase safety of Aboriginal staff and Aboriginal people in custody.</li> <li>▶ Comprehensive education for the custodial workforce to improve cultural competency.</li> <li>▶ More Aboriginal people in leadership roles across the adult custodial corrections system.</li> <li>▶ Better cultural support and safety for Aboriginal staff.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Person-centred approaches to case management, including maintaining connections to family and community supports.</li> <li>▶ Fair and transparent decision-making processes (including decisions on the use of restrictive practices and disciplinary processes for people in custody) and supporting people in custody to understand and access their rights.</li> <li>▶ Person-centred healthcare services equivalent to public healthcare available in the community.</li> <li>▶ Access to rehabilitation and transition support that builds opportunities and connections in the community.</li> </ul>



# Part 1

## Introduction

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A vision for a safer, fairer, more modern and more capable adult custodial corrections system was at the heart of the Cultural Review of the Adult Custodial Corrections System (Cultural Review). Understanding the purpose, approach and scope of the Cultural Review and context and climate across the system will give meaning to our recommendations and pathway for reform.

In this part of the report, we outline the purpose, structure and process of the Cultural Review and examine the cultural influences, context and climate within the adult custodial corrections system. We reflect on the range of historical, legal, social and cultural factors that continue to influence the current experiences of the workforce and people in custody and note the need for significant investment to realise and sustain critical reforms. This part also provides a summary of our key recommendations and outlines the proposed cultural reform process, with key domains and implementation principles to drive change.

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 1. About the Cultural Review** outlines how the Cultural Review was conducted, the scope of our terms of reference, approach, methodology and engagement activities.
- ▶ **Chapter 2. Context and climate** describes the operation of the adult custodial corrections system including the context and climate in which the workforce operates and key factors that influence the culture across the system.
- ▶ **Chapter 3. Enabling cultural change** describes our plan for cultural reform, including an overview of the state of culture within the adult custodial corrections system.

## Acronyms and abbreviations

CALD	Culturally and linguistically diverse
CJS	Corrections and Justice Services
COG	Custodial Officer Grade
Cultural Review	Cultural Review of the Adult Custodial Corrections System
DJCS	Department of Justice and Community Safety
FMH	Forensic Mental Health
IBAC	Independent Broad-based Anti-Corruption Commission
JHREC	Justice Human Research Ethics Committee
LGBTIQ+	lesbian, gay, bisexual, trans and gender diverse, intersex, queer and others ('+') whose gender identity or sexual orientation is not represented by the letters
NPM	National Preventive Measure
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PPE	Personal Protective Equipment
VPS	Victorian Public Service
WPCC	Western Plains Correctional Centre

# 1 About the Cultural Review

The Victorian Government announced the Cultural Review in June 2021. Recognising the central role of the adult custodial corrections system in Victoria's broader justice system, the Cultural Review focused on examining cultural and integrity issues and identifying opportunities to create a safer system characterised by a clear purpose, respect, equality, transparency and support.

Custodial settings are complex and dynamic environments that must balance significant safety and security demands with the rehabilitation and reintegration needs of people in custody. The culture within Victoria's adult custodial corrections system is shaped by a range of factors that impact the safety and wellbeing of both corrections staff and people in custody. These factors include the implications of a 'closed environment', historical lack of diversity among staff, hierarchical command and control structures, and the differential power dynamic between staff and those in their care and control.

A number of recent inquiries and investigations by the Independent Broad-based Anti-Corruption Commission (IBAC) and the Victorian Ombudsman have identified significant cultural issues within the adult custodial corrections system, including excessive use of force, inappropriate strip-searching, inadequate internal investigations, and concerns about the transparency and fairness of prison disciplinary hearings and how the system upholds the rights of people in custody with cognitive impairment and disability. The Cultural Review was an opportunity to further interrogate these issues through a systems lens and identify solutions to improve safety and culture.

Concurrently, the Cultural Review provided an opportunity to amplify existing reform initiatives under the Victorian Aboriginal Justice Agreement and to build upon the Department of Justice and Community Safety's (DJCS) commitment to better prevent and respond to individual complaints and reports of staff misconduct, discrimination, sexual harassment and integrity breaches within the adult custodial corrections system.

The Cultural Review was also intent on understanding the experiences of staff who work across the system in challenging environments, providing recommendations to ensure that staff are appropriately recruited, trained and supported to carry out their role in a way that both protects their own safety and wellbeing and that of the people in their care.

Finally, the Cultural Review contributes to the body growing body of knowledge about reforming workplace culture which has emerged from recent independent reviews of Victorian public institutions such as Victoria Police, Victorian courts and tribunals and, most recently, Ambulance Victoria.

## Terms of Reference

The Cultural Review's Terms of Reference focused on culture, safety and inclusion, and integrity within Victoria's adult custodial corrections system.

Examining both private and public corrections facilities, the Cultural Review considered two streams of inquiry – promoting the wellbeing and safety of staff within the adult custodial corrections system, and ensuring the system is safe for people in custody and promotes rehabilitation.

The table below summarises key themes in the Terms of Reference. The dual streams of the Cultural Review highlight the strong connections between the experiences of staff working in the system and the experiences of people in custody.

Stream 1 – Custodial staff	Stream 2 – People in custody
<ul style="list-style-type: none"> <li>▶ <b>Addressing systemic behavioural and cultural challenges</b> Measures to address systemic behavioural and cultural challenges among and towards staff, impacting on staff wellbeing and safety.</li> <li>▶ <b>Preventing behavioural and cultural challenges</b> The effectiveness and appropriateness of DJCS systems and processes that prevent and respond to behavioural and cultural challenges to protect and preserve the wellbeing of all staff.</li> <li>▶ <b>Driving cultural change</b> Options to drive cultural change and promote appropriate behaviour that is consistent with a culturally safe and integrity-based corrections system, including options to address workforce skills and key capabilities (including leadership capability).</li> <li>▶ <b>Cultural support for Aboriginal workforce</b> Measures to ensure appropriate and effective cultural support for Aboriginal staff.</li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>Access to culture, experience of discrimination and self-determination for Aboriginal people living in prison</b> Whether systems and processes in prisons ensure that Aboriginal people in custody have the right to access and continue to practice culture, are free from discrimination, and are consistent with Aboriginal self-determination.</li> <li>▶ <b>Safety in custody for vulnerable cohorts</b> The effectiveness and appropriateness of DJCS systems and processes to support the safety of people in custody (noting issues experienced by particular groups such as women, Aboriginal people, lesbian, gay, bisexual, trans and gender diverse, intersex (LGBTIQ+) people, people with disability, elderly individuals and people from a culturally or linguistically diverse (CALD) background).</li> </ul>

See Appendix A for the full Terms of Reference.

## Related issues

While the Cultural Review examined a wide range of issues, there are some areas that were outside the scope of our Terms of Reference. These included:

- ▶ the experiences of people held in custody in police cells
- ▶ the experiences of police custody officers
- ▶ Victoria's community corrections system
- ▶ specific COVID-19 custodial arrangements
- ▶ legislation outside the portfolio of the Minister for Corrections.

While we have not made findings or recommendations in relation to these issues, we have considered broader justice and health systems as context to the Cultural Review and noted the system challenges due to COVID-19 which were a constant backdrop to our engagement during the Cultural Review period.

Where participants wished to discuss issues beyond the Cultural Review's scope, we provided referrals to support and complaint services.

### **Impacts from the COVID-19 pandemic**

The COVID-19 pandemic had significant impacts on the adult custodial corrections system between 2020 and 2022, and, at the time of writing, some of these impacts are ongoing.

At various points in the pandemic, prisons and correctional centres were locked down to contain identified outbreaks, and people entering custody or transferring between locations were required to undertake preventative quarantine to limit the risk of transmission. Operational changes included adjustments to cell allocations, meal distribution, long periods of quarantine isolation, restrictions on face-to-face visits, and the transition to virtual visits.

This period had significant impacts on the corrections workforce, too – staff navigated shifting operational demands, enhanced health and safety procedures, and the mandatory use of personal protective equipment (PPE) during their shifts. Staffing shortages were a recurrent feature of this period, with many staff furloughed after close contact with positive COVID-19 cases. Recruitment and training of new staff became more critical and challenging in an online context. Staff also had limited opportunities to come together informally in person.

While the impacts of the pandemic were outside the Cultural Review's Terms of Reference, this period shaped many of the experiences corrections staff and people in custody shared with us. Where possible, we have isolated pandemic-specific experiences from ongoing systemic issues, but it is important to recognise how this period has amplified the existing stresses experienced by people living and working in the adult custodial corrections system.

We have also highlighted better practices and innovations that have emerged due to COVID-19 constraints where these may enable ongoing enhancements to the culture within the adult custodial corrections environment.

## Conducting the Review

### Expert Panel and Review team

In commissioning the Cultural Review, the Minister for Corrections appointed a panel of three independent advisers to lead the project with the Review Lead – Kristen Hilton, former Victorian Equal Opportunity and Human Rights Commissioner.

The three expert advisers were:

- ▶ Greg Smith AM, former Deputy President of the Fair Work Commission
- ▶ Jill Gallagher AO, former Victorian Treaty Advancement Commissioner and CEO of the Victorian Aboriginal Community Controlled Health Organisation
- ▶ Tim Cartwright APM, former Victoria Police Deputy Commissioner and Victoria's inaugural Family Violence Reform Implementation Monitor.

The Expert Panel was supported by a team of researchers, recruited to the Cultural Review and annexed via DJCS. The Cultural Review team brought with them diverse experience across corrections, human rights, law reform, forensic intervention services, administration of justice, public policy and communications.

### Research phases

Commencing in August 2021, the Cultural Review was conducted over a number of phases:

- ▶ **Establishment – August to September 2021**  
During this phase, the Cultural Review was established, including finalising its scope and developing our research methodology in line with research ethics requirements.
- ▶ **Research and engagement – September 2021 to April 2022**  
During this phase, we gathered qualitative and quantitative data about the experiences of corrections staff and people in custody, as well as insights from organisational stakeholders, experts and advocates.
- ▶ **Analysis – November 2021 to April 2022**  
During this phase, we analysed the information received during the research and engagement phase, to build our understanding of common themes and experiences and identify strategies that could promote a more positive workplace and corrections culture.
- ▶ **Reporting – April 2022 to December 2022**  
During this phase, we finalised our findings and recommendations, discussed our proposed reform directions with key stakeholders, and submitted our report to the Minister for Corrections.

The timeline on the following page highlights key milestones throughout the Cultural Review.

## Delivering our report

At the conclusion of the Cultural Review in December 2022, this report was provided to the Minister for Corrections via the Secretary of DJCS and the Deputy Secretary, Corrections and Justice Services.

The Cultural Review will be examined by the Victorian Cabinet and, pending approval, released publicly.

## Our approach

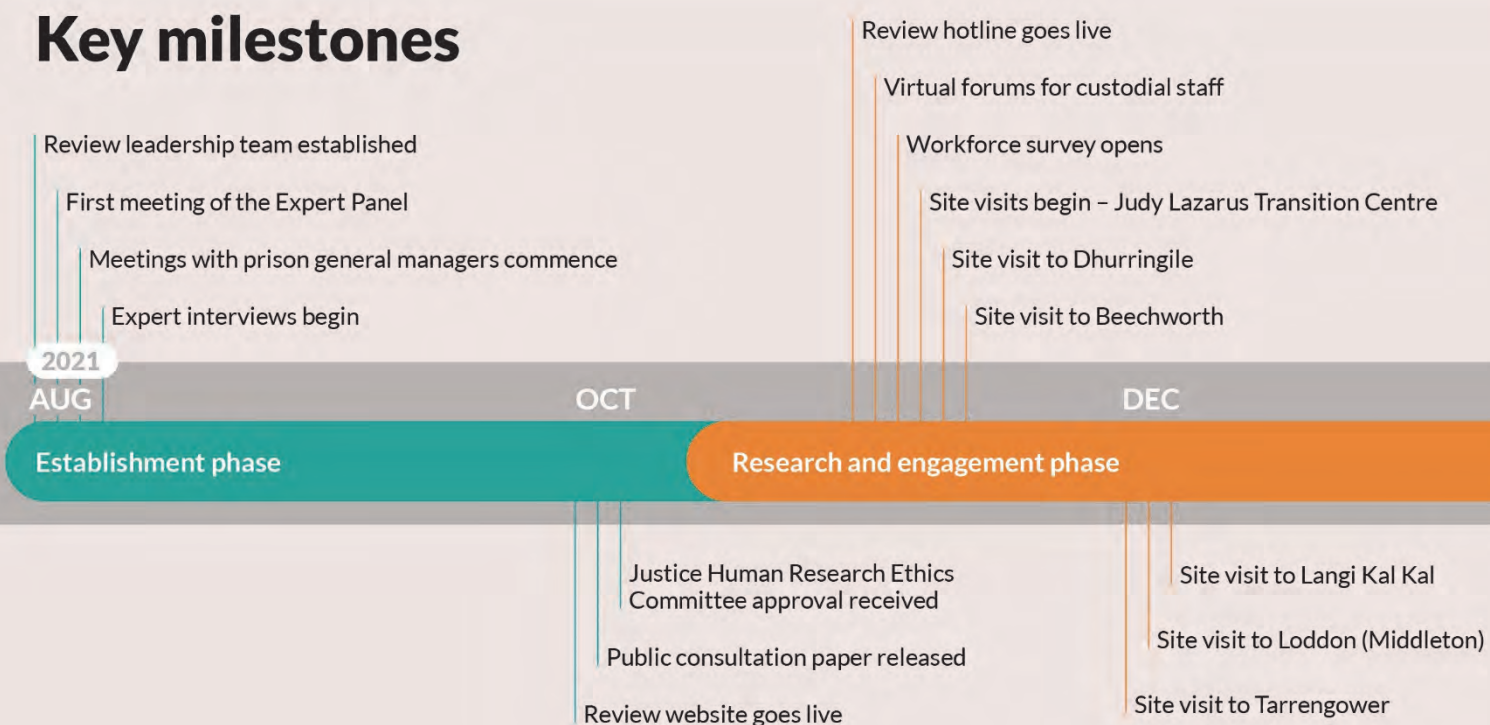
### Guiding principles

Several guiding principles underpinned our approach to the Cultural Review:

▶ **A consultative approach, prioritising lived experience**

Recognising the depth of expertise, research and professional experience within the adult custodial corrections system, we prioritised consultation with a wide network of corrections staff, people in custody and other experts throughout the Cultural Review. This included independent stakeholders and advocates – particularly those representing the key cohorts identified in the Terms of Reference – as well as executives within DJCS and Corrections Victoria, and the general managers at each prison and correctional centre. Collectively, this input played a critical role in building our understanding of the system, how

## Key milestones





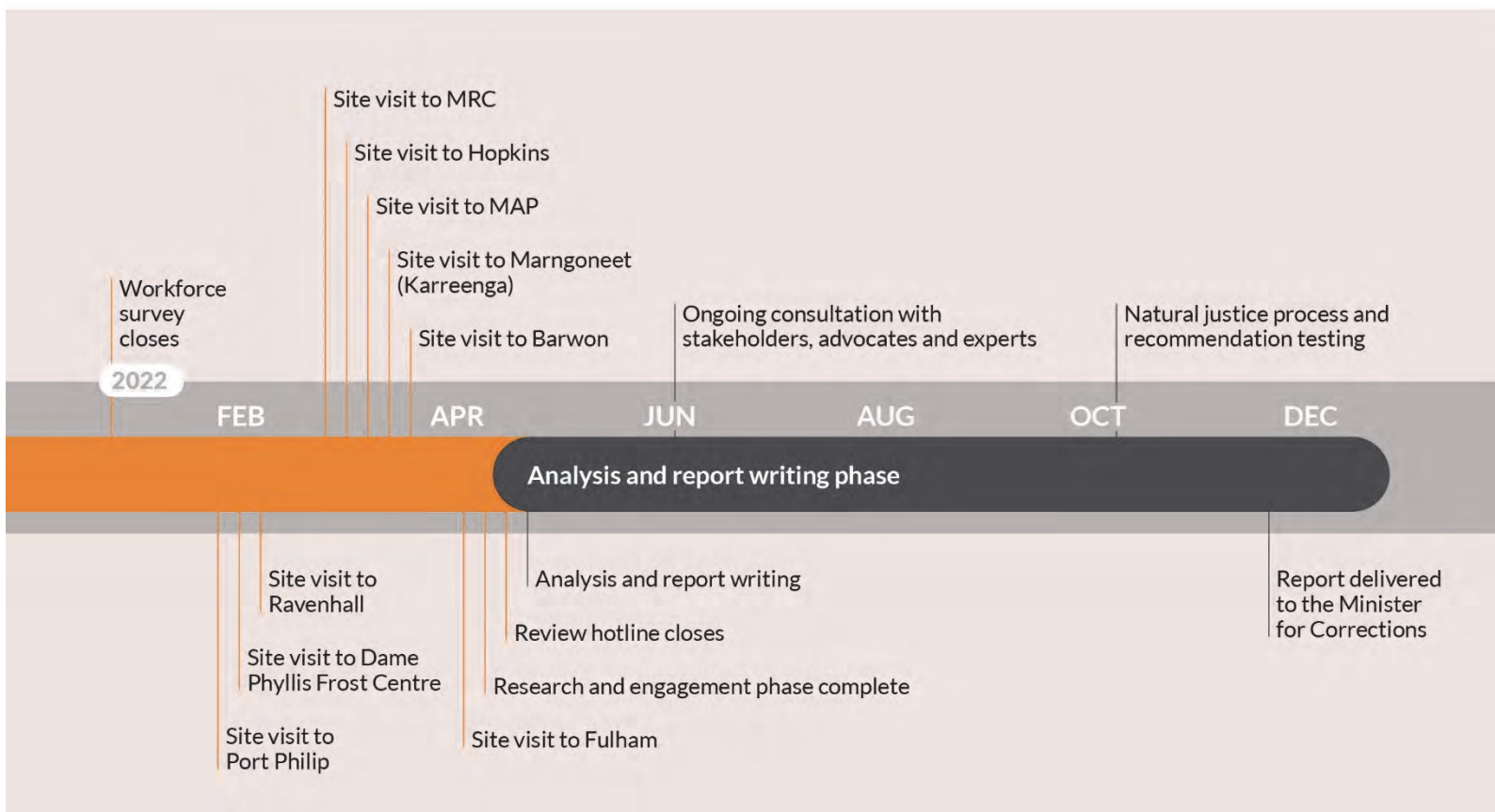
operational requirements shape the workplace culture and the opportunities for change. The opportunity to learn from those with lived experience of corrections environments provided crucial insights that shaped our findings and recommendations.

▶ **Trauma-informed engagement**

A trauma-informed approach acknowledges the enduring influence that past traumatic experiences can have on an individual’s actions and behaviours. Our engagement with both corrections staff and people in custody acknowledged the impact of past trauma, recognised the signs and symptoms, and actively managed the risk of re-traumatisation when participants shared past traumatic experiences. Critical elements of this approach included ensuring participants had autonomy in the nature and extent of their engagement with us and that, where appropriate, Cultural Review team members could refer participants to support services.

▶ **Culturally safe engagement for Aboriginal participants**

Racism, discrimination, rehabilitation and cultural safety for Aboriginal participants – both staff and people in custody – are central themes in the Cultural Review’s Terms of Reference. Guided by our cultural safety plan, engagement with Aboriginal participants was led by Aboriginal team members wherever possible, including Expert Panel member Aunty Jill Gallagher AO, the Principal Aboriginal Policy and Engagement Officer and the Senior Aboriginal Engagement Officer. We developed tailored information to ensure Aboriginal



participants had the opportunity to form a culturally safe space for themselves in the Cultural Review process and could provide feedback to the Cultural Review team on what this means for them across their engagement. In some situations, creating culturally safe spaces required non-Aboriginal staff to abstain from attending certain engagement activities. Where possible, Aboriginal staff conducted interviews with Aboriginal participants. The principles of self-determination were embedded in our engagement processes, ensuring Aboriginal participants had autonomy to participate in a way that felt safe for them.

▶ **Recognising intersectionality**

Individual experiences of the workplace and custodial environment are often influenced by more than one personal attribute that interact to exacerbate conscious or unconscious bias, disadvantage and inequality. We took an intersectional approach where possible in examining the experiences of people working and living in Victoria's prisons and correctional centres. We sought to identify where people may experience unique forms of harm associated with having multiple personal attributes, such as being an Aboriginal person with a disability living in prison. Our qualitative research has revealed some differences between the experiences of people with different and/or multiple attributes, which are outlined throughout the report.

▶ **A systems approach**

The adult custodial corrections system is a network of publicly and privately operating prisons delivering services on behalf of the state of Victoria, administered through Corrections Victoria – a business unit within DJCS. There are strong organisational cultural and contextual factors that influence individual experiences across the system. Rather than focusing on individual custodial sites and local-level concerns, our research has identified system-level issues and influences and situated these within the broader justice and social services context. Our approach, consistent with the 'Healthy Prison' model developed by the World Health Organization, acknowledges the interconnections between workplace culture, the wellbeing and capability of staff and the experiences of people in custody.

▶ **Building on existing research**

The systemic focus of the Cultural Review's Terms of Reference locate it within a growing body of research into cultural reform within public authorities, managing integrity risks and developing safe and inclusive workplace cultures. Our approach aimed to contribute to this body of knowledge by building upon existing research and progressing relevant recommendations and reform initiatives outlined in investigations, inquiries and audits by Victoria's independent integrity bodies; independent reviews into workplace equality within key statutory authorities; and wide-ranging reform initiatives such as *Respect @ Work*, the Australian Human Rights Commission's report on the national inquiry into workplace sexual harassment.

## Building on existing recommendations for change

In undertaking our work, we benefited from the detailed thought and analysis of many reviews, inquiries and reports focused on improving culture, safety, integrity and outcomes in the adult custodial corrections system and the promotion of safety at work.<sup>15</sup>

We closely considered the following reports:

- ▶ *Investigation into Good Practice When Conducting Prison Disciplinary Hearings* – Victorian Ombudsman (2021)
- ▶ *Investigation into the Imprisonment of a Woman Found Unfit to Stand Trial* – Victorian Ombudsman (2018)
- ▶ *Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria* – Victorian Ombudsman (2015)
- ▶ *Implementing OPCAT in Victoria: Report and Inspection of the Dame Phyllis Frost Centre* – Victorian Ombudsman (2017)
- ▶ *OPCAT in Victoria: A Thematic Investigation of Practices Related to Solitary Confinement of Children and Young People* – Victorian Ombudsman (2019)
- ▶ *Ravenhall Prison: Rehabilitating and Reintegrating Prisoners* – Victorian Auditor-General's Office (2020)
- ▶ *Report on Investigations into the Use of Force at the Metropolitan Remand Centre and the Melbourne Assessment Prison* – Victorian Ombudsman (2022)
- ▶ *Safety and Cost Effectiveness of Private Prisons* – Victorian Auditor-General's Office (2018)
- ▶ *Special Report on Corrections* – IBAC (2021).

The implementation of many relevant recommendations from these and other inquiries remains 'in progress' – while there is continuing activity, there have been few departmental responses to recommendations that have resulted in clear and tangible changes in practice.<sup>16</sup>

Through our engagement processes and site visits, it has become clear that many of the system issues, risks and concerns about safety and outcomes for people in custody persist. These include:

- ▶ continued inadequate access to cultural support for Aboriginal people in custody, despite recommendations from the Royal Commission into Aboriginal Deaths in Custody more than 30 years ago, investigations by the Victorian Ombudsman

<sup>15</sup> See, for example, Royal Commission *into Aboriginal Deaths in Custody* (Final Report, April 1991); Royal Commission *into Victoria's Mental Health System* (Final Report, February 2021); Victorian Parliamentary Inquiry *into Victoria's Criminal Justice System* (Final Report, March 2022).

<sup>16</sup> Department of Justice and Community Safety, Summary of Department of Justice and Community Safety Audit Tracking Register, Data provided to the Cultural Review (June 2021).

and commitments in the Aboriginal Justice Agreement (see **Part 5. Aboriginal cultural safety** for further discussion)

- ▶ inadequate access to appropriate healthcare within the custodial environment, despite recommendations from the Royal Commission into Aboriginal Deaths in Custody, the Australian Law Reform Commission, the Royal Commission into Victoria's Mental Health System and the Victorian Ombudsman (see **Part 6. People in custody** for further discussion)
- ▶ routine use of restrictive practices (such as use of force, strip-searching, seclusion and restraint) that perpetuate trauma for vulnerable people in custody, despite recommendations from the Victorian Ombudsman (see **Part 6. People in custody** for further discussion)
- ▶ inadequate systems for data-recording and reporting despite recommendations from the Victorian Ombudsman, IBAC and the Victorian Auditor-General's Office (see **Part 2. Systems** for further discussion).
- ▶ enduring gaps in the internal monitoring and independent external oversight of the adult custodial corrections system (including private prisons), despite recommendations from the Victorian Ombudsman and the Victorian Auditor-General's Office (see **Part 2. Systems** for further discussion)
- ▶ inconsistent access to work, education and rehabilitation programs across the adult custodial corrections system, despite recommendations from the Victorian Ombudsman (see **Part 6. People in custody** for further discussion).

Through the Cultural Review, integrity bodies and DJCS (in its response to recent reports) asked us to consider certain existing recommendations directly relevant to our Terms of Reference.<sup>17</sup>

## Ethics requirements

### Ethics approval

Recognising the sensitive subject matter covered by the Cultural Review's Terms of Reference and the vulnerability of many prospective participants, we sought ethics approval from the Justice Human Research Ethics Committee (JHREC) before commencing our engagement with corrections staff and people in custody.

Our ethics application was supported by the Secretary of DJCS and the Koori Justice Unit, and received approval from JHREC on Friday 29 October 2021.

During the Research and Engagement phase of the Cultural Review, demand for participation exceeded our initial targets for confidential interviews and focus groups. To enable participation from as many corrections staff and people in custody as possible, we increased our targets and submitted an amendment to our initial JHREC application. We received approval from JHREC to extend the Cultural Review on 4 August 2022.

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<sup>17</sup> See for example, Victorian Ombudsman, *Report on Investigations into the Use of Force at the Metropolitan Remand Centre and the Melbourne Assessment Prison*, (Report, 2022) 5.

## Natural justice

In accordance with the Expert Panel's engagement, a draft of this report was provided to DJCS in October 2022 as part of the natural justice process.

This process sought to verify the accuracy of the information included in the report and invite DJCS to respond to any adverse comments, as well as findings and recommendations. Experts who had participated in expert interviews were also asked to approve the use of quotes from interviews.

DJCS provided its feedback on the draft report. The Expert Panel considered this feedback and, where required, made changes to the report before it was finalised and submitted to the Minister for Corrections.

## Engagement and research

### Methodology

To inform our findings and recommendations, the Cultural Review developed a rigorous and expansive evidence base. We undertook qualitative and quantitative analysis of the data we gathered, to identify systemic issues, common experiences and best-practice examples.

Our research methodology drew together:

- ▶ personal experiences from corrections staff and people in custody, gathered through direct engagement and written and oral submissions
- ▶ an online workforce survey for corrections staff
- ▶ analysis of existing datasets about the corrections workforce, prison population and adult custodial corrections system
- ▶ consultation with stakeholders, advocates and experts
- ▶ desktop research focusing on existing academic output, reports, inquiries and investigations.

### Participants

Over the course of the Cultural Review, some 1,716 individuals shared their experiences and expertise. These participants included:

- ▶ current and former corrections staff (54 per cent)
- ▶ people currently in custody, or who had been previously, along with family members and support people (41 per cent)
- ▶ a wide network of stakeholders, advocates and experts (5 per cent).

### **A note on terminology**

For the purpose of the Cultural Review, the term 'custodial staff' in the Terms of Reference was understood to refer to custodial officers and other corrections staff who ordinarily work in a Victorian prison or correctional centre and are employed privately or by Corrections Victoria and DJCS.

We considered the experiences of both uniformed and non-uniformed staff and adopted the term 'corrections staff' to refer to any staff who ordinarily work within the adult custodial corrections system.

When we use the term 'custodial staff' in this report, we mean staff who specifically perform uniformed roles.

### **Key cohorts – people in custody**

The second stream in the Cultural Review's Terms of Reference identifies cohorts that may have specific needs while in custody, including women, people with disability, older people, people from CALD backgrounds and LGBTIQ+ people.

Throughout the engagement period, we sought opportunities to engage with members of these cohorts as well as young people in custody. We planned our site visits to ensure we focused on particular cohorts over-represented in custody and sought support from specialist staff – for example, mentors and staff working with people with disability in custody. We also held focus groups focused on specific cohorts. Around 40 per cent of the people in custody who shared their experiences represent these groups.

We also invited participation from Aboriginal people living and working in the adult custodial corrections system. In total, 212 Aboriginal participants shared their experiences with the Cultural Review, comprising:

- ▶ 17 Aboriginal staff (9 confidential interviews, 4 submissions and 4 focus group participants) – from 67 staff (Custodial Officer Group (COG) and Victorian Public Service (VPS)) who identify as Aboriginal or Torres Strait Islander
- ▶ 214 Aboriginal people in custody (183 yarning circle participants, 5 confidential interviews and 41 submissions).

## **Documenting lived experience**

### **Distinguishing between the lived experience of different cohorts**

While the Cultural Review focused on systemic issues, our findings and recommendations emerged from the collective input of many individuals. Across both cohorts – corrections staff and people in custody – participants revealed some of the rich diversity of people living and working within the system.

Our approach recognised that some groups are more vulnerable to discrimination, sexual harassment, bullying and other unfair treatment – specifically, women, LGBTIQ+ people, people from CALD backgrounds, people with disability, and Aboriginal people. We gathered demographic data from participants in both cohorts and, where appropriate, we prioritised tailored engagement opportunities for

representatives of these groups – for example, dedicated focus groups for LGBTIQ+ people and yarning circles for Aboriginal participants.

Our qualitative and quantitative analysis reports any meaningful differences evident in the responses provided by members of these cohorts, but it should be noted that the relatively small sample size for various groups means different experiences may not be evident in statistical analysis.

We recognise that it is not possible to fully represent the diverse, intersectional and varied ways each person experiences custody, which will be influenced by their background and other circumstances.

### **Use of personal stories**

Throughout the Cultural Review, more than 1,700 individuals shared their experiences, often traumatic, with us. We extend our appreciation to every individual who participated.

The case studies, quotes and narratives in this report do not purport to represent the experiences of every person working or living in a Victorian prison or correctional centre. Rather, they are intended to illuminate the systemic issues at the heart of the Cultural Review, to demonstrate common experiences and to capture good practices that exist across the system.

In doing so, we have omitted some stories that may represent more disturbing examples of the experiences of corrections staff and people in custody, both to protect the reader and others who may find these stories triggering, and because we wish to provide a balanced picture of the current state of the adult custodial corrections system. While not visible in these pages, every story has in some way shaped this report and our understanding of the system.

Participants consented to the use of de-identified personal stories they shared in this report. We have identified quotes and studies that seek to highlight common themes.

### **Privacy and confidentiality**

To inform our findings and recommendations, we collected personal and often sensitive information from participants about their experiences living and working in the adult custodial corrections system. In line with our commitment to ensuring a trauma-informed approach, it was critical that we upheld participants' confidentiality and privacy.

To fulfil this commitment and our legal obligations under the *Privacy and Data Protection Act 2014*, prospective participants received information about the Cultural Review, how their information would be used, and our mandatory reporting obligations before they consented to participate. Any identifying information was redacted from written submissions and interview transcripts before they were analysed, and survey responses were disaggregated from any demographic data provided. As an additional assurance, Cultural Review team members and any third-party service providers signed confidentiality agreements.

### **Mandatory reporting**

The Cultural Review was subject to mandatory notification and reporting obligations under the *Independent Broad-based Anti-corruption Commission Act 2011*.

Under these obligations, there were some circumstances that required us to disclose information provided by participants to DJCS. Scenarios that may trigger a mandatory notification include a person providing information about potential criminal offences committed by current employees of DJCS; potential sexual offences committed against a child under the age of 16 years in Victoria; or potential public sector corruption or misconduct.

We assessed all disclosures for mandatory reporting and made notifications where it was required by the law.

## **Engagement with corrections staff and people in custody**

To reach as wide an audience as possible, our engagement strategy adopted a layered approach, giving participants access to a range of victim-centric and trauma-informed pathways to share their personal experiences safely and securely.

### **Promotion**

During the research and engagement phase, the Cultural Review hotline and website were important information sources for prospective participants. The hotline was accessible to members of the public and also available for unmonitored phone calls via the Prisoner Telephone System.

We received 282 enquiries via the hotline, 116 via email and 39 via the Cultural Review website. The website had 6,677 page views and 3,287 visits during the engagement period.

We also distributed promotional posters and signage, tailored for corrections staff and people in custody, to each site to inform prospective participants about the Cultural Review.

For corrections staff, we conducted a series of virtual forums to encourage participation and provide more information about the Cultural Review's processes for managing privacy and confidentiality.

### **Site visits**

Between November 2021 and April 2022, members of the Expert Panel and Cultural Review team visited each prison and correctional centre in Victoria.



Despite challenges presented by the COVID-19 pandemic, we were given access to all custodial sites and complied with pandemic risk management policies. Spending one to four days at each location, we engaged directly with corrections staff and people in custody, as well as spending time with prison general managers and their executive teams.

During site visits, we visited as many areas of the location as possible, conducted confidential interviews, focus groups and yarning circles, and gathered written and oral submissions, as well as engaging informally with corrections staff and people in custody. At each site, we spent time with people in custody and corrections staff at a range of units including protection, medical, management and high needs or disability units. We also visited industry across most sites.

In total, we spent 32 days on site, split fairly evenly across minimum-, medium- and maximum-security locations.

See Appendix D for the full schedule of site visits and Appendix F for a sample itinerary of a site visit.

# Engagement snapshot

**15**  
site visits

## 32 days onsite

8 days

Minimum security

12 days

Medium security

12 days

Maximum security

## 397 focus group participants

28%

72%

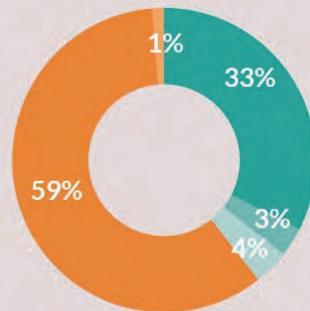
Corrections staff | People in custody

Including 14 Yarning Circles with 193 Aboriginal participants

**50**  
focus groups

**156**  
confidential  
interviews

## Interview participants



People in custody currently

People in custody previously

Family members and support people

Current corrections staff

Former corrections staff

**455**  
individual  
submissions  
(written + oral)

**102**

submissions from  
corrections staff

**353**

submissions from  
people in custody\*

**615**  
workforce  
survey  
responses

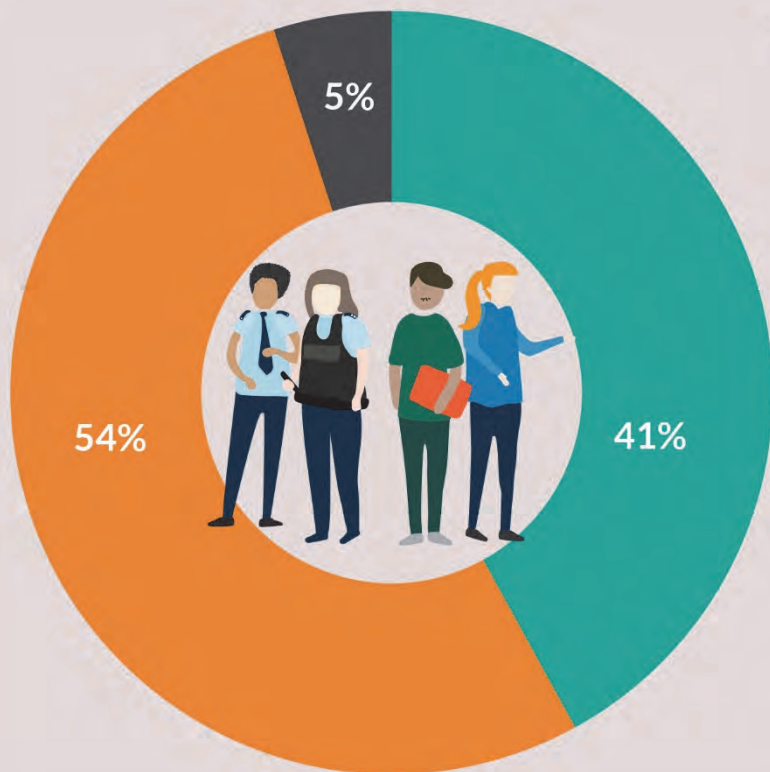
Includes 71 submissions that were invalid or blank.

# 59

expert interviews  
(DJCS and external stakeholders)

# 34

stakeholder submissions  
(external stakeholders)



# 1,716

participants overall

### Participants overall

- People in custody (currently, previously and family members and support people)
- Corrections staff (current and former)
- Department and external stakeholders

### **Confidential interviews**

Corrections staff and people in custody were invited to participate in semi-structured confidential interviews. Interviews ran for approximately 60 minutes and were conducted by Cultural Review team members experienced in dealing with sensitive matters.

Given the access limitations, we prioritised interviews with people in custody during site visits. For corrections staff, we conducted interviews during site visits where possible, or arranged time for virtual interviews via video call or telephone at a later date. Many staff felt more comfortable speaking with us off-site or online.

We conducted 97 confidential interviews with current and former corrections staff and 59 with people currently or previously in custody and their family members and support people.

### **Focus groups**

During site visits, we conducted focus groups with corrections staff and people in custody. Depending on the location, these groups were either for a general audience or tailored to specific cohorts (for example, leadership and general staff groups, 'prisoner representative groups', older people in custody, and so on).

We conducted 50 focus groups, attended by 114 corrections staff and 283 people in custody. This included 14 yarning circles for Aboriginal people in custody, attended by 193 participants. At most locations we met with a representative group for people in custody and offered staff focus groups.

### **Oral and written submissions**

The Cultural Review accepted written and oral submissions from corrections staff and people in custody throughout the research and engagement phase. Participants could upload submissions via our website or submit them via email or post. Where appropriate, Cultural Review team members supported some participants to make oral submissions via telephone or during site visits.

To encourage participation by people in custody, we distributed hardcopy submission forms and pre-addressed envelopes to all sites. This form included guiding, demographic and consent questions, and could be securely returned via DX.

We received 102 submissions from current and former corrections staff and 353 from people currently or previously in custody and their family members and support people.

### **Online workforce survey**

We engaged ORIMA Research to conduct an online workforce survey for corrections staff. The survey asked 73 questions and was open from November 2021 until January 2022. The survey was anonymous, and only disaggregated data was provided to the Cultural Review.

In total, 799 corrections staff registered for access and 615 responded to the survey. While this is a lower rate of participation than anticipated, it accords with the apprehension we heard from some corrections staff about participating in the Cultural Review, due to concerns about privacy and confidentiality.

We liaised with the Victorian Public Sector Commission to verify our analysis and ensure the response rate was sufficient and representative to inform our data findings.

See Appendix G for a full list of workforce survey questions.

### **Engagement with stakeholders, advocates and experts**

Guided by our consultative approach and desire to build on existing research, we engaged with a wide network of stakeholders, advocates and experts in the early stages of the Cultural Review.

#### **Organisational submissions**

We invited submissions from stakeholders, advocates and experts via our website and direct correspondence. To help focus organisations' submissions, we published a consultation paper on our website, which posed eight sets of guiding questions related to the Terms of Reference.

We received 34 public submissions. See Appendix B for the full list of submissions received.

#### **Expert interviews**

From September 2021 to May 2022, we conducted a suite of expert interviews with both independent stakeholders, advocates and experts and key executives within DJCS and Corrections Victoria.

These interviews examined operational strategies, existing research and best practice in custodial operations. They were professionally transcribed, and any quotes included in this report were approved by interview participants.

We conducted 59 expert interviews. See Appendix C for the full list of expert interviews.

## Key information and data sources

In parallel with our primary research with corrections staff and people in custody, we also conducted comprehensive desktop research and data analysis. We requested information and data from both DJCS and external agencies.

Through this process, we asked DJCS to provide:

- ▶ briefing documents, policies, procedures and strategies, including Commissioner's Requirements and Deputy Commissioner Instructions and local operating procedures
- ▶ information about programs and services available to people in custody, including current programs, policies, practices and supports for Aboriginal people, and any program evaluations that have been undertaken
- ▶ information about prison industries and rates of pay
- ▶ position descriptions, induction information and training modules for corrections staff
- ▶ monitoring and evaluation of private prison contracts, including service delivery outcomes
- ▶ information and communications about complaints pathways and reporting, assessment criteria and referrals to integrity bodies
- ▶ status updates on the implementation of recommendations from previous inquiries, investigations, audits and evaluations
- ▶ information about the Independent Prison Visitor Scheme and reporting mechanisms
- ▶ progress updates on the implementation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- ▶ demographic data about the workforce and prison population
- ▶ statistical data related to misconduct, disciplinary action against people in custody and corrections staff, integrity notifications, workers compensation, use of force, use of restraints, strip-searching, critical incidents, seclusion and separation, behaviour management plans and complaints handling.

We recognise and appreciate that it has been a resource-intensive exercise for DJCS to respond to these requests.

We also requested relevant data from the Victorian Ombudsman, IBAC, the Victorian Equal Opportunity and Human Rights Commission, and the Victorian Public Sector Commission.

## Limitations of our research

The Cultural Review's engagement and research activities yielded a significant evidence base which supported our findings and recommendations. However, it is important to acknowledge some limitations that impacted our engagement and research activities.

### Incomplete datasets

While DJCS endeavoured to fulfil our information requests, we note that some datasets proved challenging to supply. In some instances, datasets were incomplete, not regularly maintained or required significant manual analysis. Some information was not available because it could not be readily extracted from IT systems, while other data is only collected and maintained at individual locations, sometimes manually.

Further, access to information about private prisons was limited by information about private prison operations not being held centrally within DJCS.<sup>18</sup> This meant that some datasets we requested were not readily available as they are not held centrally by the department. This included detailed data on strip searching, workforce demographics, and staff misconduct matters at private prisons, all of which are monitored and recorded in a different format by each of the private prisons, limiting our capacity to draw comparisons across the public and private systems.

We have detailed where quality data was not available throughout this report. Challenges accessing data informed a number of our findings, and we have made recommendations to lift data and information management capability across the system.

### Limited information on some related reform processes

While DJCS provided regular updates to the Cultural Review on many reform projects, some policy areas critical to the Cultural Review's Terms of Reference remained opaque. This included the Victorian Government's progress toward the implementation of OPCAT which is due to commence in early 2023.<sup>19</sup> The recommendations we have made in relation to enhancing independent oversight of the adult custodial corrections system have been developed without the benefit of information about Victoria's planned approach for designating a National Preventive Mechanism under OPCAT.

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<sup>18</sup> Under current contractual arrangements, information on private prison performance and operations is primarily provided to DJCS through the assessment of operating instructions audits, Commissioner's Requirements audits, self-reported Service Delivery Outcomes (SDOs) and Key Performance Indicators (KPIs). In-depth analysis of staff performance and HR matters are the responsibility of private prison operators and DJCS does not undertake regular reviews of staff incidents that are not linked to prisoner welfare or security.

<sup>19</sup> There has been some recent progress in relation to the implementation of OPCAT in Victoria. As well as requiring signatory states to establish a system of regular preventive visits to places of detention by National Preventive Mechanisms, OPCAT also requires that signatories accept visits from the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Subcommittee). On 11 October 2022, the *Victorian Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* entered into force, providing for the Subcommittee to be able to visit places of detention in Victoria.

However, we expect our recommendations will contribute to the oversight landscape. At the time of writing, other major reform processes were underway, including investigations into Aboriginal deaths in custody and healthcare reform. We considered the available information about these reforms in forming our own recommendations.

### **Survey fatigue and scepticism about the potential for change**

Public sector employees are invited to participate in a range of surveys each year, including the whole-of-public-sector People Matter Survey, administered by the Victorian Public Sector Commission, as well as a range of surveys and other feedback tools at departmental, agency and business unit level. As a result, survey fatigue may have limited the participation of corrections staff in the Cultural Review, particularly the workforce survey. Our conversations with corrections staff during site visits hinted at this issue, where many staff voiced their belief that cultural issues within the adult custodial corrections system are well known, that they had previously voiced their concerns through other feedback mechanisms and that they doubted any positive change could come from another review. The sense of survey or consultation fatigue was heightened due to the demands on corrections staff time during the COVID-19 pandemic.

### **COVID-19 pandemic**

At the time of the Cultural Review, the corrections workforce had experienced the heightened stress and demands of frontline work during the peak of the COVID-19 pandemic. Staffing shortages, changes to operational procedures and extended lockdowns had all taken their toll on staff, and we believe that many staff had limited mental and emotional capacity to participate in the Cultural Review. Some staff were also unable to look beyond the immediate challenges of the COVID-19 operating environment, with concerns about PPE and other changes to their way of working front of mind.



## 2 Context and climate

The growing number of people in custody, the high proportion of people on remand, the ‘churn’ through the system and the complexity of the health, social, cultural and psychological needs of people entering the adult custodial corrections system are adding further complexity to an already challenging workplace. These influences have an impact on climate – which is shorthand for how it feels to work or live within the custodial environment. The system is also going through a sustained transition, characterised by changes to the operating context, the organisational structures and legal framework that have substantially altered the profile of people in custody and the configuration of the broader system.

Custodial environments are dynamic and complex places. Every day there are risks to the safety and wellbeing of people within custodial environments – both staff and people in custody.

Custodial staff work with highly vulnerable and, at times, dangerous people in what can be a heightened climate and environment. They face substantial occupational risks in their workplace, including an elevated risk of occupational violence and vicarious trauma. Most of this happens behind closed doors. This means that the critical and challenging work of custodial staff is not visible to, or understood by, the community.

One of the major tasks for the Cultural Review has been to understand the context and climate within Victoria’s prisons and correctional centres – and what factors influence the unique attitudes, behaviours and conduct which, in turn, shape the culture within the adult custodial corrections system.

## Key findings – Context and climate

- ▶ Within the corrections workforce and the broader community, there is a changing understanding of imprisonment and the purpose of the adult custodial corrections system.
- ▶ The system is moving toward a more rehabilitative approach; however, a number of legacy features – from a time when incarceration was disproportionately oriented towards security, order and control at the expense of therapeutic approaches – continue to influence custodial culture.
- ▶ A period of substantial growth in the prison population, including growth in the number of unsentenced people, has placed pressure on and reshaped elements of the adult custodial corrections system, including shifting the operating model at locations that were not designed for people on remand.
- ▶ The growth in different cohorts within the custodial environment, including women, older people, people from CALD backgrounds, people with disability and LGBTIQ+ people has revealed gaps in staff capability and the inadequacy of systems and processes to support the safety and rehabilitation of all people in custody.
- ▶ The continuing over-representation of Aboriginal people in custody has exposed limitations in the system's ability to ensure the cultural safety and wellbeing of Aboriginal people in custody.
- ▶ The recently completed Western Plains Correctional Centre, a maximum-security facility within the Barwon prison precinct, is an opportunity to introduce more modern technology and infrastructure and decommission existing unsafe facilities. However, to date there is no operational funding for the site.
- ▶ There is a disconnect between the adult custodial corrections system and broader justice and social services systems. There is a need to recognise the significant role of the adult custodial corrections system within the justice system, including an unrealised opportunity to work collaboratively to reduce recidivism.

## About the operation of the Victorian adult custodial corrections system

In Victoria, DJCS is responsible for the delivery of custodial services. Within DJCS, Corrections Victoria is the operational arm of DJCS that is responsible for prison operations, the post sentence scheme and program and service provision in prisons.<sup>20</sup>

Corrections Victoria is part of a broader Corrections and Justice Services (CJS) group that holds responsibility for policy, strategy and service design; prison health and AOD services (run by Justice Health); performance analysis and reporting of prison SDOs; and Community Correctional Services. Each of these business areas report to the Deputy Secretary of CJS, as does the Commissioner of Corrections Victoria.

Outside of CJS, the Evidence and Insights business unit within the Corporate Governance and Support group holds responsibility for prisoner data and analysis, research and evaluation services across DJCS. Human Resources, Employee Investigations, Information Technology, Finance, JARO, Corrupt Conduct and Investigations sit in other Divisions within DJCS.

There are fifteen prisons in Victoria. Twelve of these prisons are publicly operated while the remaining three are operated by private companies on behalf of the State of Victoria.<sup>21</sup> There are 5,131 custodial staff working in the adult custodial corrections system, with 3,586 employed at public locations and 1,545 employed within the three private prisons.

Victoria has a combination of maximum-, medium- and minimum-security prison locations across metropolitan and regional sites. Some locations have a large population of people in custody who have not been sentenced (remand population), while others only accommodate sentenced people. In recent years, the configuration of the system has changed to accommodate the larger remand population including in facilities that have previously only accommodated sentenced people.

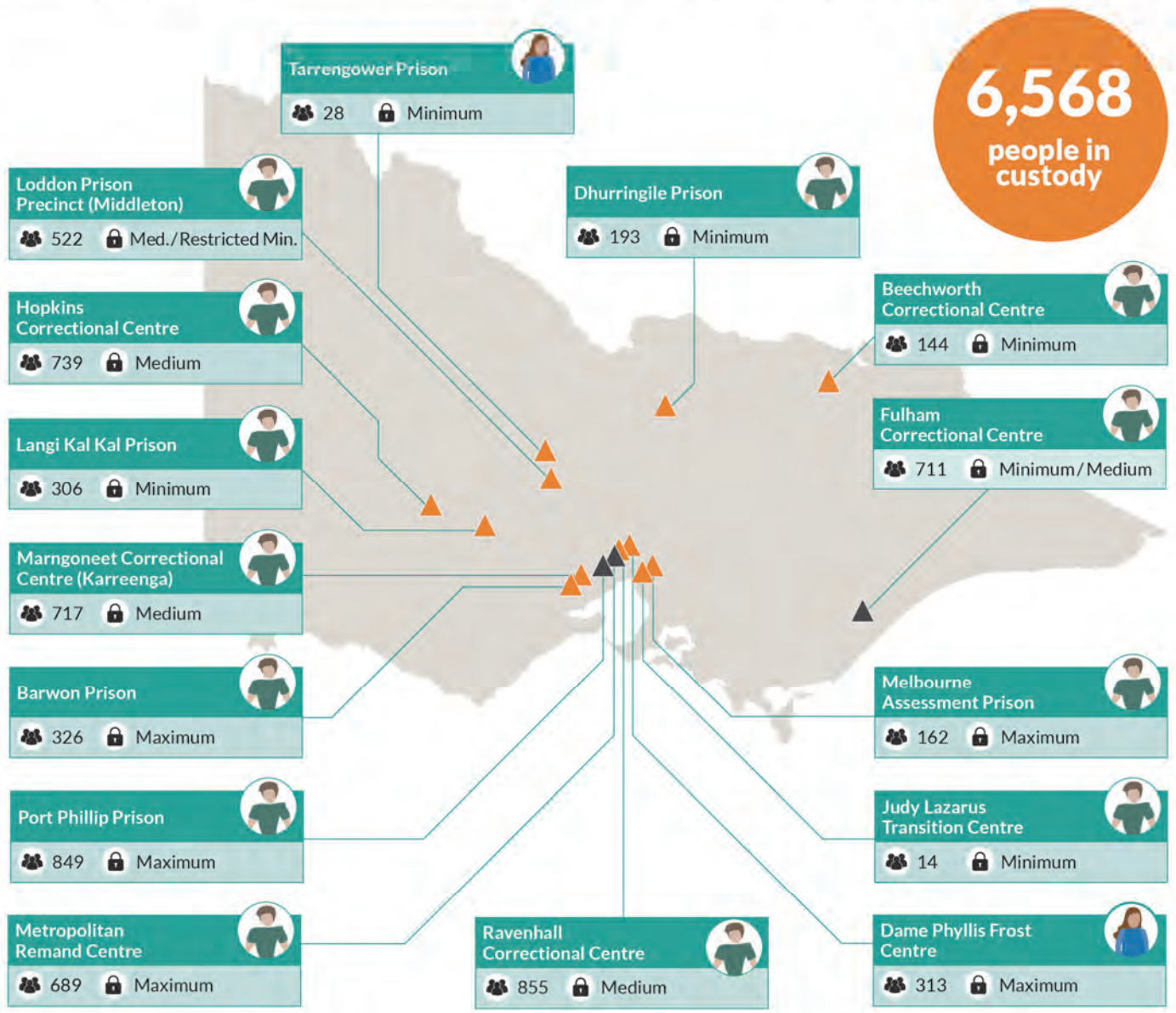
There are two dedicated facilities for women in custody – the Dame Phyllis Frost Centre and Tarrengower Prison.

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<sup>20</sup> The objective of Corrections Victoria is 'to deliver effective correctional services for a safe community'. This is supported by the Operations, Offender Management, Sentence Management and Security and Intelligence divisions within Corrections Victoria.

<sup>21</sup> Fulham Correctional Centre and Ravenhall Correctional Centre are managed by GEO Group, and Port Phillip Prison is managed by G4S.

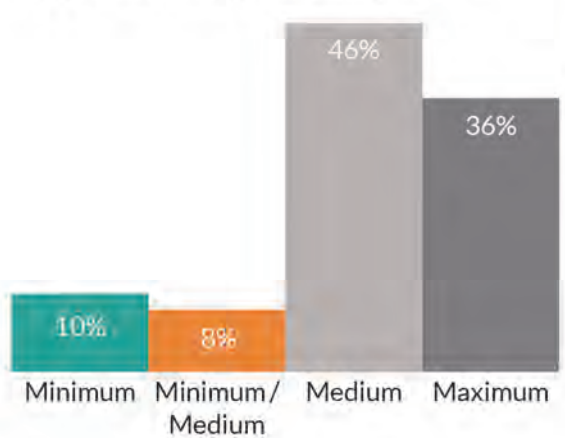
# Victoria's adult custodial corrections system



**Key**  
 Men's prison (Male icon) Women's prison (Female icon) Public prison (Orange triangle) Private prison (Black triangle) Population (at June 2022) (Group icon) Security level (Lock icon)

Source: Corrections Victoria, Monthly Prisoner and Offender Statistics (June 2022).

## Population by security level



## Demographics



## Prison industries

More than **1,400** people in custody working in prison industries

Metal product manufacturing – 8 locations  
 Assembly – 6 locations  
 Textiles, upholstery and clothing – 4 locations

Wooden product manufacturing – 4 locations  
 Construction – 1 location

Logistics and warehouse – 4 locations  
 Recycling – 1 location



Horticulture – 5 locations  
 Natural resource management – 5 locations  
 Agriculture – 4 locations

Retail – 13 locations  
 Hospitality – 9 locations  
 Food manufacturing and packaging – 4 locations  
 General services (laundry) – 1 location

Design services – 5 locations  
 Digital printing – 2 locations

Source: Corrections Victoria, Prison Industries Strategic Plan.

## Specialist units

Location					Specialist units		
	Mainstream	Protection	Sentenced	Remand	Health and disability	Security and protection	Special needs
Beechworth	▲	▲	▲				
Dhurringile	▲	▲	▲				– Special needs (Dhadjowa)
JLTC	▲	▲	▲				
Langi Kal Kal	▲	▲	▲				
Tarrengower	▲	▲	▲				– Living with Mum
Loddon (Middleton)	▲	▲	▲		– Cognitive impairment (Avoca)		
Fulham	▲	▲	▲	▲		– Management (Napier)	– Young medium security (Nalu)
Hopkins	▲	▲	▲	▲		– Management (Richardson) – Special protection (Mackenzie) – Detention (post-sentence) (Greenhill)	– Aged and special needs (Canton, Wimmera)
Marngoneet (Karreenga) <sup>1</sup>	▲	▲	▲	▲		– Management (Operational) – Management Centre – Separation (Stringybark)	
Ravenhall	▲	▲	▲	▲	– Forensic mental health (Ballert Yeram-boo-ee) – Medical (Hildene)	– Management (Forbes)	– Close supervision (Glenhope) – Young and vulnerable (Bambra, Bolinda)
Barwon	▲	▲	▲	▲		– High security (Acacia, Melaleuca, Olearia) – Management (Banksia) – High protection (Hoya) – Detention (post-sentence) (Piper)	
DPFC	▲	▲	▲	▲	– Mental health (Marrmak) – Drug treatment (Thompson 2)	– Management (Swan 2) – Protection (Murray)	– Complex needs (Rosewood) – Living with Mum
MAP	▲	▲	▲	▲	– Acute assessment (AAU)	– High protection (Bourke, Exhibition) – Management (Spring)	
MRC	▲	▲	▲	▲		– Management (Chartwell, Exford) – High protection (Deakin)	
Port Phillip	▲	▲	▲	▲	– Medical (St John's) – Psycho social (St Paul's) – Cognitive impairment (Marlborough)	– Management (Charlotte)	– Young and vulnerable (Penhyn)

<sup>1</sup> Marngoneet accomodates mainstream people in csutody; Karreenga accomodates protection people in custody.

There is a single community-based transition facility, the Judy Lazarus Transition Centre, which provides intensive transitional programs and a supervised pathway to the community for up to 25 men who are assessed as having high transitional needs. While safe and supported transition should be a central feature of the adult custodial corrections system, only a very small fraction of men can access this facility as part of the administration of their sentence. Other transitional programs and support, including contracted transitional support services, are available across the adult custodial corrections system and are described in further detail in Part 6 Chapter 23.

A further publicly operated prison, the Western Plains Correctional Centre (WPCC), was recently completed. It is designed to accommodate both sentenced and unsentenced people in custody and introduces more therapeutic prison design and infrastructure, including new technology to support enhanced case management. At the time of writing, WPCC had not been allocated operational funding to accommodate any men.

Each prison location is unique. According to DJCS, 'the system is configured to meet the needs of different cohorts and to provide tailored pathways through the system as people progress towards release.'<sup>22</sup> Notably, the 'character' of each prison location is shaped by:

- ▶ its role within the overall custodial pathway (whether a maximum-security front-end location where people enter custody or a minimum-security location housing people approaching the end of their sentence)
- ▶ the nature of the facilities and infrastructure
- ▶ its security rating
- ▶ in some cases, the identified needs of people in custody at that location.

Once a person enters the adult custodial corrections system, a range of factors determine their placement and pathway through the system – including whether they are sentenced or on remand, their classification/security (risk) rating<sup>23</sup>, their sentence plan and their gender.

A person's classification, placement and pathway through the adult custodial corrections system are guided by operational policies and frameworks that are anchored in legislative and regulatory requirements.<sup>24</sup> Decisions about the administration of a custodial sentence are not made by the sentencing court, but by DJCS and the decisions of the Sentence Management Panel and the Case Management Review Committee.

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<sup>22</sup> Department of Justice and Community Safety (Corrections Victoria), 'Custodial Operations in Victoria: Background brief for Prison Cultural Review', Data provided to the Cultural Review (2021). 4

<sup>23</sup> There is a six-tier system for security ratings for people in prison based on the level of risk (from highest to lowest) a person is assessed as posing to the safety of other people in custody, staff or themselves; the general security and good order of the prison; and the risk to the community (for example risk of escape or community sentiment based on a person's offending details): Ibid

<sup>24</sup> This includes the Sentence Management Manual and Offender Management Manual, which provide guidance to staff involved in sentence management functions.

Most people will spend time at more than one location during their time in custody. This may include moving between public and private prison locations. People may also be moved to a different location – for example to Port Phillip Prison or the Dame Phyllis Frost Centre – to access healthcare that is not made available at their usual location.

Through the Cultural Review, we saw that DJCS often takes care when making decisions about the movement of people in custody around the system. However, we also heard that some movement of people between prison locations is based on operational constraints rather than a balanced consideration of where a person in custody is best able to access the support that they need.

Recent changes to the operating landscape have further shaped the way that people move through the system and the shape of the custodial pathway. For example, Ravenhall Prison was originally intended to house sentenced people in custody; but due to limited capacity across the system, it now also accommodates people on remand.<sup>25</sup> This is discussed in more detail when we consider specific issues for staff and people in custody associated with the growing remand population in Part 6.

## **The adult custodial corrections system is a significant public sector employer and workplace**

The adult custodial corrections system is a significant public sector employer. It also supports private-sector employment through contractual arrangements with private prison operators at Ravenhall, Fulham and Port Phillip Prison.

A number of allied services – including health, forensic mental health, education and community services – operate within the custodial environment. However, these staff are not directly employed by DJCS.

As an employer, DJCS has obligations to provide a safe workplace for staff under Victoria's *Occupational Health and Safety Act 2004*. These obligations require DJCS to take actively ensure that staff are protected from unlawful workplace behaviours – including bullying, sexual harassment (see Part 4 of this report) – and that any operational risks that affect the safety of staff are appropriately identified and managed (see Part 3).

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<sup>25</sup> DJCS advised that all custodial locations except Loddon Prison house a number of people on remand.

## The nature of imprisonment and the custodial response to offending

Prisons have been part of the Victorian criminal justice landscape since 1845 when the first permanent prison was opened in Melbourne. At that time, there were 59 men and 9 women in custody.<sup>26</sup> Since then, there has been a growing and rapidly changing demand for custodial responses to offending. This has included the expansion of prison infrastructure, the temporary use of prison hulks (ships used as floating prisons), the commissioning and eventual closure of Pentridge Prison, and the steady increase in the number of prison locations now operating across Victoria.

A custodial sentence is now the most serious criminal justice outcome.

Traditionally, the dominant purpose of prisons was to protect the community by incapacitating people found guilty of serious criminal offences, as well as acting as a deterrent for others. However, the functions and purposes of the adult custodial corrections system have shifted over time. Now, almost half of the people in custody are simply there awaiting trial and have not been accused or convicted of serious criminal offending.

There is also a growing recognition that an effective criminal justice response needs to consider the underlying causes and circumstances of offending behaviour. Recent research also points to the tension between a short-term community safety outcome that imprisonment offers and whether the current conditions of imprisonment create a foundation for community safety in the long term.<sup>27</sup>

Most people in the adult custodial corrections system have complex issues and backgrounds of trauma. The social and economic factors that may contribute to offending behaviour are uncontroversial and entrenched:

- ▶ socio-economic disadvantage
- ▶ low educational attainment
- ▶ lack of employment opportunities
- ▶ housing instability and homelessness
- ▶ mental health conditions
- ▶ substance use and dependency
- ▶ social exclusion and isolation.

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<sup>26</sup> See generally Arie Freiberg, Stuart Ross & David Tait, 'Change and Stability in Sentencing: A Victorian Study' (1996) 13 *Law in Context* 10.

<sup>27</sup> See, for example, Queensland Productivity Commission, *Imprisonment and Recidivism*, (Final Report, 2019) 12.



Supporting people to identify, address and overcome these issues requires effort and attention across multiple service systems, including health, housing, education and community services. Due to their historical focus on security and safety, custodial settings are not generally trauma informed; however, there are opportunities to provide more responsive care and meet individuals' complex needs while they are in custody.

## The operation of the custodial system requires significant government expenditure

A custodial sentence is the most expensive criminal justice intervention, and the operation of the custodial system requires significant government investment.<sup>28</sup> The most recent Victorian Budget allocated over \$1.5 billion for the supervision and support of prisoners.<sup>29</sup> The increasing investment in prisons over recent years has largely been driven by the growing prison population and the need to increase system capacity. It also indicates that the system is not succeeding in its goal of rehabilitation. The recent growth in the custodial population is discussed further below.

The Productivity Commission reports that, in Victoria, it costs close to \$150,000 for a person to be held in custody for one year.<sup>30</sup> Despite the significant costs associated with the administration of custodial sentences, 37.7 per cent of people sentenced to custody in Victoria will return to prison within two years.<sup>31</sup> Close consideration of different ways of working within the custodial system must be explored to increase return on investment and deliver improved individual and community outcomes. In overseas jurisdictions the concept of 'we are releasing your neighbour' recognises that most people will eventually be released into the community and so the system has a responsibility to do all they can to reduce the risk of their reoffending.

There is also evidence that custodial environments can be criminogenic – that is, that they make a person more likely to engage in further offending.<sup>32</sup> This data is not surprising given that many of the solutions to the entrenched social and economic factors that can contribute to offending behaviours are not found within adult custodial corrections systems and that current processes and infrastructure may not be responsive to these needs. Where people return to custody, it also extends and

<sup>28</sup> See Productivity Commission, *Australia's Prison Dilemma*, (Report, 2021) 3.

<sup>29</sup> This represents a 10 per cent increase in the investment in prisoner supervision and support from the 2021/22 budget. This is largely due to the specific investment in the new Western Plains Correctional Centre. State of Victoria, *Victorian Budget Paper 3 (Service Delivery) 2022/23*, (Report, May 2022) <https://s3-ap-southeast-2.amazonaws.com/budgetfiles202223.budget.vic.gov.au/2022-23+State+Budget+-+Service+Delivery.pdf>.

<sup>30</sup> Productivity Commission, *Australia's Prison Dilemma*, (Report, 2021) 59. Note: this includes capital costs. Excluding capital costs, the 2019/20 net operating expenditure for keeping a person in custody for a year was \$117,895.

<sup>31</sup> DJCS recently changed the counting rules for the rate of recidivism. This has resulted in a reduced rate of recidivism for Victoria but aligns the calculation of rate of recidivism with other jurisdictions in Australia. See Corrections Victoria, *Measuring recidivism in the Victorian system*, (Web page, May 2022) <<https://www.corrections.vic.gov.au/measuring-recidivism-in-the-victorian-system>>.

<sup>32</sup> Productivity Commission, *Australia's Prison Dilemma*, (Report, 2021) 53.

compounds the indirect costs of imprisonment on individuals, families and communities.<sup>33</sup>

The Victorian Ombudsman has highlighted that the growing expenditure on prisons is not sustainable and that more effective options should be explored.<sup>34</sup> Other stakeholders have supported approaches that redirect funding away from the custodial system and directly invest in families and communities through justice reinvestment.<sup>35</sup>

There are significant opportunity costs associated with growing expenditure on prisons given the current fiscal climate. There is strong community interest in making changes to the system to ensure that the investment in the system delivers a return on investment. In this report, we have focussed on cultural change that will ensure the system maintains focus on improving long term community safety through rehabilitation and safe transition back to the community.

While this may require immediate investment, we anticipate that improving the conditions for rehabilitation and the capacity of the system to track and monitor performance against a clearly defined system purpose has the potential to deliver greater value for the Victorian community in the longer term. In Part 6 of this report, we set out how the system could be better oriented towards rehabilitation and supporting safe release, including by taking a person-centred approach and being more responsive to individual and complex needs.

## The system is under pressure

The Victorian adult custodial corrections system is under significant pressure. Changes to bail laws in 2017 resulted in more people being remanded in custody ahead of their court hearing. This has contributed to a period of growth in the number of people entering custody, triggered changes to the overall configuration of the adult custodial corrections system, and placed pressure on staff, systems and processes.

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<sup>33</sup> Productivity Commission, Australia's Prison Dilemma, (Report, 2021) 65-69.

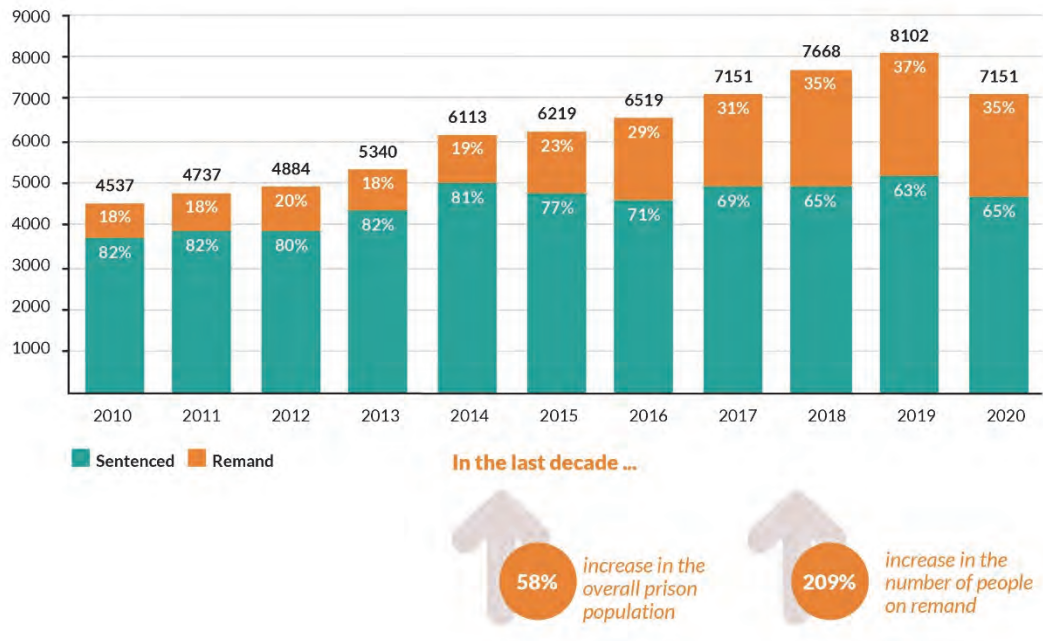
<sup>34</sup> Victorian Ombudsman *Prisons failing to keep us safe* (Web page, September 2015) <<https://www.ombudsman.vic.gov.au/our-impact/news/prisons-failing-to-keep-us-safe-ombudsman/>>

<sup>35</sup> See for example, Committee for Economic Development of Australia, *Double Jeopardy: The Economic and Social Costs of Keeping Women Behind Bars* (Report, 2022)

## Growth in Victoria's prison population

There was substantial growth in Victoria's custodial population between 2010 and 2020.

Overall prison population – sentenced and remand, 2010–20



As at June 2022, there were 6,568 people in custody within the adult custodial corrections system. This number includes 6,225 men and 343 women in custody.<sup>36</sup> Of those in custody, 2,769 people were unsentenced, including those on remand awaiting the hearing of their criminal charges and those awaiting sentence.<sup>37</sup>

<sup>36</sup> There are a number of transgender, non-binary and gender-diverse people in Victorian prisons and their placements or recorded gender may or may not accord with their gender identity. Department of Justice and Community Safety - Corrections Victoria, 'Monthly prisoner and offender statistics 2021-22' (Web Page, June 2022) < <https://www.corrections.vic.gov.au/monthly-prisoner-and-offender-statistics>>

<sup>37</sup> According to data provided by Corrections Victoria, 'Unsentenced prisoners' are persons who have been remanded to custody while awaiting the outcome of their court hearing. They may be unconvicted (remanded) or convicted but awaiting sentencing (remanded for sentencing). Unsentenced prisoners also includes any person who is subject to a Detention Order after the expiration of their sentence and where there are no other warrants holding them in prison. Department of Justice and Community Safety - Corrections Victoria, 'Monthly prisoner and offender statistics 2021-22' (Web Page, June 2022).

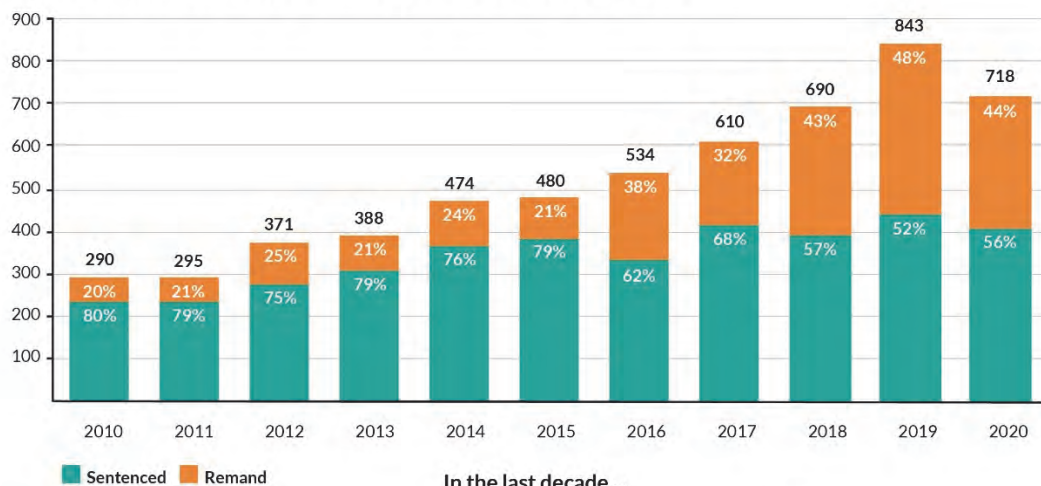
DJCS data also shows growth in certain cohorts between 2010 and 2020.<sup>38</sup>

In the last decade ...



Aboriginal people continue to be over-represented at every stage of the criminal justice process, including within the prison population. The number of Aboriginal people in custody grew 148 per cent between 2010 and 2020.<sup>39</sup> As at end June 2022, there were still 695 Aboriginal people in custody in Victoria.<sup>40</sup>

Aboriginal people in custody – sentenced and remand, 2010-20



In the last decade ...



Other community, policy and legal factors may also contribute to the growing number of people in custody in Victoria. These include community attitudes to offending, changes to bail and remand laws, the abolition of suspended sentences and the introduction of mandatory prison sentences for certain types of offending, such as assaults on emergency services workers.

The overall trend of growth in the custodial population was interrupted by the COVID-19 pandemic.

<sup>38</sup> Department of Justice and Community Safety - Corrections Victoria, *Profile of people in prison* (Infographic, 2020) [Infographic Profile of people in prison 2020.pdf](https://www.corrections.vic.gov.au/infographic-profile-of-people-in-prison-2020) (corrections.vic.gov.au).

<sup>39</sup> Ibid.

<sup>40</sup> Monthly data released by Corrections Victoria does not include specific data in relation to Aboriginal women in custody. It is understood that there has been significant growth in the number of Aboriginal women in custody, particularly Aboriginal women on remand.

## There is a growing proportion of people on remand

The growing proportion of people moving through the system on remand influences the role of staff and the daily operations of the adult custodial corrections system. People on remand are presumed to be innocent and have not been found guilty.

There are specific standards and requirements for the management of people on remand that give effect to international human rights laws and Victoria's Charter of Human Rights and Responsibilities. This includes separation of people on remand from people who have been sentenced and an expectation that people on remand will have access to their own clothing.

While the impact of a growing remand population has generally been concentrated at front-end locations, this impact has been felt at all maximum and medium security locations, with the exception of Loddon. Staff at some locations identified this shift as a strong influence on the climate and culture of their workplace.

'My biggest argument with the system is that they are not true to their purpose. The thing I love about Judy Lazarus Transition Centre and even Marngoneet Correctional Centre is that they were both built for a purpose, and they've tried very hard to maintain the integrity of that purpose. To build a place like [\*\*\*\*] that had all these bells and whistles attached to it, and was very forward-thinking and cutting edge and promised a lot, the minute government puts remand prisoners into a medium-security prison it's lost its integrity... Like all prison focus is on security, but... they lose their purpose, and they're limited in testing things because while technically it's not really classified as a maximum-security prison, but for all intents and purposes it runs like one. Part of the planning for Forensic Mental Health (FMH) – 95% of the prisoners that are in here are medium-security prisoners, but because of the nature of FMH being a maximum-security area, they miss out on lots of opportunities. They can't go across into the main area and do programs or courses because it's deemed inappropriate for them to go across.'

**Staff member**

Throughout our engagement, we continually heard about the ways growth in the number of people on remand has contributed to the volatility of individual prison locations, reconfigured the system, and the shaped the experiences for staff and people in custody.

In particular, a number of stakeholders and people working within the system pointed to the system 'churn' associated with the remand population – that is, more people passing through the system for shorter periods of time. In 2019–20, 77 per cent of people discharged from a remand only episode had been on remand for less than three months. Approximately half of these people spent less than one month on remand.<sup>41</sup>

Key issues identified by stakeholders included the limited access to programs for people on remand, the impact of short sentences on women and their families, the

<sup>41</sup> Victorian Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (1 September 2021)37.

limited transitional support when people are sentenced to time served, and the impact of movement through the system on the workforce and other people in custody.<sup>42</sup>

While we will not make recommendations relating to the factors contributing to the growing number of people in custody, it is important to recognise how these broader factors influence the adult custodial corrections systems, the culture within the corrections workforce, and the experience, safety and outcomes of people in custody.

## The needs and experiences of people in custody are increasingly complex and diverse

While many people in custody have complex health, social and economic problems, the traditional prison model was not intended to address such problems and, at some point, most will return to living in the community. In light of this and the number of people who currently return to custody within two years of completing a custodial sentence, a stronger rehabilitative focus is essential. Embedding a rehabilitative focus requires investment and close attention to the individual needs of people in custody which will, in turn, better promote safety, reduce the harmful effects of imprisonment and support people to limit the risk of reoffending when they return to the community.

'What about [people] who feel they have nothing to lose... who feel not heard? Their underlying issues are not being taken care of. People with mental health issues... dealing with drug addiction. [People] who are dealing [or not dealing with] complex trauma-related symptoms. These are no little issues and as we are all aware of, they lead and can lead to death in and out of prison through suicide and drug overdose and can also lead to a return to criminal behaviour that result in more victims of crime.'

**Person in custody**

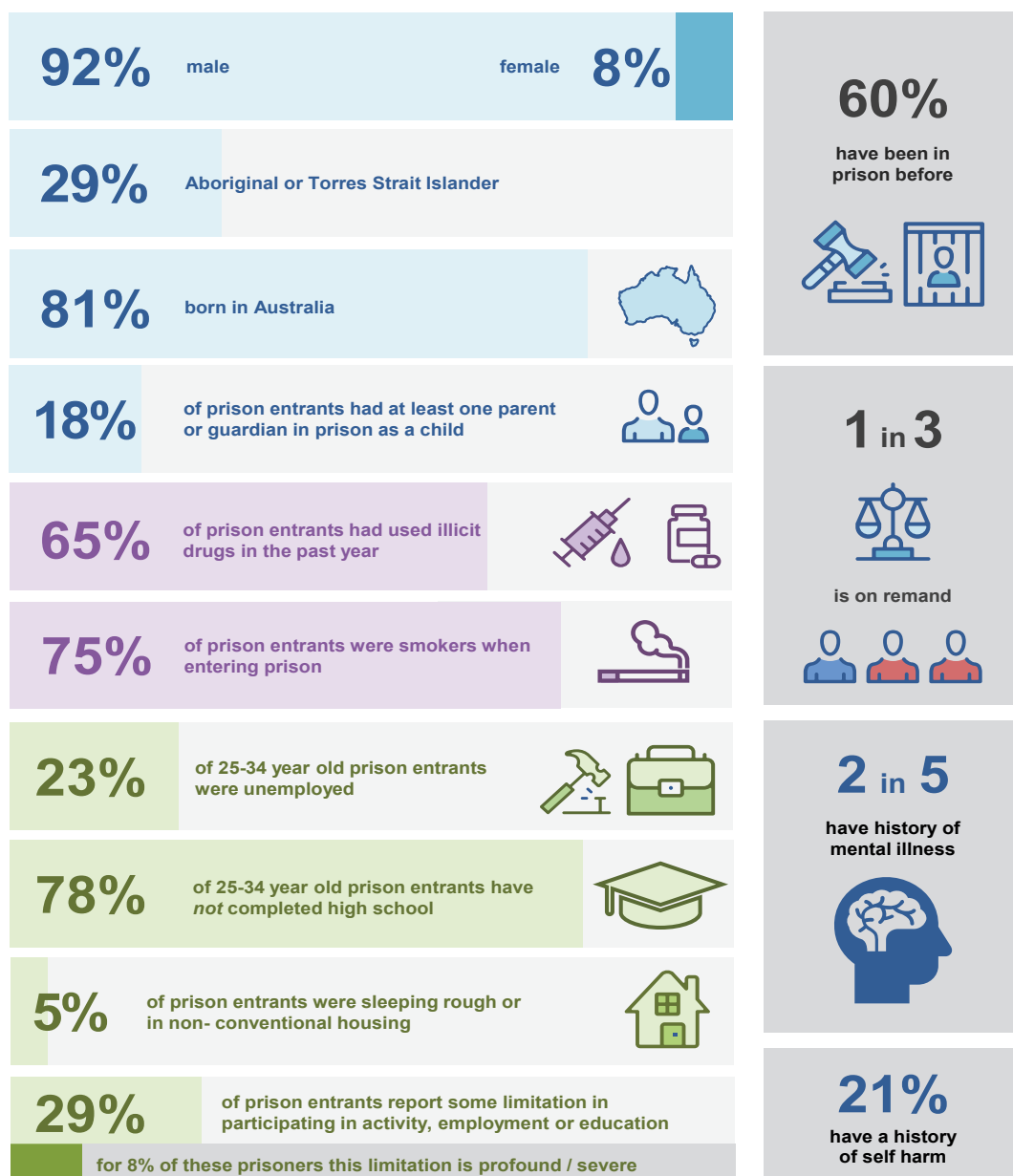
Ensuring that people have access to the care and support they need also assists to support stability within the custodial environment. This requires active management of chronic health conditions, ensuring that people have access to mental health and wellbeing support, and connecting people with cognitive impairment or disability to the specialist supports they require.

There is also a growing understanding of the intersectional needs of different groups within the custodial population. Growth in Victoria's overall prison population has resulted in a growing number of Aboriginal people, women, people from CALD backgrounds and older people in the current custodial population.

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<sup>42</sup> For example, Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021); Fitzroy Legal Service, Submission to the Cultural Review (January 2022); Victoria Legal Aid, Submission to the Cultural Review (December 2021); Jesuit Social Services, Submission to the Cultural review (December 2021); Djirra, Submission to the Cultural Review (December 2021); Human Rights Law Centre, Submission to the Cultural Review (December 2021).

This is not unique to Victoria – analysis from the Australian Institute of Health and Welfare identifies key characteristics of Australia’s prison population and the complex issues custodial corrections systems need to manage:<sup>43</sup>



Cohorts with a smaller or under-recorded population within the adult custodial corrections system – particularly transgender and non-binary people – may also have individual needs.

See Part 6 of this report for further discussion of the experiences and challenges of different cohorts within the system.

<sup>43</sup> Productivity Commission Australia’s Prison Dilemma (October 2021) 21 citing data from Australian Institute of Health and Welfare, Australian Bureau of Statistics and Justice Health and Forensic Mental Health Network.

## The adult custodial corrections system is part of the justice and social services system

Essential to understanding the systems and processes in the adult custodial corrections system is understanding its role in the justice system and its connections to the broader social services system. When information, service knowledge and case management flows between these systems, there are better outcomes for people in custody and system efficiencies. These are fundamental principles of good client management and service delivery, but they are particularly critical in the corrections context given that the vast majority of people in custody have had contact with various social and justice services throughout their lives.

### Connection to the justice system

As part of the criminal justice system, the adult custodial corrections system's primary purpose is to administer the custodial orders of the court. Once a person is sentenced by a court, the administration of that sentence is the responsibility of DJCS. The court's sentencing decisions may seek to protect the community and establish the right conditions for rehabilitation, but the court's role does not extend to directing how these conditions and supports are made available to a person in custody.<sup>44</sup>

The adult custodial corrections system is a closed environment. It is largely beyond the boundary of open justice and the transparency expected of other justice institutions, such as the courts. Many process maps that chart the operation of the criminal justice system locate imprisonment as a final destination of a person's journey through the justice system. It is framed as the outcome at the conclusion of other justice processes.

While rehabilitation has been a primary purpose of the Victorian custodial corrections system for decades<sup>45</sup>, changes in culture and practice have been incremental. Embedding enduring cultural change will rely on recognising the custodial system's critical role within the broader criminal justice system and its capability to disrupt individual cycles of offending.

Prioritising rehabilitation as an outcome will require collective effort and focus from the entire justice system, as most people that are sentenced to a period of imprisonment will return to community life once they have completed their custodial sentence. Safe and successful transition back to community life supports community safety. It is an outcome that should shape the activity and effort of all justice institutions, including the adult custodial corrections system.

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<sup>44</sup> *Sentencing Act 1991 (Vic)* s 5.

<sup>45</sup> In Victoria, the shift away from 'warehousing' toward the humane containment of people in custody was symbolically made with the closure of Pentridge in 1997 and the introduction of unit-based management. A further shift to rehabilitation was a central component of the Corrections Long Term Management Strategy introduced in 2000, which saw the introduction of an Offender Management Framework focused on reducing reoffending, along with funding of psychological services to deliver offending behaviour programs and reintegration programs into the community.



### Victims of crime

For victims of crime, the adult custodial corrections system is also an important mechanism for holding perpetrators of crime to account. While the experience and perspectives of victims of crime is beyond the Cultural Review's Terms of Reference, we acknowledge the deep interest that victims of crime have in ensuring accountability for offending.

## Connection to the broader social services system

The adult custodial corrections system should also be seen as part of the broader social services system. People entering the criminal justice system are more likely to have a range of complex health and social issues<sup>46</sup> and, in many cases, these issues have contributed to the circumstances of their offending, such as criminal activity connected to a substance-use disorder.

When people cannot access the services and supports they need in the community, they can end up in the criminal justice system due to unmet health needs, experiences of homelessness, unemployment, mental health issues and other circumstances of disadvantage. For some people, entering the adult custodial corrections system may be the first time they have had an opportunity to access regular health and social support.

People in custody should be able to access social services equivalent to those provided to people in the community.<sup>47</sup> However, there is a practical disconnect between the services provided within the custodial environment and the services available to the general community. A senior system leader observed:

'There's something about the wall that keeps out those things which any other citizen should have access to. It means that there's discontinuity for those that are already disadvantaged, disabled, hurt and maimed. There is something about the community not taking responsibility for their citizens in this as well... Anything at all that nudges so that the community has a clearer understanding that these are citizens and they come from the community and they go back to the community, and the services should have continuity as well.'

**Expert Interview**

At a time where the custodial population is characterised by increasingly diverse and complex needs, there is an urgent need to build closer connections between the adult custodial corrections system and the broader social services system, to improve safety and outcomes for people in custody.

<sup>46</sup> See generally Australian Institute of Health and Welfare *Health of prisoners* (Web page, July 2022) <https://www.aihw.gov.au/reports/australias-health/health-of-prisoners>.

<sup>47</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 24.

These connections should be built through:

- ▶ information-sharing systems and processes
- ▶ collaborative and supported approaches to meeting the needs of people in custody,
- ▶ better understanding of the needs of people as they enter the adult custodial corrections system
- ▶ appropriate social, health and wellbeing support while they are in custody
- ▶ ensuring that people are supported to connect with community services when they transition back into the community.

See Part 6 of this report for further discussion.

## Rights and obligations within the system

The State of Victoria, through the Secretary of DJCS, has a duty of care for the safety of people in custody, regardless of whether they are in a public or private prison.

When a person is sentenced to a period in custody, the deprivation of their liberty is their punishment – the conditions and treatment they experience in custody should not intensify their punishment, according to law. People who are in custody on remand awaiting a court hearing are presumed innocent – and this presumption persists regardless of how long they are on remand.

In recent decades, there has been a growing recognition of individual's rights and needs and the role of rehabilitation in improving longer-term community safety. Within Victoria, the Charter of Human Rights and Responsibilities requires public authorities – like DJCS – to act compatibly with human rights and to properly consider human rights when making decisions.

While the Charter of Human Rights and Responsibilities sets out expectations for the human rights of the whole community, including people in custody, it also provides specific safeguards for people deprived of their liberty including:

- ▶ protection from torture and cruel, inhuman or degrading treatment<sup>48</sup>
- ▶ humane treatment when deprived of liberty, including a requirement that an accused person must be segregated from people who have been convicted of offences.<sup>49</sup>

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<sup>48</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 10.

<sup>49</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 22

The Charter of Human Rights and Responsibilities also includes specific rights relevant to different cohorts of people in custody. These include:

- ▶ cultural rights, including the distinct cultural rights of Aboriginal people<sup>50</sup>
- ▶ freedom of thought, conscience religion and belief<sup>51</sup>
- ▶ recognition and equality before the law.<sup>52</sup>

Beyond Victorian human rights laws, there are specific international instruments that articulate standards for the treatment and care of people in custody:

- ▶ United Nations Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984
- ▶ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted 17 December 2015
- ▶ United Nations Rules for the Treatment of Women Prisoners (the Bangkok Rules), adopted 21 December 2010.

In addition to its obligations under international law, Victoria has made a commitment to these standards through the principles set out in the *Guiding Principles for Corrections in Australia* (2018)<sup>53</sup> and the Custodial Standards that apply to the operation of the adult custodial corrections system in Victoria.<sup>54</sup>

There is also guidance on human rights considerations recorded in the Commissioner's Requirements and Deputy Commissioner's Instructions.

Currently, the *Corrections Act* 1986 does not adopt the international human rights framework for people in custody. In Part 2 of this report, we discuss the need to articulate a clear legislative purpose for the system within the *Corrections Act 1986*, to support positive change in the lives of people in custody and improvements to safety, culture and integrity within the adult custodial corrections system.

While the application of these standards at an operational level is important, specific legislative protections that adopt international human rights law and principles of respect, dignity and safe and humane treatment for people in custody will have strong practical and symbolic value in shaping the purpose and operation of the adult custodial corrections system.

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<sup>50</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 19

<sup>51</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 14.

<sup>52</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 8.

<sup>53</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018)

<sup>54</sup> Department of Justice and Community Safety (Corrections Victoria), *Correctional Management Standards for Men's Prisons in Victoria* (2014); Department of Justice and Community Safety (Corrections Victoria), *Standards for the Management of Women Prisoners in Victoria* (2014).

## Snapshot of the state of culture

For the purpose of the Cultural Review, we conceptualise workplace culture as the accepted way of doing things in a workplace. It is an amalgam of attitudes, behaviours and experiences; of action and inaction. Workplace culture can either foster positive individual workplace experiences, supportive team dynamics and a collective sense of purpose or perpetuate work practices that do not meet relevant standards and lead to individual harm, fractured relationships and an undermining of purpose and role.

Through our engagement with corrections staff and people in custody, what became clear is that there is not a singular workplace culture within the adult custodial corrections system; however, there are several cultural norms common to most sites. In addition, local cultural norms and ways of working have evolved and adapted over time through local leadership, workplace attitudes and local initiatives.

Overall, the system is in transition and moving towards a culture that better reflects a contemporary adult custodial corrections system. However, each custodial site is at a different point along its change journey, and there is a need for unified strategy, sustained focus and strong leadership to bridge the gap between paper standards and operational practice in ensuring the system can ensure the safety and wellbeing of both corrections staff and people in custody.

### The culture is in transition

The adult custodial corrections system is moving away from a traditional orientation that prioritises security, order and control to an approach that reflects the need to ensure that opportunities for early intervention and rehabilitation are embedded across the justice system.

There is also recognition that the climate and the environment of the prison has a role to play in supporting and enabling these community outcomes. A broader understanding of safety and security recognises that physical security is only one part of a safe and effective custodial environment. Put differently, growing understanding of how a 'safe' prison is one where operations are not just focussed on containing and confining people but the creation of an environment where safety is achieved through a broader range of contributing factors that shape the climate and safety of the custodial environment. This includes staff wellbeing, positive and constructive relationships between staff and people in custody, effective assessment of health and other needs, appropriate infrastructure supports and placements, access to programs and family connection and effective case management.

Over the last two decades, DJCS policies and strategies moved to focus on rehabilitation, case management, access to transition support and vocational programs, as well as the development of more respectful relationships between staff and people in custody. Despite this policy intent and the roll out of numerous programs designed to support people in custody, the culture and operation of the adult custodial corrections system retain a number of problematic legacy characteristics from its earlier iterations. This earlier custodial corrections model was built around a power differential that posited custodial officers 'above' people in

custody, with little systemic regard for their rights and needs. Many of these characteristics have endured since the establishment of the Australian penal colony. Moreover, the blueprint for the system was created for a prison population that was predominantly white, cis-gender and male, at a time when racism, discrimination and stigmatisation of particular groups was prolific and normalised.

These punitive influences and legacy elements mean that despite good intent and the commitment of many system leaders and individual staff members, the current systems and processes are not designed or implemented to effectively respond to complex trauma, and the social, health and economic issues that have shaped the lives of many people entering the system.

### There are cultural challenges that are not unique to the custodial environment

Many of these cultural challenges are not unique to the custodial environment. In the last decade, major reviews into public sector workplaces have examined similar cultural challenges and made recommendations to addressing cultural concerns in organisations characterised by male-dominated, hierarchical environments with a security or service function. Relevant reviews include:

- ▶ *Independent Review into Sex Discrimination and Sexual Harassment, including Predatory Behaviour, in Victoria Police*<sup>55</sup>
- ▶ *Independent Review into Workplace Equality in Ambulance Victoria*<sup>56</sup>
- ▶ *Review into the Treatment of Women in the Australian Defence Force*.<sup>57</sup>

There have also been recent public reports on issues relating to cultural and inappropriate workplace behaviours in public and private sector workplaces including:

- ▶ *Respect @ Work: National Inquiry into Sexual Harassment in Australian Workplaces*<sup>58</sup>
- ▶ *Review of Sexual Harassment in the Victorian Courts and VCAT*<sup>59</sup>

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<sup>55</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase One* (Report, 2015); Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase 2 Audit* (Report, 2017); Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase 3* (Report, 2019).

<sup>56</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Report, 2021).

<sup>57</sup> Australian Human Rights Commission, *Review into the Treatment of Women in the Australian Defence Force: Phase 2* (Report, 2012).

<sup>58</sup> Australian Human Rights Commission, *Respect@Work: Sexual Harassment National Inquiry* (Report, 2020).

<sup>59</sup> Dr Helen Szoke AO, *Review of Sexual Harassment in Victorian Courts and VCAT* (Report, 2021).

- ▶ *Report into Workplace Culture at Rio Tinto*<sup>60</sup>
- ▶ *Girls and Women in Australian Football Umpiring: Understanding registration, participation and retention.*<sup>61</sup>

There are also processes that have examined the complex dynamics of institutional settings and closed environments. These have included:

- ▶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability<sup>62</sup>
- ▶ Royal Commission into Institutional Responses to Child Sexual Abuse<sup>63</sup>
- ▶ Royal Commission into Victoria's Mental Health System.<sup>64</sup>

We have considered these reports, where relevant, and identified additional unique factors that shape the experience of the adult custodial corrections system in a way that is different to other organisations.

## **Persistent cultural influences have a direct impact on systems, the workforce, conduct and outcomes for people in custody**

The custodial workplace is unusual in that, in addition to being a daily work environment for staff, it is also where people in custody experience their everyday life. The choices, conduct and behaviour of corrections staff have a direct impact on the safety, human rights and general living conditions of people in custody and influence their access to programs that help them to make positive change in their lives.

One person in custody we spoke to described the real-life impact of this link between workplace culture and the experiences of people in custody:

'In a dysfunctional culture, the members can often be confused about their roles and the overall direction of the group. Amid such confusion, people start to think more of their own interests and agendas, and this can form factions. We [incarcerated people] have often witnessed this disunity amongst officers that is quite visible. This can then set a standard in the environment, which shows that this behaviour is acceptable. The visible factions between officers are divided between those who are supportive and compassionate towards prisoners and those who believe prisoners should be punished and therefore treated poorly.'

**Person in custody**

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<sup>60</sup> Elizabeth Broderick & Co, *Report into Workplace Culture at Rio Tinto* (Report, 2022).

<sup>61</sup> Dr Victoria Rawlings and Damian Anderson, *Girls and women in Australian football umpiring: Understanding registration, participation and retention* (Report, 2021).

<sup>62</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Interim Report, 2020).

<sup>63</sup> *Royal Commission into Institutional Responses to Child Abuse* (Report, 2017).

<sup>64</sup> *Royal Commission into Family Violence: Report and Recommendations* (Report, 2016).

Through our engagement processes, we have observed a range of persistent cultural influences (described below) which operate within the adult custodial corrections system. Some of these factors persist despite significant local and DJCS-wide efforts, new generations of staff, policies and procedures. This challenge in shifting deeply embedded cultural norms is apparent across the adult custodial corrections system.

### **Systems**

- ▶ The adult custodial corrections system is not guided by a clear purpose or set of objectives. This allows local workplace culture to have a disproportionate influence on service delivery approaches within the system.
- ▶ Gaps in internal and external monitoring, oversight and accountability mechanisms weaken the transparency and accountability of the adult custodial corrections system. This obscures emerging cultural issues and risks within the system.
- ▶ Data and information management practices do not support effective risk management, reflective practice or continuous improvement within the system. Inadequate systems and record-keeping contribute to a culture that does not prioritise monitoring of integrity risks and has limited accountability.
- ▶ The experiences of staff and people in custody are not valued in system planning and governance.
- ▶ There is a cultural disconnect between DJCS's aspirations and expectations of the adult custodial corrections system as a whole and local-level custodial culture due, in part, to a lack of clear communications, information-sharing and cooperation between different business units within DJCS, Corrections Victoria and private prison operators.
- ▶ Systems and processes are not based around the needs of the individual, which contributes to a command-and-control dynamic within the custodial environment where procedural compliance can overwhelm responsive care.
- ▶ The operation of the adult custodial corrections system is not integrated with the broader justice and social services system, resulting in a distinct culture and missed opportunity to adopt more contemporary practice and a joined-up service delivery approach.

### **Workforce**

- ▶ The custodial workforce does not receive sufficient training and professional development to help them build the skills and capability they need to respond to the complex challenges within a contemporary custodial environment and to support cultural change.
- ▶ Leadership has not consistently and proactively role-modelled respectful conduct and actively disrupted unhelpful cultural norms that persist in the workforce.

- ▶ Efforts to recruit a more diverse workforce and embed new skills to support cultural change are stifled by a dominant culture resistant to new ways of doing things. Current training is not effectively setting the tone for positive culture.
- ▶ The system is not meeting the wellbeing needs of the custodial workforce – across the system, many staff are fatigued and experiencing the cumulative impact of ‘trauma’, resulting in some being ‘checked-out’ or ‘hypervigilant’. This has also contributed to an ‘us versus them’ culture at some sites and creates integrity risks.

### **Conduct**

- ▶ The custodial workforce is dealing with the legacy of a culture that accepted and minimised negative workplace experiences in the past, including sexual harassment, bullying and discrimination among staff. Some custodial sites still have significant cultural issues where these behaviours are considered the norm and go unchecked.
- ▶ Staff often opt to stay silent about negative experiences and incidents within their workplace due to a culture of ‘mateship’ and ‘silence’. As a result, there is still a lack of trust in reporting processes and a real and perceived fear of retribution in the workforce.
- ▶ Despite a significant focus on integrity issues, leadership has not always responded consistently to staff misconduct, which has undermined progress.
- ▶ Staff experience significant threats to their safety and verbal abuse from people in custody on a daily basis which are seen to justify more punitive responses.
- ▶ A defensive workforce and leadership culture has developed at all levels resulting in blame-shifting and a lack of shared responsibility across DJCS.

### **Aboriginal cultural safety**

- ▶ There are gaps between DJCS’s policy commitments to support Aboriginal cultural safety within the adult custodial corrections system and accountability for the experience of cultural safety within the system.
- ▶ There is an over-reliance on Aboriginal staff to make custodial environments safer for Aboriginal people and a lack of recognition of the need to ensure cultural safety as a precondition for the recruitment, retention and professional development of Aboriginal staff.
- ▶ Despite existing commitments to improve Aboriginal cultural safety, a defensive culture across the system, a sense of resignation and lack of meaningful reflection and investment are undermining efforts to address the poor experiences of Aboriginal people in custody.
- ▶ Aboriginal people have limited access to appropriate cultural support and programs as a result of structural racism, discrimination and unconscious bias being embedded in the adult custodial corrections system and culture.



## People in custody

- ▶ For people in custody, the power imbalance inherent in incarceration is heightened by the built environment, poor workplace culture and a set of unspoken norms for how staff and people in custody should interact. This includes a culture of silence for both people in custody and staff.
- ▶ The system is not trauma informed and struggles to meet the complex needs of people in custody. This, in turn, can contribute to challenging behaviours and increases safety and wellbeing concerns for staff who may not be trained or supported to meet these complex needs.
- ▶ While there are clear policies, programs and services available to people in custody with diverse needs, the extent of support they receive depends on the individual prison's workforce culture and staff orientation towards care, service delivery and rehabilitation.
- ▶ The physical environment of many prisons sets the tone for a punitive culture where the wellbeing and needs of people in custody are irrelevant. For people in custody, this can reinforce feelings of a lack of self-worth and be demotivating. The environment and routine also contribute to a dehumanising culture.
- ▶ At some locations we heard about custodial staff 'gatekeeping' access to healthcare and that the unmet health needs of people in custody contributes to the volatility of the custodial environment. This is partly due to a legacy power dynamic between staff and people in custody and demand for healthcare exceeding available resources.
- ▶ The culture does not currently provide staff with the discretion, confidence, training and supervision to support ethical decision-making, resulting in some operational decisions lacking fairness, transparency and consistency.
- ▶ The custodial culture does not always support people in custody to exercise their rights to justice, including enabling them to seek information, advice and support to understand and address issues about their treatment in custody.
- ▶ The workforce does not have a clear understanding of the link between how the custodial culture shapes the experiences of people in custody and their safe transition back to community. The development of a rehabilitative culture is hampered by unhelpful beliefs and stereotypes about people in custody being unable to change and lack of a clear purpose for the system as a whole.

This report explores the effect of these factors across the prison system and highlights the some of the complexities in transforming the custodial culture, as well as the powerful imprint of leadership, sense of safety for staff, the built environment and shared purpose have on custodial culture.



### 3 Enabling cultural change

The cultural issues facing the adult custodial corrections system are challenging and wide ranging – and addressing them will require dismantling and rebuilding a deeply embedded culture, developing the workforce’s capability and implementing a range of new approaches. Our recommendations chart a path towards reform; however, cultural transformation will require an organisation shift in mindset, committed leadership and sustained effort and whole of government investment.

In this chapter, we set out our aspirations for the future of Victoria's adult custodial corrections system and create a map to guide cultural transformation. We describe our conceptual framework for reform drawing on a systems approach and emphasising the connection between purpose and values, wellbeing, safety and capability of the workforce, the systems and processes that underpin custodial operations in Victoria, and outcomes for people in custody and the community. We have organised our recommendations and actions under key pillars and identified foundational or enabling priorities to support change.

One of those key pillars is leadership. Complex problems require creative solutions, and transforming Victoria’s custodial culture will rely upon brave leadership, integrity, the ability to clearly communicate the long-term goals of reform and inspire the workforce to be part of the change process. While difficult, a genuine and demonstrated willingness to be open and commit to a new way of doing things is critical to drive real change and correct the narrative that reviews of this nature do little other than collect dust on shelves.

Recognising the complexity of large-scale organisational change and these challenges, we have also developed some guidance for implementation and set out key principles for reform.

## Key findings – Enabling cultural change

- ▶ To drive cultural change, the adult custodial corrections system requires a clear long-term vision, sustained effort, government investment and significant organisational reform.
- ▶ Sequencing reform efforts will help ensure foundational pieces are in place. Immediate priorities should include:
  - the development of a new principal Act for the adult custodial corrections system
  - reforms to increase the capability and wellbeing of the workforce
  - measures to prevent and respond to workplace harm and integrity issues
  - a community-led outcomes framework to ensure the system better responds to the cultural needs of Aboriginal people
  - an embedded rehabilitative approach.
- ▶ Key implementation principles to support cultural reform include:
  - acknowledging harm experienced by staff and people in custody and committing to a new way of working
  - transparency and openness
  - shared responsibility and accountability
  - listening and incorporating lived experience
  - building in flexibility to ensure the system can evolve to reflect best practice and community expectations
  - implementing outstanding recommendations from integrity bodies
  - building on existing work and overcoming reform fatigue
  - investing in and resourcing change
  - aligning the adult custodial corrections system with other parts of the justice and social systems.

## Reimagining the potential of the adult custodial corrections system

The world we live in today is very different from the one that existed a few decades ago, when a significant focus of prisons was reducing the risk to the community through incapacitation. As discussed above, in recent decades, we have seen a significant shift in Victoria and in other jurisdictions recognising that rehabilitation is key to sustainable community safety outcomes and a return on the substantial community investment in the operation of the adult custodial corrections system. However, despite movement in the right direction, legacy elements of a more punitive system remain which constrain the realisation of these broader community objectives.

Developing this vision requires raising the bar and elevating the aspirations of the system – to reimagine the critical and influential role of the adult custodial corrections system in supporting long term community safety outcomes. A workforce that is capable, safe and supported workforce is more likely to work with shared purpose to support these outcomes for people in custody and the community more broadly.

Articulating a clear purpose and aspirations for the adult custodial correction system should guide staff conduct and their approach to their duties, the way processes and system operate and the overall measurement of system performance and outcomes.

To support this shift, each pillar of reform will require a reorientation, commencing with a strong articulation of the system purpose and values in the legislative and policy framework.

### Recommendation 1.1 Transparency and accountability for implementation

The Department of Justice and Community Safety should publish and disseminate the key findings and recommendations of this report, ensuring they are available to the corrections workforce and key stakeholders.

The response should specify how the department will implement the Cultural Review's recommendations against an implementation schedule.

### **Articulating long-term reform outcomes for the system**

While cultural reform within an organisation as large and complex as the adult custodial corrections system will be incremental, the actions we have recommended are directed towards the following outcomes:

1. A more purposeful, integrated and transparent system underpinned by a modern Corrections Act that priorities rehabilitation, rights and safety.
2. A system that is better able to publicly measure, evaluate and report on its progress and outcomes.
3. A more diverse workforce that is more developed, better supported, valued and aligned around a common purpose.
4. Leadership that is accountable, role models ethical behaviour and decision making and has the capability to lead cultural change.
5. A culture that is shaped by a commitment to integrity, fairness and openness and has the best possible systems in place to identify, prevent and respond to the unique risks in the custodial environment.
6. A safer, more inclusive and equal workforce where sexual harassment, bullying, discrimination, racism and victimisation are unequivocally prevented and acted upon.
7. A culturally safer environment for Aboriginal people in custody where their specific needs, rights, identities, histories and humanity are recognised and protected.
8. A custodial environment that is person-centred and trauma-informed, developed around responding to the complex needs of people in custody to enable their rehabilitation and safest transition back into the general community.
9. A public model of health for people in custody that recognises the importance of equivalency of healthcare and outcomes.
10. A more open custodial system that is better connected to the community and integrated with other critical social supports, services and families.

## **The pathway towards cultural reform**

The cultural reform pathway below outlines our vision, pillars and foundational recommendations.

### **Key pillars for change**

Our recommendations are organised under six key pillars that will help create the right conditions for sustained and meaningful cultural change:

- |                      |                                   |
|----------------------|-----------------------------------|
| ▶ Purpose and values | ▶ Data systems and processes      |
| ▶ Capability         | ▶ Transparency and accountability |
| ▶ Leadership         | ▶ Systems outcomes                |

These pillars are discussed in detail in the relevant Parts 2 to 6 of this report.

Over time, through our foundational recommendations, this outcome-focussed mindset will become embedded in practice and reinforce a positive custodial culture for those who work and live in Victoria's prisons and correctional centres.

### Foundational recommendations

There are four foundational recommendations that represent the building blocks to drive cultural change for the adult custodial corrections system:

- ▶ **new principal Act** for a safe and humane adult custodial corrections system, articulating a clear purpose, set of principles, safeguards and standards for the system (see **Recommendation 2.1**, Part 2)
- ▶ reforms to increase the **capability and wellbeing** staff (see **Recommendations 3.1 and 3.4**, Part 3)
- ▶ **measures to prevent and respond** to workplace harm and integrity issues (see **Recommendation 4.18**, Part 4)
- ▶ a **community-led outcomes framework** to ensure the system is culturally safe and better responds to the cultural needs of Aboriginal staff and people in custody (see **Recommendation 5.2**, Part 5)
- ▶ an **embedded rehabilitative approach** across the system to support the individual needs and wellbeing of people in custody and reduce recidivism (see **Recommendation 6.2**, Part 6).

While we do not seek to prescribe how DJCS should implement our recommendations, we suggest high-level sequencing of actions to ensure foundational recommendations have created the right conditions for other actions to be effective.

### Key implementation principles

We have outlined key principles to guide implementation and to enable DJCS to move towards our vision for a fairer, safer, more modern and more capable corrections culture.

- ▶ **Acknowledge harm and commit to a new approach or way of working**

This is not the first time a large-scale organisation has conducted a complex and sensitive inquiry of this nature. From our experience, the success of any large-scale cultural change process hinges on the willingness of organisational leaders to acknowledge and accept the harm experienced and scale of the problem in the first instance and commit to the long-term process of change.

Where leaders have embraced the opportunity to learn and reflect offered by a deep inquiry of this nature, they have gained the support and trust of the workforce and accelerated positive change.

- ▶ **Demonstrate transparency and openness**

Expectations about how organisations respond to workplace cultural issues are shifting – the community expects that organisations will be accountable for

unlawful and inappropriate behaviours within their workplaces and that their response will be transparent. We support the initiative of the Minister for Corrections and DCJS for their commitment to open and transparent examination of issues of culture, safety and integrity within the adult custodial corrections system.

We see enormous value in ensuring that DJCS adopts a transparent approach in its response to this report by acknowledging the issues and harm experienced by people working and living in the system, committing to the change journey and ensuring staff and the public are kept abreast of DJCS's response, actions and progress. Our recommendations for better data and information management systems will also provide the infrastructure for enhanced transparency and reporting progress.

▶ **Prioritise accountability and shared responsibility for success**

Effective governance, oversight and operational infrastructure will be required to ensure DJCS's efforts to implement our recommendations are aligned across the organisation and that it remains accountable for its progress.

While some recommendations will be implemented within Corrections Victoria, we consider that responsibility should be shared, with DJCS ultimately accountable for resourcing, supporting and monitoring implementation of the cultural reform process.

A joined-up approach across business units will ensure the implementation of our recommendations is coordinated and will help avoid the siloing or dilution of recommendations in response to competing business unit priorities.

Central coordination, oversight and governance will also be important to ensure operational expertise and lived experience informs implementation and that there is consistency in communications and policy development. It is clear that many previous attempts to embed lasting reform have been hindered by a lack of coordination, information-sharing and translation of central policies and expectations on paper into operational practice, enabling local norms to flourish.

▶ **Listen and incorporate lived experience**

As explored in Chapter 7, within Part 2, there are significant benefits in formally incorporating lived experience into system design and reform.

As a first step, this approach requires leaders to accept that they may not have all the answers and that we each operate with blind spots, due to our relative privilege, roles, characteristics and life experience. Throughout our recommendations, we remind DJCS to consult with the workforce, people with lived experience of custody and key stakeholders. We also recommend a lived experience advisory group be established, along with a lived experience charter, to ensure lived (and living) experience (living in custody) informs system design and policy development (see **Recommendation 2.7**, Part 2). We also recommend a specific mechanism to consult with the workforce to inform policy and operational processes across the system (See **Recommendation 3.3**).



▶ **Build in flexibility**

DJCS should build flexibility into its culture reform process and continually monitor implementation to ensure actions continue to represent best practice. This requires anticipating the long-term expectations of the community and evolution of the system, to ensure that actions do not become outdated before they have been implemented. This will require DJCS to maintain a strong focus on outcomes.

DJCS should also anticipate and consider how it will respond to related reform initiatives such as the Victorian Treaty process and the work of the Yoorrook Justice Commission, which will undoubtedly result in Aboriginal community asserting their aspirations for the adult custodial corrections system.

▶ **Implement outstanding recommendations from integrity bodies**

In recent times, Victorian integrity bodies have made a range of recommendations to improve the adult custodial corrections system. These recommendations have focused on improving community safety over the longer term, increasing community confidence in the fairness of the system, and upholding the legal rights of people in custody. There have also been recommendations about improving staff capability, system performance and improving responses to protect against corruption and integrity issues within the custodial system. There have also been many thousands of pages of recommendations that aim to improve the experience for Aboriginal people in custody over many decades.

However, while most recommendations from these inquiries, investigations, inquests and reviews have been accepted by DJCS and previous agencies responsible for the adult custodial corrections system, their implementation has been patchy and incomplete. The implementation of many recommendations remains 'in progress', with continuing activity but few actions resulting in clear and tangible changes in practice.<sup>65</sup>

We do not want to duplicate or diminish the critical work and analysis that has gone before the Cultural Review, and we urge DJCS to consider existing recommendations as it begins work to implement our recommendations. We have specifically highlighted relevant recommendations made by the Victorian Ombudsman and IBAC that we see as compatible with the recommendations of the Cultural Review. Stakeholders have also strongly supported action to implement these recommendations.<sup>66</sup>

<sup>65</sup> Department of Justice and Community Safety, Summary of Department of Justice and Community Safety Audit Tracking Register, Data provided to the Cultural Review (June 2021).

<sup>66</sup> For example, Victoria Legal Aid, Submission to the Cultural Review (December 2021). 11 Human Rights Law Centre, Submission to the Cultural Review (December 2021)16–18; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 107–109.

▶ **Build on existing work and overcoming reform fatigue**

We recognise the immense expertise within DJCS and the progress underway both within the adult custodial corrections system and at departmental level to support cultural reform. We also recognise many people within the system feel overwhelmed and fatigued as a result of the number of recent inquiries and reports that have made numerous recommendations for system and operational reform.

We have observed that many reform ideas and initiatives have been swamped by new and emerging risks or priorities in the system and a sense of policy and programmatic ‘churn’, with gaps emerging between system stewardship and operational service delivery.

It is our intention that DJCS will implement our recommendations in a way that builds on existing work, ideas and momentum, rather than duplicating effort.

We do not recommend the proliferation of new policies, plans and strategies; rather, we support an approach that simplifies, enhances, consolidates and translates key material for the corrections workforce and drives whole-of-system reform.

▶ **Align and coordinate with other parts of the justice system**

While the adult custodial corrections system only represents one part of the justice system, it must work across government and the community sector to deliver positive change in the lives of people in custody. A coordinated and aligned approach across government will help ensure effort is focused, efficient and sustained.

By embedding cultural reform within the broader context of the justice system, long-term reform will be sustainable and able to withstand changing priorities.

# Part 2

# Systems

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A clearly defined purpose is critical for any effective system. It should be well understood by those who use the system and should guide operations, policy and outcomes. Information management, data and internal and external oversight systems must support the active monitoring of the system to ensure it is delivering on its intended purpose.

Within a safe and effective custodial corrections system, a shared purpose shapes the culture and becomes embedded in operational practice. It must be supported by transparency and oversight, internal and external monitoring, data integrity and information management processes. The system should also be directly informed by the needs and experiences of system users.

Victoria's adult custodial corrections system is a complex web of laws, locations, infrastructure, contractual arrangements, policies, processes and service users. It is situated within the broader criminal justice system, but also part of a wider network of social services. Navigating these complex inputs is a key step in creating a corrections culture that prioritises safety and integrity, and recognises the individual needs of people in custody

Currently, the legislation that underpins Victoria's adult custodial corrections system does not provide a detailed definition of its purpose and, in this absence, the system's traditional focus on security, order and control continues to exert a strong influence. This shapes local culture, including the way that people working within the system understand their role and perform their duties, how prisons manage data and share information within and across the system, and how policy is put into practice.

Through our conversations with corrections staff, people in custody, stakeholders, advocates and experts, the Cultural Review of the Adult Custodial Corrections System (Cultural Review) identified some critical issues affecting the system:

- ▶ The development of a system-wide data culture is frustrated by incomplete data collection, obsolete IT systems and inefficient processes, governance and monitoring.
- ▶ The system combines public and private prisons that have different service delivery models, governance arrangements and reporting requirements.
- ▶ The system is operationally disconnected from the Department of Justice and Community Safety (DJCS), the justice system and broader social services system.
- ▶ The system does not routinely integrate the experiences of the workforce or the lived experience of service users in policy development and planning processes.
- ▶ More dedicated and independent oversight would improve scrutiny, transparency and accountability of the whole system.

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 4. System purpose in legislation and regulation** sets out our recommendations for a new legislative framework to reflect Victorian public sector values, clear objectives, and strengthened human rights, to help create a modern, safe and humane adult custodial corrections system.
- ▶ **Chapter 5. Oversight and monitoring** describes the current internal and external monitoring framework, key gaps and challenges, and proposes enhanced internal performance monitoring alongside stronger independent external oversight.
- ▶ **Chapter 6. Data capability and information management systems** identifies limitations of the current data system and the necessary steps to ensure up-to-date, system-wide data is available to inform risk identification and performance monitoring.
- ▶ **Chapter 7. Involving system users in policy and operational changes** highlights the benefits of ensuring people with lived and living experience of the custodial system have a voice in system design and operational changes.

## Acronyms and abbreviations

ACT	Australian Capital Territory
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders
Charter	Charter of Human Rights and Responsibilities
Corrections Act	<i>Corrections Act 1986</i>
Cultural Review	Cultural Review of the Adult Custodial Corrections System
DJCS	Department of Justice and Community Safety
IBAC	Independent Broad-based Anti-corruption Commission
IPV	Independent Prison Visitor
JARO	Justice Assurance and Review Office
KPI	key performance indicator
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PIMS	Prisoner Information Management System
SDO	service delivery outcome
VAGO	Victorian Auditor-General's Office
WHO	World Health Organization



## 4 System purpose in legislation and regulation

Strengthening the legislation that underpins Victoria's adult custodial corrections system will help refocus the system on safety, culture and integrity. At the same time, it will act as a catalyst for cultural change and articulate a long-term vision for a safer, fairer system that improves community safety. Critically, the operationalisation of this purpose and the systems that shape it should result in fewer people returning to custody.

We support a more certain articulation and shared understanding of the purpose of the adult custodial corrections system.

To achieve this, we recommend a new legislative framework for the adult custodial corrections system that articulates rehabilitation as a primary system purpose. The legislative framework should reflect Victorian public sector values, clear objectives, and strengthened human rights as foundations for a modern, safe and humane system. Putting wellbeing and rehabilitation at the core of the system purpose will deliver longer-term individual and community safety benefits.

The proposed focus on a rehabilitative approach is not to diminish the criticality of what it is referred to as 'good order and security'. Rather, it is to recast the notions of security or safety away from a primary focus on 'static security' – the traditional methodology of correctional facilities, made up of physical measures (high walls, alarm systems) and also extensive monitoring practices (body searches, prisoner counts) – toward 'dynamic security' – which also values the interpersonal relationships and interactions between people in custody and corrections staff. In other words, a rehabilitative culture is not established after 'good order and security' – it is fundamental to it.

## Key findings – System purpose in legislation and regulation

- ▶ The *Corrections Act 1986* requires urgent revision to support a more modern understanding of the purpose of the adult custodial corrections system.
- ▶ The lack of overall purpose in the legislation – including absence of recognition of the role of positive change, wellbeing and rehabilitation in reducing recidivism – acts as a roadblock for cultural change.
- ▶ While the Charter of Human Rights and Responsibilities applies to the *Corrections Act 1986*, human rights standards are not specifically embedded in legislation.
- ▶ Victoria recognises the principles of self-determination and cultural rights and is progressing Treaty and truth-telling processes into the injustices experienced by Aboriginal people in Victoria. These significant strides are not reflected in the principal legislation that governs the operation of the adult custodial corrections system.
- ▶ There is an urgent need for strong legislative guidance on fair, transparent and ethical decision-making to inform how corrections staff and management carry out their roles.

## Reflecting shared purpose in the legislative framework

At the time of its creation, the legal framework for the operation of the adult custodial corrections system – the *Corrections Act 1986* (Corrections Act) – was considered a progressive piece of legislation that created statutory rights for people in custody for the first time.<sup>1</sup> While the Corrections Act (and the regulations made under it) have been amended and reissued over time, the fundamental approach and the architecture for the custodial response to offending remains largely unchanged. It no longer represents best practice and requires urgent amendment.

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<sup>1</sup> Victoria, *Parliamentary Debates*, Legislative Assembly, 18 September 1986, 634 (Mr Fordham, Minister for Industry, Technology and Resources).



One significant limitation of the legislative framework, which has system-wide implications, is the lack of a clear and detailed purpose for the adult custodial corrections system, beyond the following:

'The purposes of this Act are:

- to provide for the establishment, management and security of prisons and the welfare of prisoners;
- to provide for the administration of services related to community-based corrections and for the welfare of offenders; and
- to provide for other correctional services.'<sup>2</sup>

The legislative framework does not create clear expectations for the nature of the custodial environment or the overall objectives of the custodial response to offending, such as promoting staff safety, providing a safe and humane environment and supporting rehabilitation and reintegration into the general community.

### **Corrections staff, stakeholders and the community do not share the same understanding of the purpose of the system**

During our research and engagement, we asked many of our institutional and operational stakeholders about the role and purpose of the adult custodial corrections system. The differing responses to this question were a useful proxy for the divergent views about the system's purpose that exist across the system and within the community.

One system leader described the creation of a safe, secure, humane and rehabilitative environment as core to the system's purpose:

'[Our objective is] to administer the order of the court that's provided to us. We need to do that safely and humanely. We have people in our care and we've got a lot of power over people in our care, so how do we do that in a way that's safe, secure, humane, and in rehabilitative environment? At an individual level, how do we support someone with their rehabilitation needs? And then, at a policy and program level, actually make a difference to the community?'

**Expert interview**

While the central role of rehabilitation in the delivery of custodial services is reflected in the *Guiding Principles for Corrections in Australia*, this is not universally understood by the custodial workforce or people in custody.<sup>3</sup> During our onsite engagement, a common misconception we encountered was that prisons should be harsh or punishing environments.

Ensuring that there is a shared understanding that a person's loss of liberty is their complete punishment should be a clear element of the legal framework for the custodial system. This view was shared by a number of leaders within the system:

<sup>2</sup> *Corrections Act 1986*, s 1.

<sup>3</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018).

'In the absence of rehabilitation, we just have more of the same and there is no place in a prison system for punishment.'

**Expert interview**

In other words, the duty of the adult custodial corrections system is not to judge or punish but rather to carry out the court's decision. The premise of taking action to avoid unnecessary shame and punishment has its roots in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) which state:

'Imprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation'<sup>4</sup>

**Rule 3, Mandela Rules**

We recommend a substantial revision of the Corrections Act, incorporating explicit recognition of rehabilitation and reintegration as the primary purpose of the custodial system. This will enable the development of a more rehabilitative culture that supports positive change for people in custody and will help drive a more long-term approach to community safety.

Stakeholders also support a substantial revision of the Corrections Act to better align with the values of a modern custodial corrections system. Victoria Legal Aid noted how explicit recognition of rehabilitation and reducing recidivism would elevate these objectives:

'An explicit statement of Corrections Victoria's objectives of rehabilitation and reducing recidivism in legislation would elevate these goals and assist in setting the direction of not just the Act but all other regulatory instruments. The current purposes outlined in the *Corrections Act 1986* are brief and operations focused. The guiding principles and overarching objectives could include the purposes of rehabilitation and reducing reoffending.'<sup>5</sup>

**Victoria Legal Aid**

The Human Rights Law Centre commented similarly, noting the link between the purpose of the system and powers conferred by the Corrections Act:

'The legislation is lacking an objects clause which is critical to articulating the overarching aims of the legislation and to provide guidance as to the scope and nature of the powers conferred by the law.'<sup>6</sup>

**Human Rights Law Centre**

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<sup>4</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 3.

<sup>5</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 4.

<sup>6</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021) 9. This written submission was also endorsed by the Victorian Aboriginal Legal Service, Fitzroy Legal Service, Flat Out and LGBTIQ Legal Service.

Forensicare also noted the importance of reforming legislation and subordinate instruments to reduce stigma, promote person-centred language, enshrine equivalency of healthcare and embed accountability.<sup>7</sup>

## Reorienting the system towards rehabilitation and wellbeing to reduce recidivism

Other jurisdictions' corrections legislation recognises the connection between a therapeutic approach to managing people in custody and their wellbeing, a safer workplace and lower levels of recidivism.

For example, Queensland's legislation states that 'the purpose of corrective services is community safety and crime prevention through the humane containment, supervision and rehabilitation of offenders'.<sup>8</sup>

South Australia also provides statutory guidance on the expectations for individual approaches to rehabilitation and case management through the guiding principle and core objective of the *Correctional Services Act 1982 (SA)*. It seeks to promote the rehabilitation of people in custody 'by providing the necessary correction, guidance and management to assist in their reintegration into the community' and through effective and individualised management plans.<sup>9</sup> It also includes an expectation that the system takes into account particular needs and circumstances relevant to the cultural identity and linguistic background of a person.<sup>10</sup>

Similarly, New Zealand's corrections legislation articulates rehabilitation as critical to the system's purpose – a vehicle for improving public safety and contributing to the maintenance of a justice society by:

'Assisting in the rehabilitation of offenders and their reintegration into the community, where appropriate, and so far as is reasonable and practicable in the circumstances and within the resources available, through the provision of programmes and other interventions.'<sup>11</sup>

### Corrections Act 2001 (New Zealand)

One of the principles guiding the New Zealand system is that people in custody must 'be given access to activities that may contribute to their rehabilitation and reintegration into the community'.<sup>12</sup> The *Corrections Act 2004 (New Zealand)* connects the ambition 'to reduce the risk of reoffending' with the individual needs of people in custody, by requiring the system to consider 'cultural background, ethnic identity and language' when developing and providing rehabilitative reintegration programs and interventions.<sup>13</sup>

<sup>7</sup> Forensicare, Submission to the Cultural Review (December 2021) 2.

<sup>8</sup> See also *Corrections Services Act 2006 (Qld)* s 3(1).

<sup>9</sup> *Correctional Services Act 1982 (SA)* s 3(2)(c).

<sup>10</sup> *Correctional Services Act 1982 (SA)* s 3(2)(e).

<sup>11</sup> *Corrections Act 2004 (New Zealand)* s 5(1)(c).

<sup>12</sup> *Corrections Act 2004 (New Zealand)* s 6(1)(h).

<sup>13</sup> *Corrections Act 2004 (New Zealand)* ss 6(1)(c)(i), 6(1)(h).

While operational policies and cultural norms shape the way custodial staff perform their roles day-to-day, legislation is a powerful tool that can signal a change in approach that should translate to changes in operational practice through updated policies, guidelines and training.

Developing a new legislative framework for the adult custodial corrections system is a foundational reform that will symbolically and legally shift the dial on what the criminal justice system and the broader community expect of a fair, safe and modern custodial corrections system.

## A values-based approach

To drive cultural change across the system, the new legislation should set out the expectations for a values-based approach to the delivery of corrections services. This could be through defining a set of principles to guide the operation of the system, drawing on the Victorian Public Sector Values, which apply to all corrections staff and are set out in the *Public Administration Act 2004*.<sup>14</sup> The Victorian Public Sector Values are:



Several of these values – integrity, impartiality, accountability, respect, leadership and human rights – play significant parts in a safe and respectful custodial environment and should be considered in the development of a new legislative framework.

DJCS and Corrections Victoria also have organisation-specific values that guide their work, including ‘working together, making it happen, respecting other people, serving the community and acting with integrity’.<sup>15</sup>

According to the most recent *Corrections Victoria Strategic Plan 2015–2018*, the following approach guides the work and community expectations for the custodial system and the corrections workforce:

**‘People** – our people are fundamental to our success.

**Partnership** – we are committed to improving community safety with our partners in the criminal justice system.

**Respect** – everyone within the correctional environment has the right to feel safe and to be treated with respect.

<sup>14</sup> See further, Victorian Public Sector Commission, *Public Sector Values* (Web page) <https://vpssc.vic.gov.au/ethics-behaviours-culture/public-sector-values/>; *Public Administration Act 2004* (Vic) s 7.

<sup>15</sup> Department of Justice and Community Safety, *About the department* (Web page) <https://www.justice.vic.gov.au/about-the-department>.

**Rehabilitation** – we believe that all individuals have the capacity for positive behaviour change.

**Victims** – our work acknowledges and respects the rights of victims.

**Excellence** – it is essential to be future-focused and to strive for innovation, best practice and excellence.

**Public value** – we strive to deliver public value through a modern, efficient and effective correctional system.<sup>16</sup>

As part of the development of a new legislative framework and the implementation of our recommendations, we suggest that DJCS update its own vision, values and statement of direction. Other public sector bodies have undertaken work to translate the Victorian Public Sector Values into their operating context, and a similar approach could help connect these values to the corrections context.<sup>17</sup>

## Reflecting contemporary human rights standards

Since the commencement of the Corrections Act, there has been significant development of human rights standards for people in custody under international law.<sup>18</sup>

Key civil, political and cultural rights were explicitly adopted in Victoria in 2006 when it became the first state jurisdiction to create specific human rights legislation – passing the Charter of Human Rights and Responsibilities (the Charter). Since that time, it has been unlawful in Victoria for public authorities to act in a way that is incompatible with human rights or, when making a decision, to fail to give proper consideration to a relevant human right. This obligation applies to the delivery of services within the adult custodial corrections system and the day-to-day work of corrections staff.<sup>19</sup>

Through the operation of the Charter, there is also a process of reflecting on human rights standards in the development and implementation of operational guidelines

<sup>16</sup> Department of Justice and Community Safety (Corrections Victoria), *Strategic Plan 2015-2018*.

<sup>17</sup> See for example, Department of Education and Training, *Understanding DET's Values – Schools Guide* (October 2017).

<sup>18</sup> This includes the enactment of a number of significant human rights instruments relating to the rights of people in custody. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) were adopted in 2005. The Nelson Mandela Rules built on the Standard Minimum Rules for the Treatment of Prisoners that were first adopted in 1955. The United Nations Rules for the Treatment of Women Offenders (the Bangkok Rules) were adopted in 2010 and build on the Nelson Mandela Rules to provide additional rights for women in prison. Other relevant developments in international human rights law include the adoption of the International Convention of the Rights of People with Disability (2006), the United Nations Declaration on the Rights of Indigenous Persons (2007) and the Optional Protocol to the Convention on the Rights of People with Disabilities (2006). Of more general application, the Optional Protocol to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted by the United Nations in 2002 and ratified by Australia in 2017. OPCAT provides a regime for the inspection of places of detention. Australia is in the process of implementing its obligations under OPCAT.

<sup>19</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 38.

and policies. Current human rights standards, however, are not expressly applied and adopted to the overarching legislative framework for the system.

Subordinate instruments and operational instructions and policies in Victoria align more closely with international standards which are reflected in the *Guiding Principles for Corrections in Australia* and the custodial standards for men and women in Victoria.<sup>20</sup> However, as the standards are not adopted or expressly incorporated by the Corrections Act, they cannot be enforced in the same way as statutory standards or substantive human rights.

Several other jurisdictions provide examples of how protection of the human rights of people in custody can be incorporated into custodial legislation. For example, the *Corrections Act 2004* (New Zealand) expressly states that rules and regulations relating to the operation of corrections facilities are based on the Mandela Rules.<sup>21</sup> Some Australian jurisdictions also reference human rights within their principal Act. For example, Queensland explicitly recognises the inherent dignity and individual needs of people in custody:

‘Every member of society has certain basic human entitlements and that for this reason, an offender’s entitlements other than those that are necessarily diminished because of imprisonment or other court sentence, shall be safeguarded.’<sup>22</sup>

**Corrections Services Act 2006 (Qld)**

### **A safe and humane custodial system – the ACT’s *Corrections Management Act 2007***

The ACT’s *Corrections Management Act 2007* sets out how the management of people in custody should contribute to the maintenance of a safe, just and democratic society. The Act’s introductory preamble sets out expectations for a safe and humane custodial corrections system:

- ▶ ‘The inherent dignity of all human beings, whatever their personal or social status, is one of the fundamental values of a just and democratic society.
- ▶ The criminal justice system should respect and protect all human rights in accordance with the *Human Rights Act 2004* and international law.
- ▶ Sentences are imposed on offenders as punishment, not for punishment.
- ▶ The management of imprisoned offenders, and people remanded or otherwise detained in lawful custody, should contribute to the maintenance of a safe, just and democratic society, particularly as follows:
  - by ensuring justice, security and good order at correctional centres

<sup>20</sup> Corrective Services Administrators’ Council, *Guiding Principles for Corrections in Australia* (2018); Department of Justice and Community Safety (Corrections Victoria), *Correctional Management Standards for Men’s Prisons in Victoria* (2014); Department of Justice and Community Safety (Corrections Victoria), *Standards for the Management of Women Prisoners in Victoria* (2014).

<sup>21</sup> *Corrections Act 2004* (New Zealand) s 5(1)(b).

<sup>22</sup> *Corrections Services Act 2006* (Qld) s 3.

- by ensuring that harm suffered by victims of offenders, and their need for protection, are considered appropriately in making decisions about the management of offenders
- by promoting the rehabilitation of imprisoned offenders and their reintegration into society
- by ensuring that imprisoned offenders and people remanded or otherwise detained in lawful custody are treated in a decent, humane and just way.<sup>23</sup>

The Act contains expectations about the treatment of people in custody including to respect and protect human rights; to ensure decent, humane and just treatment; to preclude torture or cruel, inhuman or degrading treatment; and to ensure the person is not subject to further punishment (in addition to deprivation of liberty).<sup>24</sup> There are also requirements to ensure that the conditions in custody meet minimum living conditions.<sup>25</sup> The Act also expects promotion of a person's rehabilitation and reintegration into society.<sup>26</sup>

## Providing a framework for clear and consistent decision-making

One of the challenges to understanding the expectations, standards and requirements for the adult custodial corrections system is the sheer volume of materials and policy that guide the system's operations.

Corrections staff work in a dynamic and challenging workplace that often requires them to respond rapidly to imminent risks. In high-pressure situations, there is an expectation that staff understand and have applied the policies, procedures and guidance that relate to the immediate situation. Providing a clear framework for decision-making would help create more certainty and increase safety and fairness within the custodial environment.

We have heard from staff that there is a need for more detailed and ongoing training on the operational application of Commissioner's Requirements, Deputy Commissioner's Instructions and Local Operating Procedures. We were advised that these documents are made available to new recruits as part of pre-service training and that updates or changes are communicated to the workforce through email and local processes.

Despite various mechanisms being in place to communicate policy changes, we understand there may be inconsistencies in how well local management embed an operational understanding of policies within the workforce.

<sup>23</sup> *Corrections Management Act 2007* (ACT), preamble.

<sup>24</sup> *Corrections Management Act 2007* (ACT) s 9.

<sup>25</sup> *Corrections Management Act 2007* (ACT) s 12.

<sup>26</sup> *Corrections Management Act 2007* (ACT) s 9.

We have heard from staff that the practical application in custodial environments is mainly learned on the job and there is inconsistency in practice:

'There is no accountability at any level ... You can easily be a lazy prison officer, senior or supervisor and that there seems to be an inconsistency of interpretation of Deputy Commissioner Requirements and Local Operating Procedures.'

**Staff member**

Supporting corrections staff with clear and consistent principles to guide fair, transparent and ethical decision-making will empower and support them in their daily duties and ensure that people in custody experience consistent and fair decision-making. It will also support the continued shift away from a compliance-based culture and punitive responses.

Through our engagement with corrections staff and people in custody, we heard concerns about procedural fairness and inconsistency in decision-making:

'[A good staff member is someone who] communicate[s] with you properly, they address you; they follow up if you make a request. They're balanced. There's often inconsistency in how staff behave – they tolerate something one day, but not the next.'

**Person in custody**

'The Deputy Commissioner's Instructions are there to protect me, to protect the prisoner, to ensure [things are] fair, what the expectations [on behaviours] are ... [Management at this location] keep changing the goal posts. They will make up decisions to suit themselves.'

**Staff member**

A new legislative framework would help create new custodial standards and key outcomes, define indicators or measures, and provide guidance to custodial staff on the expectations of their role. In support of this new approach, in Part 6 of this report, we recommend the development of an ethical decision-making framework, which would derive its authority from a new legislative framework.

Victoria already holds the building blocks for this approach in the existing custodial standards for men and women, the Charter, as well as the *Guiding Principles for Corrections in Australia*. A useful example of an outcomes-based application of standards is the ACT Standards for Adult Correctional Services.<sup>27</sup> This document records standards in plain language and includes indicators to assist people to understand what actions the standard might require at an operational level.

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<sup>27</sup> ACT Inspector of Custodial Services, *Standards for Adult Custodial Correctional Services* (2019) [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services\\_final\\_web.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services_final_web.pdf).



## A revised framework for the use of strip-searching and restrictive practices

A revised legislative framework should also strengthen the transparency and accountability processes for the use of strip-searching and restrictive practices in custodial environments. This should include prohibiting the use of certain practices that no longer meet contemporary expectations of a modern custodial corrections system, such as the use of spitter hoods and reliance on routine strip-searching.<sup>28</sup> It should also include clear statutory guidance on the circumstances when other practices may be used – such as use of force, restraints and seclusion – and relevant safeguards and requirements to report publicly on how often these practices are used within the custodial environment.

In some jurisdictions, the use of certain restrictive practices has been prohibited. For example, South Australia has recently banned the use of spitter hoods in their custodial facilities.<sup>29</sup>

Other jurisdictions provide legislative guidance on the use of restrictive practices, including the use of force and strip searches. For example, Queensland's principal legislation provides detailed guidance for staff on the circumstances and pre-conditions for the use of force.<sup>30</sup> Corrections legislation in other jurisdictions also includes strong reporting and record-keeping obligations in relation to searches and other practices.<sup>31</sup>

In Victoria, the use of restrictive practices, including force, spitter hoods and routine strip searching, is regulated by Corrections Victoria operational policies (Commissioner's Requirements). While these regulatory instruments require custodial staff to conduct risk assessments, seek approval and report when they use force, restrictive practices, or perform a strip search on a person in custody, a number of stakeholders contributing to the Cultural Review have strongly supported legislative prohibition and safeguards and additional oversight.<sup>32</sup>

Our research and engagement highlight the gap between policy and practice and the benefit of introducing a legislative framework to further limit the use of some restrictive practices.

See Chapter 6 for our specific recommendations about record-keeping and data reporting and *Part 6. People in custody* for further discussion of the impact of these practices on people in custody and related recommendations.

<sup>28</sup> While we acknowledge the intent of corrections policy is to eradicate routine use of these practices, they are not currently regulated by the *Corrections Act 1986*.

<sup>29</sup> *Statutes Amendment (Spit Hood Prohibition) Act 2021 (SA)*, pt 2.

<sup>30</sup> *Corrective Services Act 2006 (QLD)* s 143.

<sup>31</sup> See, for example, *Corrections Management Act 2007 (ACT)* s 142.

<sup>32</sup> Including Human Rights Law Centre, Submission to the Cultural Review (December 2021) 10; LGBTIQ Legal Service, Submission to the Cultural Review (December 2021) 6; Liberty Victoria, Submission to the Cultural Review (December 2021) 10; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 15; Victoria Legal Aid, Submission to the Cultural Review (December 2021) 1; Fitzroy Legal Service, Submission to the Cultural Review (January 2022) 4.

## Embedding cultural safety for Aboriginal people in custody

The *Corrections Act 1986* is silent on the specific cultural rights and needs of Aboriginal people in custody.<sup>33</sup>

While the interpretive provision under section 38 of the Charter apply to all public authorities and should require the consideration of specific rights including Aboriginal cultural rights, we heard through our engagement processes that staff may not have confidence to apply the Charter rights in their everyday duties and decisions.

In contrast, other jurisdictions include specific recognition and support for Aboriginal people in custody in their corrections legislation, such as South Australia's *Correctional Services Act 1982*.

### Recognising Aboriginal cultural safety in legislation

The guiding principles in the South Australian legislation recognise the importance of Aboriginal and Torres Strait Islander community involvement and connections. This includes specific recognition of the importance of community involvement in the rehabilitation of Aboriginal and Torres Strait Islander people in the custodial system. This is achieved by:

'Ensuring so far as is reasonably practicable that -

- ▶ Aboriginal and Torres Strait Islander persons are placed in a correctional institution as close as possible to their usual place of residence
- ▶ an Aboriginal or Torres Strait Islander person is entitled to seek a review of a decision to transfer the person from one correctional institution to another in relation to regional transfers where the person will be 200km or further from the correctional institution they are being transferred from
- ▶ Aboriginal and Torres Strait Islanders communities are adequately consulted in relation to any community service projects that are regarded as having particular value to the relevant Aboriginal or Torres Strait Islander community.<sup>34</sup>

<sup>33</sup> The only reference to Aboriginal people is in section 82 with reference to the Secretary's consideration of an application for a custodial interstate community permit.

<sup>34</sup> *Correctional Services Act 1982* (SA) s 3(2)(g).

The approach described in the South Australian legislation is consistent with the *Guiding Principles for Corrections in Australia*, which include the following:

- ▶ placement of people in custody that promotes individual rehabilitation and supports wellbeing – where practicable, people in custody are placed in a location close to their family and community with particular consideration given to the needs of Aboriginal and Torres Strait Islander people in custody<sup>35</sup>
- ▶ interventions for Aboriginal and Torres Strait Islander people in custody that are culturally specific or adapted to cultural needs, and that acknowledge the impact of the Stolen Generations and emphasise Indigenous healing and wellbeing.<sup>36</sup>

There are also examples within Victorian legislation where decision makers are required to take into account the cultural rights and individual needs of Aboriginal people including provisions under the *Bail Act (Vic) 1977*.<sup>37</sup>

Aboriginal cultural and other rights should be explicitly adopted in the new legislation framework for the adult custodial corrections system. This should include specific recognition of Aboriginal cultural rights as provided for in section 19(2) Charter; the right to self-determination; and the introduction of a positive duty to promote and protect Aboriginal cultural rights and safety. The legislation should also include recognition of the factors that contribute to the over-representation of Aboriginal people in the criminal justice system and the impacts of colonialism, structural and systemic racism, and discrimination.

Consistent with the approach in other jurisdictions, the revised legislative framework should also provide clear guidance for corrections staff and management on how to make decisions regarding Aboriginal people in custody that support their connection to identity, culture and community.

Finally, the new legislative framework should anticipate that, as an outcome of the Victorian Treaty process, Aboriginal people will bring their own set of aspirations and expectations for the adult custodial corrections system which may also require legislative reform.

See Part 5 of this report for further discussion of access to culture and cultural safety for Aboriginal people in custody and our recommendations.

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<sup>35</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018) [5.1.5.] 23.

<sup>36</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018) [5.1.6.] 23.

<sup>37</sup> For example, the *Bail Act 1977 (Vic)* requires a bail decision-maker to take into account a person's cultural background and ties to extended family or place and any other cultural issues or obligations when making a determination about an Aboriginal person: s 3A.

## Strengthening the connection between the corrections, justice and social services systems

As discussed in Part 1, the safe, humane and effective operation of the adult custodial corrections system is also shaped and influenced by the social services system. These systems depend on each other – their connection and integration are critical to ensuring safe custody, effective working relationships between corrections staff and service providers, and successful reintegration when people exit custody and re-enter the community. It is clear from our engagement that the connection between the social services system and the custodial system is fragmented and often strained.

Notwithstanding examples of good local practice, we observed instances of piecemeal information-sharing between the custodial system and service providers, inconsistent collaboration and a 'master/servant' dynamic which undermines the ability of contracted social services to provide the support they need to people in custody.

More explicit articulation of the role and purpose of the adult custodial corrections system will help develop a shared understanding of how the adult custodial corrections system should interact with broader social services systems to improve social outcomes for people in custody. From a practical point of view, the regular interaction between people in custody and community or public service providers means that people may form personal and professional connections during their sentence or period of remand that will endure after they are released. This means that a person in custody may be able to continue to see the same mental health worker or the same doctor post release. These relationships can ease the re-entry process and remove some of the obstacles to reintegration.

There is also an opportunity to explicitly recognise and elevate the need for the adult custodial corrections system to work alongside other parts of the justice system to reduce recidivism and contribute to community safety.

See Part 6 of this report for further discussion of the importance of supporting connections with the broader justice and social services systems.

**Recommendation 2.1**  
**A new legislative framework for the adult custodial corrections system**

The Victorian Government should introduce a new legislative framework to shape a more modern adult custodial corrections system with a focus on rehabilitation, safety and human rights.

This new legislative scheme should:

- a) articulate the purpose and objectives of the adult custodial corrections system, identifying safety and rehabilitation as primary purposes
- b) set out principles and values to support clarity and consistency in decision-making within the adult custodial corrections system, including a specific decision-making framework for supporting Aboriginal people in custody
- c) include an express statutory statement that the loss of a person's liberty is the punishment, in line with the Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules)
- d) adopt and reflect contemporary international human rights standards relating to people in custody including the United Nations Declaration on the Rights of Indigenous Peoples and Mandela Rules
- e) provide guidance on the minimum facilities required at all new prison locations, including minimum standards for cultural spaces and facilities to support cultural practice
- f) introduce safeguards to prohibit routine strip-searching and certain restrictive practices, specifying that they must only be used as a last resort and must not be used punitively or for improper purposes, along with requirements for the public reporting of data relating to the use of strip-searching, seclusion and other restrictive practices, and use of force
- g) expressly recognise the historical legacy of colonisation as set out in the Aboriginal Justice Agreement, the factors contributing to over-representation of Aboriginal people in the criminal justice system, and the strength and resilience of Aboriginal communities
- h) recognise the right to self-determination and include a positive duty to ensure cultural safety for Aboriginal people in custody
- i) be flexible enough to support the key aspirations and outcomes of the Victorian Treaty process
- j) support increased connection and collaboration with the social services system
- k) establish an independent statutory Inspectorate of Custodial Services reporting publicly to Parliament.

We also recommend the establishment of an advisory committee, reporting to the Secretary of DJCS, to help develop the new legislative scheme. The advisory committee should include key criminal justice, human rights and social services representatives, Aboriginal Justice Caucus, health and support service providers, victims of crime, the Community and Public Sector Union and people with lived experience of the adult custodial corrections system.

## 5 Oversight and monitoring

There are significant power imbalances within closed environments where day-to-day operations are largely out of public view. Even where there are clear standards and expectations about staff conduct and the rights of people in custody, the power dynamics that operate within the custodial setting are a forceful deterrent to people taking action to protect their rights.

Effective internal and external oversight mechanisms are essential to assure the government and the community that the adult custodial corrections system is operating as intended and upholding safety, integrity and human rights. Monitoring and oversight mechanisms also provide valuable intel to address emerging systemic issues and support continual improvement.

An oversight system comprises several complementary functions, which each play an important role. These functions include regulation, auditing, investigations, reporting and inspection and monitoring.<sup>38</sup> Some functions are reactive (complaints or incident management), while others are proactive or preventive, aimed at identifying and responding to risks before they occur. The combination of strong internal oversight mechanisms and external, independent oversight is considered best practice in both international law and current research.<sup>39</sup>

'A robust system of correctional oversight is one that is multi-faceted and multi-layered ... and is one that involves numerous players both inside and outside the correctional agency ... Internal accountability measures and external forms of oversight are neither in competition nor mutually exclusive; they are designed to meet entirely different – but complementary – needs.'<sup>40</sup>

<sup>38</sup> Sourced from Michelle Deitch who frames 'oversight' as a 'catch-all, umbrella term that refers to at least seven distinct functions', including regulation, audit, accreditation, investigation, legal, reporting, inspection/ monitoring: Michelle Deitch, 'Distinguishing the Various Functions of Effective Prison Oversight' (2010) 30(5) *Pace Law Review* 1439.

<sup>39</sup> See United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 83, which notes that there should be a twofold system for regular inspections, including internal and external oversight; See also Michelle Deitch, 'Distinguishing the Various Functions of Effective Prison Oversight' (2010) 30(5) *Pace Law Review*.

<sup>40</sup> Michelle Deitch, 'Distinguishing the Various Functions of Effective Prison Oversight' (2010) 30(5) *Pace Law Review* 1444.

The effectiveness of internal and external oversight and monitoring can be partly measured by a corrections authority's attitude toward, and engagement with, oversight bodies, as well as their willingness to receive feedback and respond promptly to recommendations, observations and concerns raised. Insular and defensive institutional cultures are less receptive to the observations, expertise and advice of oversight bodies.

We observed aspects of the current adult custodial corrections culture that may limit the effectiveness of internal and external oversight functions. We call for a fresh approach to oversight, a resetting of existing relationships with internal and external oversight bodies, and a reorientation of the system toward transparency and openness.

Despite the various oversight and integrity arrangements, there are significant gaps, limited opportunities for scrutiny of the routine experiences of people in custody and the experiences of staff, and resources are stretched thin. This is also a missed opportunity to take a preventive approach to risks, identify opportunities to improve staff capability and ensure that the system is achieving its objectives.

The lack of effective preventive monitoring and oversight has resulted in a reactive system where the same issues continually arise. For example, external oversight bodies have consistently identified staff training and capability as a way to address many systemic issues. However, without a holistic proactive approach, responses are often ad hoc and time limited, providing a Band-Aid solution until the next crisis.

We recommend strengthening the system's internal monitoring functions alongside the creation of an independent Inspectorate of Custodial Services to complement the work of existing integrity bodies. A stronger internal monitoring function will create a more transparent and responsive system with the capability to undertake internal risk identification and mitigation and support continuous improvement to systems and processes, services and staff capability.



## Key findings – Oversight and monitoring

- ▶ Internal scrutiny and monitoring of the adult custodial corrections system is patchy, inconsistent and provides little public transparency. External oversight is spread across a number of oversight and integrity bodies; however, Victoria is one of the few jurisdictions that does not have a dedicated external oversight body for the adult custodial corrections system.
- ▶ Effective internal and external oversight is limited by a lack of system purpose and data limitations.
- ▶ There is an urgent need for a review and update of service delivery outcomes (SDOs) and a shift to a more holistic approach to measuring system performance with attention to consistency across private and public prisons.
- ▶ There is insufficient public reporting about the overall performance of the system and how it is measured, to support transparency and accountability.
- ▶ The delay in the designation of a National Preventive Mechanism (NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is a missed opportunity to establish greater external scrutiny of the adult custodial corrections system.<sup>41</sup>
- ▶ The Independent Prison Visitor (IPV) Scheme makes a critical contribution to transparency and accountability, but it would benefit from increased structure, independence and improved processes for ensuring their feedback supports continuous improvement.
- ▶ There are opportunities for Aboriginal community Elders and Respected Persons and Aboriginal community-controlled organisations to play an enhanced role in oversight processes.

<sup>41</sup> Australia ratified OPCAT on 21 December 2017. At the time of ratification, Australia invoked Article 24 of OPCAT to postpone its obligations to establish an NPM until January 2022 arguing that postponement was necessary to negotiate with the States and Territories. The core obligation arising from ratification of OPCAT is the establishment of a system of regular visits to places of detention by an independent body or bodies, known as National Preventive Mechanisms (NPMs) and enable the Sub Committee for the Prevention of Torture (UN SPT) to visit places of detention and to work collaboratively with the NPMs. During the course of the Cultural Review, the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022 received Royal Assent (27 September 2022) and commenced on 11 October 2022. This facilitated the UN SPT's visits in Victoria at all places of detention, not just adult correctional facilities.

## Enhancing internal oversight and system performance

Processes and data systems that enable corrections staff and leadership to identify and respond to local and systemic issues are essential for building a complete picture, managing risk and assessing the performance of a complex system:

‘People don’t need to be fearful. It’s a big system. There’s lot of people employed in it so there’s going to be things that are missed or deliberate things that are done, but to be able to bring them to the light and say, “Something needs to happen. Go and investigate it”. And you need that person to follow that through to fix that up.’

**Sisters Inside**

Internal oversight activities are often in response to individual critical incidents or a specific report or review; while external oversight bodies respond to complaints but have limited resourcing to regularly visit custodial sites. There is little alignment between the ultimate purpose of what the system is trying to achieve and, therefore, no consistent way of identifying and responding to systemic issues both through internal processes and in response to external oversight bodies.

We note that a number of business units within DJCS play a role in system monitoring and risk identification. However, there is limited consistent and ongoing monitoring capability to support preventive action. We have observed that the system parts are reactive and siloed, require additional resources and data capability, and need to be better supported by information-sharing protocols.

In particular, it is critical that the System Performance Branch within Corrections Victoria and other risk and assurance functions within DJCS more broadly have adequate resourcing and capability to oversee and monitor performance, and to address risks in a timely manner, to ensure the system meets its legal duty of care, both to staff and people in custody.<sup>42</sup>

During the Cultural Review, we heard that teams with oversight functions are constrained by limited resources, expertise and inadequate data systems. We also heard that important data is frequently held in hardcopy locally, often in different formats. This lack of consistent and complete local data as well as the limited capability of central data systems is a serious impediment to effective oversight of the system's performance.<sup>43</sup>

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<sup>42</sup> We note several changes have been made to improve internal assurance processes during the course of the Cultural Review including the implementation of quarterly reporting to DJCS's Board of Management on JARO reviews, integrity, complaint and misconduct matters, as well as monthly reports on Workcover matters with summary statistics and detailed information on each case.

<sup>43</sup> These differences are particularly stark in relation to private prisons. Our analysis of the public and private prison data provided by DJCS found that public and private prisons have their own individual systems for recording information. This impacts the ability of DJCS to both receive and interpret data at a systems level to understand key issues and risks.

During our research, data limitations prevented us from readily examining many of the issues central to the Cultural Review's Terms of Reference, and this significantly obscures DJCS's own understanding of the performance and integrity of the system.

Through our engagement with DJCS, we found that the limited visibility of the 'everyday' operation of the adult custodial corrections system was a concern for DJCS and those with responsibilities for the strategic leadership of the adult custodial corrections system:

'I think the "eyes-in" piece is missing. The Independent Prison Visitor Scheme is the closest we've got [to an independent corrections inspectorate] ... How do you get eyes in? I think it's a constant struggle for the department to really know what's going on the ground.'

**Expert interview**

Senior leaders from Corrections Victoria also raised concerns in relation to system oversight, internal risk management and mitigation and performance monitoring, including a lack of resourcing, an over-reliance on integrity agencies, and limited ability to form a complete strategic picture of the system:

'Everything in little head office is very manual, and we've tried to pick up pieces or build systems as best as we can to do some of that thematic identification. [There is a] team of three that processes over 5,000 pieces of correspondence every year from the public ministers' constituents, prisoners, prisoners' families ... With the growth in the demand for that over the years [...] their workload has grown by 1,400 per cent in 10 years. They just can't keep stats anymore.'

**Expert interview**

As a part of a commitment to system reform, DJCS requires a 'reboot' of its risk identification, management and mitigation processes. This will require additional resourcing to improve IT systems and data management, but equally will require close attention to lead risk indicators, regular communication of emerging and priority risks to leadership and clear accountabilities for the response to, and management of, risk. This is particularly so in relation to private prisons.

## **Role of SDOs in monitoring system performance and identifying risks**

DJCS's current approach to internal oversight and monitoring focuses on tracking the performance of the adult custodial corrections system predominantly through the quarterly reporting of service delivery outcomes (SDOs) and key performance indicators (KPIs). While DJCS collects a number of other data points including use of force reviews, annual surveys conducted with people in custody and prison inspections by senior departmental leaders, it is the SDOs and KPIs that are regularly relied upon to assess the performance of the system.

It is intended that these performance measures will provide senior executives and the Secretary of DJCS with adequate information about a range of issues and processes relating to the safety, security, health and welfare of people in custody and delivery of activities and programs.<sup>44</sup>

It emerged as a unanimous theme that the current performance measures are inadequate and do not provide the detailed level of system oversight that is required to apprehend emerging risks across the system as a whole or on a locational basis, drive continuous improvement, or encourage an assessment of quality of outcome.

To enable a more holistic and aligned understanding of the performance of the system, we recommend a review and update of SDOs and overall system performance measures. This review should pay particular attention to how the performance of private prisons is managed and the purpose of SDOs (e.g., to ensure minimum standards are met; to set stretch goals; and/or identify risks).

### **SDOs do not provide a comprehensive or accurate picture of organisational culture**

As noted above, during our engagement, we heard that SDOs did not provide an accurate or comprehensive picture of the culture or performance of a particular prison and were regarded as 'out of date'. One corrections leader commented:

'[Service delivery outcomes] were defined about 10, 15 years ago when corrections was a more different beast ... They don't really accurately reflect the leading indicators of a healthy system.'

**Expert interview**

We also heard that while SDOs are intended to be an outcomes measurement framework, in many instances the activities required to satisfy an outcome are administrative in nature and encourage a compliance-based approach as opposed to understanding whether the activity is helping to drive quality and improvement towards a defined outcome.

For example, we heard that SDO 23 – which is intended to drive effective case management – uses an audit score averaged across a sample of case management files. As such, it only provides a limited picture of the outcomes case management is trying to achieve.

'We tried desperately to focus everyone's attention on case management, it met that intention, but now the measure has had a negative effect, with a lot of prison staff just focusing now on SDO 23, because that represents case management. And we're like, "No, that's just only one indicator of it".'

**Expert interview**

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<sup>44</sup> Department of Justice and Community Safety (Corrections Victoria) *Prison Service Delivery Outcomes Definitions 2020-21 (version 1.0)* (September 2020).

Not all SDOs apply to all prisons, for example, SDO 24 WorkCover only applies to public prisons, others are only applicable to private prisons like SDO 11 Chronic Health Care Plans, and SDO 25 relating to Disability Training only relates Port Phillip Prison given its management of the Marlborough Unit.

We also received reports of data being recorded inconsistently against SDOs and variations in the way different locations interpret and report data, which make it difficult to assess the overall performance of the corrections system.

'What happens at the moment with the SDOs and what's called an SDO calculator, every General Manager has appointed different people with different skills who have different understandings. Some people use the SDO calculator, some people use offline spreadsheets and then aggregate it in. There's nobody that's been responsible end-to-end to ensuring the quality and alignment with policies and processes and all of the things to get into it. What you then get is, as many prisons as there are, there are that many variations of things.'

**Expert interview**

The limitations of SDOs have been apparent for decades – an independent 2000 report into private prisons noted that SDOs at the time were short term, focused on negative behaviours of people in custody, were quantitative and did not 'adequately reflect all key aspects of operatory performance.'<sup>45</sup>

This report also noted that SDOs can lead to perverse incentives and unreported incidents, and ultimately do not provide a true test of how a prison is operating. The report noted that Corrections Victoria had commissioned an external review of SDOs in relation to the operation of private prisons, which recommended including better assessment of the custodial environment (including surveys for people in custody and staff and independent audits by the then Office of the Correctional Service Commissioner<sup>46</sup>) and the inclusion of outcome measures that align with the purpose of the system. The report also recommended the development of a model of quality service provision based on the 'healthy prison' test<sup>47</sup> and that quantitative and qualitative measures are included in the performance management framework.<sup>48</sup>

### **New 'cultural' outcomes should be considered**

A review of SDOs provides an opportunity to include outcomes that better reflect and are aligned to a new system purpose. A revised SDO framework may include outcomes aimed at improving workplace culture and increasing support and safety for staff. Revised SDOs should also reflect proposed changes to the use of restrictive practices and ensure that current measures that guide reintegration and case management outcomes are geared toward an assessment of the quality of the case management or the transition support, rather than the mere existence of it.

<sup>45</sup> Peter Kirby, Vivienne Roche, and Brian Greaves, *Report of the Independent investigation into the management and operation of Victoria's private prisons - Part 1* (Report, October 2000) 34.

<sup>46</sup> Now called the Justice Assurance Review Office (JARO).

<sup>47</sup> World Health Organization's (WHO) 'Healthy Prison test' is a conceptual framework used in other jurisdictions to guide independent oversight and assess all aspects of the treatment and care of people in prisons.

<sup>48</sup> Peter Kirby, Vivienne Roche, and Brian Greaves, *Report of the Independent investigation into the management and operation of Victoria's private prisons - Part 1* (Report, October 2000) 40.

Some other jurisdictions already use outcomes-based standards to measure the performance of adult custodial corrections systems.

### Queensland's outcomes-based prison inspection standards

In Queensland, the Office of the Chief Inspector conducts inspections and reviews of all correctional facilities. These inspections are based on the WHO's Healthy Prison test and review all prisons against the following outcomes:

- ▶ Appropriate steps are taken to ensure that individual people in custody are protected from harm by themselves and others.
- ▶ People in custody are treated with respect for their dignity while being escorted to and from prison, in prison and while under escort to any location.
- ▶ People in custody are held in conditions that provide the basic necessities of life and health, including adequate air, light, water, exercise in the fresh air, food, bedding and clothing.
- ▶ People in custody are treated with respect by centre staff.
- ▶ Good contact with family and friends is maintained.
- ▶ The entitlements of people in custody are accorded them in all circumstances without their facing difficulty.
- ▶ People in custody take part in activities that educate, develop skills and personal qualities and prepare them for life outside prison.
- ▶ Healthcare is provided to the same standard as in the community.
- ▶ Appropriate steps are taken to ensure that people in custody are reintegrated safely into the community and, where possible, into a situation less likely to lead to their further involvement in crime.<sup>49</sup>

These outcomes are used to measure the health of the prison and its performance.

We recommend a review of the SDOs alongside measures to support a more holistic understanding of the health of the custodial system such as independent interviews with people leaving custody. This review should be coordinated by the Office of the Secretary and include input from relevant business units and DJCS's Board of Management. It should be based on best-practice oversight of the performance of adult custodial corrections systems and inform the development of enhanced data systems and capability.

'What we need to do is zoom out, look at the outcomes we're wanting to achieve and see ourselves as a system of which there are component parts that are contributors to outcome achievement.'

Expert interview

<sup>49</sup> Queensland Corrective Services, *Healthy Prison Report* (Web page, October 2019) <https://corrections.qld.gov.au/documents/reviews-and-reports/healthy-prison-report/>.

We also support increased public reporting on the performance of the adult custodial corrections system, including SDOs to build transparency and accountability. For a number of years, advocates have called for greater public reporting with little result, despite this being a feature of independent oversight bodies in other jurisdictions.<sup>50</sup> Reporting publicly on the performance of the adult custodial corrections system will increase public understanding of the system's purpose and operations. In turn, this will improve community understanding of the value of the custodial workforce and the experiences of people in custody.

Our recommendation for a review and update of SDOs should also be informed by the proposed custodial standards to be developed by the new Inspectorate of Custodial Services – see Recommendation 2.3 below. We anticipate that the inspectorate will play a central role in validating the outcomes and results of performance measurement and work collaboratively to ensure effective monitoring and oversight of the system.

**Recommendation 2.2**  
**Revised service delivery outcomes and public reporting**

The Department of Justice and Community Safety should review and revise the service delivery outcomes (SDOs) used in the adult custodial corrections system, to reflect the amended purpose of the system and better identify, monitor and measure indicators of overall system performance and safety within custodial environments.

Revised SDOs should draw on the World Health Organization's 'Healthy Prison' test and provide a full picture of workplace safety, cultural issues and outcomes for people in custody.

To support increased transparency, the Department of Justice and Community Safety should:

- a) publish detailed SDOs and other key performance indicators for the adult custodial corrections system
- b) report against these SDOs and key performance indicators for both private and public prisons in its annual report tabled in the Victorian Parliament.

In Parts 4 and 6 of this report, we provide additional guidance on revising policies related to use of force (see Recommendation 4.3, Part 4) and measuring rehabilitative outcomes for people in custody more generally (see Recommendation 6.2, Part 6).

<sup>50</sup> For example, in Queensland, the outcome of prison inspections conducted by the Office of the Chief Inspector are publicly available. Similar public reporting models exist in New South Wales and the Australian Capital Territory.

## Monitoring performance of private prisons

One of the challenges for coherent and consistent oversight of the adult custodial corrections system is the combination of public and private prisons. Over the course of the Cultural Review, we heard about the challenges associated with identifying, regulating and responding to issues that arise in the operation of the private prisons managed by G4S and GEO Group Australia Pty Ltd.<sup>51</sup>

Monitoring and oversight of private prisons is driven by the terms of the contract between the Minister for Corrections, acting for the State of Victoria, and the relevant corporate entity. As part of the contract, private prisons must adhere to and meet benchmarks for relevant SDOs and KPIs.<sup>52</sup>

Private prisons are also subject to the Corrections Act and the Corrections Regulations 2019, as well as the Commissioner's Requirements. However, they are not bound by Deputy Commissioner's Instructions. They also have their own site-specific operating instructions and requirements that are reviewed by Corrections Victoria and DJCS to ensure that they are consistent with the Corrections Act, Commissioner's Requirements and their contractual obligations. Disjointed assessment and evaluation of the performance of private prisons makes it extremely difficult to get a sense of the performance of the system as a whole.

### Use of KPIs in private prisons

KPIs place additional requirements on private prisons, with financial penalties if they do not meet these requirements.

During our engagement, we heard that the significant financial penalties private prisons face for breach of contract or failure to achieve certain KPIs may encourage under-reporting of issues or attempts to skew data to avoid adverse action under contractual arrangements. We heard that the consequences of noncompliance can be severe for private prisons, including people losing their jobs.<sup>53</sup> While the use of KPIs, performance payments and financial penalties is intended to drive performance, this contractual structure provides different incentives for private prisons to achieve targets beyond outcomes for people in custody and staff. It is therefore much easier to set 'stretch benchmarks' for public prisons when there are no financial penalties.

These complexities were highlighted in recent investigations by the Independent Broad-based Anti-corruption Commission (IBAC), which noted that there is potential for private prison operators to manipulate SDOs to achieve performance payments, with negative impacts people in custody.<sup>54</sup> IBAC noted that private prison operators may misclassify data relating to prisoner-on-prisoner assaults, self-harm and out-of-

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<sup>51</sup> Victoria's privately run prisons are Ravenhall Correctional Centre, Port Phillips Prison and Fulham Correctional Centre.

<sup>52</sup> Relevant SDOs and KPIs are outlined in Appendix H.

<sup>53</sup> Staff member – Expert interview with the Cultural Review.

<sup>54</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 93.



cell hours. IBAC also noted the possibility that urinalysis tests could be manipulated.<sup>55</sup>

These findings align with the accounts of some participants:

'It is common occurrence ... to have senior managers ... pressure and coerce staff to under-report incidents to avoid a financial penalty and maximise profits. Unfortunately, the contract between corrections and [the provider] has bred this culture.'

**Staff member**

IBAC recommended that DJCS review the risk of SDO data related to private prisons being manipulated and that appropriate mitigation strategies be put in place.<sup>56</sup> We support the implementation of IBAC's recommendation, noting it would improve performance reporting across both public and private prisons.

### **Limited oversight and control**

DJCS has advised that the Private Prison Performance Management strategy currently consists of weekly performance meetings, a risk management strategy and a number of regular reporting requirements. We also understand that the recent introduction of an Assistant Commissioner, Custodial Operations role dedicated to private prisons will also improve Corrections Victoria's operational oversight of private prisons.

Despite these monitoring mechanisms, we found DJCS has limited control, visibility and oversight of private prison culture and performance. This is, in part, due to the setup of contractual obligations, inconsistencies in record-keeping and data systems and a lack of protocols for information-sharing.

The issue of comparability of data sets across public and private prisons came into stark relief during the Cultural Review and we experienced significant difficulty receiving data and information from private prisons. Data and information received was often in different formats, reflecting different reporting processes, which prevented us from making some comparisons across the system.<sup>57</sup> A number of issues related to data capture and management were also identified by the Victorian Auditor-General's Office.<sup>58</sup>

We consider that the monitoring, accountability and information-sharing arrangements for private prisons could be improved. While we are aware of the commercial restrictions and sensitivities associated with managing private contracts, there should be appropriate scrutiny and rigour applied to the conditions experienced by people in custody in private prisons. Notably, contractual agreements give the Victorian Government the right to access private prisons to

<sup>55</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 93.

<sup>56</sup> See recommendation 1(g): Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 97.

<sup>57</sup> For example, workforce demographic data and misconduct data is not held centrally by CV and was collected in a different format by each of the private prisons.

<sup>58</sup> Victorian Auditor-General's Office, *Safety and cost effectiveness of private prisons* (Report, 2018).

review, inspect, test and monitor services, and to examine and audit their accounts and records. With additional resources, DJCS could make greater use of this function.

There is also an urgent need to create consistent processes for data collection and central reporting to enable whole-of-system performance monitoring. See Chapter 6 for further discussion of data and information systems.

These changes will help DJCS better monitor the performance of private prisons, assess public value and support the Secretary of DJCS to meet their duty of care to people in custody across public and private prison locations.

### **Identifying better practice in private prisons**

The performance monitoring system also provides an opportunity to analyse data and identify effective practices that could be applied across the public prison system.

Anecdotally, we heard that it was sometimes easier to pilot programs in private prisons without the need to seek approval from government through time-consuming and uncertain funding proposal processes. We observed a number of examples of good practice within private prisons that could be applied to public locations – examples include a pilot program at Port Phillip Prison that enabled people in custody to use tablets for virtual visits, and Ravenhall Correctional Centre's Gateway digital case management application.

We understand that intellectual property developed during the contracted period belongs to DJCS, meaning there are opportunities for innovative programs and technological solutions to be piloted in private prisons and rolled out across the whole system.<sup>59</sup> However, we did not hear any successful examples of this happening. Similarly, we heard there is very limited sharing of information and resources (for example, to inform training, conduct and complaints handling) between public and private locations.

### **JARO's role in system oversight and accountability**

Located within DJCS, JARO (Justice Assurance and Review Office) provides internal assurance and conducts reviews to support accountability and oversight of the adult custodial corrections system and the youth justice system. JARO is not established under legislation and has the status of a standard business unit of DJCS, with a director reporting to the executive director of the Integrity and Reviews business unit, within the broader legal function of DJCS. The functions that are now performed by JARO were previously performed by the Office of Correctional Services Review.

JARO also has responsibility for administering the IPV (Independent Prison Visitor) Scheme. This includes making recommendations to the Minister for Corrections regarding IPV appointments, providing administrative support, briefing the Minister on the outcomes of IPV visits, and helping respond to issues raised by IPVs.

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<sup>59</sup> Staff member – Expert interview with the Cultural Review.

### The purpose and functions of JARO are narrow in scope

While JARO plays a role within the broader oversight, accountability and monitoring landscape for the adult custodial corrections system, JARO's mandate has been deliberately narrowed in recent years.<sup>60</sup> The primary role of JARO is to advise the Secretary of DJCS on the performance of the youth justice and adult custodial corrections systems, to ensure that the Secretary fulfils their statutory responsibilities.<sup>61</sup> This includes providing the Secretary with information on key risks, mitigation strategies and opportunities for improvement.

To support this advisory function, JARO undertakes detailed assessments of certain incidents, conducts reviews and investigations into deaths in custody and other 'high risk' incidents, including serious physical and sexual assaults, within the youth justice and adult custodial corrections systems.<sup>62</sup> As JARO's mandate as an internal assurance function is to advise the Secretary of DJCS about risks across the adult and youth justice, these reports are not published.<sup>63</sup>

Its previous function in considering issues of misconduct and the individual performance of custodial officers is now within the portfolio of People and Workplace Services and Integrity and Reviews. We understand that the shift to a more confined set of functions was intended to enable JARO to focus on monitoring and continuous improvement at a systems level.

'[JARO] does not focus on any individual prison officer, it doesn't name people in its reports. Its focus is very much now about what was the system, did the system work, are there gaps in the system, rather than did a particular person fail or not live up to their duties.'

Expert interview

### JARO has limited capacity to oversight the system

As an internal business unit within DJCS, JARO's capacity to provide an ongoing and comprehensive assurance and review function is subject to competing priorities within DJCS.

We heard that JARO is responsible for assessing and triaging a significant number of critical incidents each month. The workload associated with this responsibility has limited JARO's capacity to undertake the intended thematic reviews and systemic consideration of issues to support continuous improvement. In 2020–21, JARO only

<sup>60</sup> The DJCS note the changes to JARO's role have been made to clarify and simplify its role; provide separation from DJCS misconduct process and improve engagement with Corrections Victoria.

<sup>61</sup> Department of Justice and Community Safety, *Annual Report 2020-21* (Report, 2021) 179.

<sup>62</sup> JARO assesses incidents using a risk assessment framework correlated with high impact and controllability. Additional high-risk incidents that are consistently assessed and reviewed, including escapes, attempted suicide, major fires, riots and serious self-mutilation. All Critical Incidents are reported to the Assistant Commissioner, Deputy Commissioner or Duty Director within 30 minutes if a 'notifiable' incident and within 24 hours if a 'reportable' incident. JARO assesses certain notifiable incidents and reviews and investigates a small proportion of these based on its risk framework: Justice Assurance and Review Office, *Risk Assessment Framework User Guide* (2018); Department of Justice and Community Safety (Corrections Victoria 'JARO Overview and Risk Assessment Framework – Presentation', Data provided to the Cultural Review.

<sup>63</sup> We note that JARO reviews also serve the purpose of acquitting DJCS reporting obligations to the Victorian Coroner. The Coroner can, and frequently does, reference or publish JARO reports.

conducted two thematic reviews in comparison to reviewing 24 deaths in custody and conducting four incident reviews.<sup>64</sup>

DJCS has advised that in recent years, there has been a push to convey more information from JARO reviews to Corrections Victoria leadership and that identifying opportunities for broader change at a system level is a core part of JARO's remit. However, throughout our engagement we heard that there is still limited collaboration, information-sharing or dialogue between JARO and Corrections Victoria. This may be indicative of a broader issue in the relationships between Corrections Victoria and DJCS business units that have a role in the corrections system.

### **JARO does not contribute to public transparency**

As mentioned above, JARO's functions do not extend to public reporting on issues within the adult custodial corrections system, meaning JARO cannot contribute to transparency and public accountability. Key stakeholders have raised their concerns about the lack of public reporting, by JARO and DJCS more broadly, on operational issues within the system.<sup>65</sup>

The lack of independence and limited functions of JARO have also been criticised by stakeholders in recent years, noting there is no other dedicated body or agency that provides regular monitoring, inspection and public reporting on the adult custodial corrections system in Victoria.<sup>66</sup> For example, the Victorian Ombudsman previously found that this internal departmental function does not meet the objectives of an 'independent, robust and transparent' monitoring and oversight agency.<sup>67</sup> We support this finding and other similar observations and recommendations from key stakeholders that there is a tension in having one business unit provide oversight of another within the same government department.<sup>68</sup>

The limited independence of JARO and concerns about the quality of its analysis of custodial incidents was also recently criticised by the coroner in the inquest into the passing of a Gunditjmarra, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman at the Dame Phyllis Frost Centre (DPFC) in January 2020.

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<sup>64</sup> DJCS data provided to the Cultural Review on 18 November 2022. We note that community death and thematic reviews are also undertaken by JARO.

<sup>65</sup> Fitzroy Legal Service, Submission to the Cultural Review (January 2022); Victorian Aboriginal Legal Service, Submission Cultural Review (December 2021); Specific lack of public reporting by JARO was also raised by the Law Institute of Victoria in its submission to the Australian Human Rights Commissioner on 'Ratifying OPCAT in the context of youth detention' (2016) 9.

<sup>66</sup> Victorian Aboriginal Legal Service, Submission to Cultural Review (December 2021) 89

<sup>67</sup> Victorian Ombudsman, *Investigation into deaths and harm in custody* (Report, 2014) 14.

<sup>68</sup> The Human Rights Law Centre explicitly argued that the current approach, which relies on JARO to provide continuous improvement of the correctional system, is 'inadequate' due to the fact that it is not independent from either the Department or the prison it oversees. Human Rights Law Centre, Submission to the Cultural Review (December 2021) 21. Also see, for example, Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017) 26; Law Institute of Victoria, Submission to the Australian Human Rights Commissioner on 'Ratifying OPCAT in the context of youth detention' (2016) 9.

We acknowledge that JARO cannot be directly compared to other independent oversight and monitoring agencies. JARO has a valuable but different mandate and purpose, and it should not be expected to perform the functions of an independent monitor from within DJCS. As noted below, we envisage JARO working closely with the proposed independent Inspectorate of Custodial Services, together with other integrity bodies, to support more active and transparent monitoring and oversight of the system.

## External oversight and preventive monitoring

External independent oversight is a critical part of ensuring the safety, integrity and performance of the adult custodial corrections system:

'Effective oversight provides an opportunity to shine a light in the dark corners of the adult custodial corrections system.'

**Independent Prison Visitor**

There are a number of public sector bodies and agencies that contribute to the external scrutiny and monitoring arrangements for the adult custodial corrections system. However, unlike in many other jurisdictions, there is no dedicated independent body with singular responsibility for overseeing prisons or resourcing to conduct regular inspections.

Stakeholders have advocated for stronger independent oversight of the adult custodial corrections system since Australia's ratification of OPCAT in 2017.<sup>69</sup> The already-deferred January 2023 deadline for implementing OPCAT is quickly approaching, and Victoria has not made progress in designating its NPM due to ongoing funding negotiations with the Commonwealth Government.<sup>70</sup>

We have identified opportunities to strengthen external oversight arrangements, which may occur alongside the establishment of Victoria's NPM – noting OPCAT requires State parties to designate a body or bodies to carry out regular preventive visits to examine the treatment of people deprived of their liberty.

<sup>69</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021); Fitzroy Legal Service, Submission to the Cultural Review (January 2022); Victorian Ombudsman, *Investigation into deaths and harm in custody* (Report, 2014) 129.

<sup>70</sup> Victoria has not established an NPM. The *Monitoring of Places of Detention by the United Nations Subcommittee on Prevention of Torture (OPCAT) Act 2022* (Vic) commenced on 11 October 2022 which facilitated the UN SPT's visits in Victoria at all places of detention. We have been advised that OPCAT implementation is delayed due to funding negotiations with the Commonwealth Government stalling. See also statement by DJCS provided as part of the recent Inquiry into Victoria's Criminal Justice System: Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Report, 2022) vol 1, 630.

We recommend the establishment of an independent Inspectorate of Custodial Services with two leadership roles – an Inspector of Custodial Services and an Aboriginal Inspector of Custodial Services. An independent inspectorate would complement the functions of existing integrity agencies and could contribute to Victoria's future NPM by conducting regular visits across the corrections system, carrying out joint visits and sharing information.<sup>71</sup>

## Building on the functions of existing independent oversight and integrity agencies

The Victorian Ombudsman and IBAC have valuable statutory functions relating to the oversight of the adult custodial corrections system. These agencies have made a significant number of recommendations to address integrity risks, human rights concerns and improve transparency within Victoria's prisons and correctional centres.<sup>72</sup> In addition, the Victorian Auditor-General's Office (VAGO) has conducted performance audits of the adult custodial corrections system, with a recent focus on private prisons.<sup>73</sup>

The Victorian Ombudsman has broad powers to investigate and respond to complaints from people in custody and has own-motion powers to investigate broader issues across the system. Since 2014, the Victorian Ombudsman has conducted 18 formal investigations across public and private prisons, resulting in 123 recommendations to improve the adult custodial corrections system.<sup>74</sup> The Victorian Ombudsman has also conducted thematic preventive investigations and 'OPCAT style' inspections.<sup>75</sup>

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<sup>71</sup> While we do not make recommendations about the specific NPM model or body, we recognise that there is a current gap in the oversight landscape as there is no dedicated body with capacity to carry out regular preventative visits to prisons. The gap should be addressed and, in doing so, complement the work of Victoria's future NPM(s).

<sup>72</sup> See, for example, Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021); Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022); Victorian Ombudsman, *Good practice when conducting prison disciplinary hearings* (Report, 2021).

<sup>73</sup> See for example, Victorian Auditor-General's Office, *Ravenhall Prison: Rehabilitating and Reintegrating Prisoners* (Report, 2020); Victorian Auditor-General's Office, *Safety and cost effectiveness of private prisons* (Report, 2018). We also note that VAGO has upcoming audits into the corrections system, including Correctional services for people with a cognitive disability; Ravenhall prison: rehabilitating and reintegrating prisoners Part 2; and prisoner health services.

<sup>74</sup> Victorian Ombudsman, Expert Interview with the Cultural Review (December 2021). During the Expert Interview, the Victorian Ombudsman's Office advised that 97 per cent of these recommendations have been either fully or partially accepted by the relevant authority.

<sup>75</sup> See Victorian Ombudsman investigations reports: Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019); Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017).

IBAC is responsible for identifying, exposing and preventing corrupt conduct across the public sector.<sup>76</sup> In recent years, IBAC has completed a number of targeted investigations into issues within the adult custodial corrections system, resulting in recommendations to increase integrity within the system. Issues considered by IBAC include inaction, excessive use of force, inappropriate strip-searching, attempts to mask misconduct and breaches of professional boundaries.

The public reports produced by the Victorian Ombudsman and IBAC make an invaluable contribution to the transparency of the adult custodial corrections system. Both bodies are Independent Officers of the Parliament and have mandates that stretch across all public sector agencies and include complaint handling and investigative and prevention functions. While both bodies also have budgetary independence, new functions would necessarily require additional resourcing.

Alongside the Victorian Ombudsman, IBAC and VAGO, there are several other statutory agencies that contribute to oversight of the adult custodial corrections system. These include the Commission for Children and Young People,<sup>77</sup> the Victorian Equal Opportunity and Human Rights Commission,<sup>78</sup> the Office of the Public Advocate,<sup>79</sup> the Health Complaints Commissioner<sup>80</sup> and WorkSafe Victoria.<sup>81</sup> Legal organisations such as Victoria Legal Aid and the Victorian Aboriginal Legal Service also indirectly contribute to the oversight landscape.

We have benefited from the work these agencies have undertaken in examining issues of culture, safety, and integrity within the adult custodial corrections system, which align closely with the themes in the Cultural Review's Terms of Reference.<sup>82</sup> It is critical that these agencies are well resourced and provided with information and access to continue their important work.

Notwithstanding the important work of these oversight bodies, we believe the establishment of a dedicated, properly resourced specialist inspectorate function will play a critical and complementary role in effective oversight of the adult custodial corrections system including by carrying out regular, preventative-focused visits.

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<sup>76</sup> This includes receiving and investigating complaints about serious and systemic corrupt conduct across the public sector, including in the corrections sector. IBAC also undertakes research and investigations into systemic issues. Most recently, this has included the *Special Report on Corrections*, which was released in mid-2021.

<sup>77</sup> Commission for Children and Young People is an independent statutory body that promotes improvement in policies and practices affecting the safety and wellbeing of Victorian children and young people. This includes monitoring the safety and wellbeing of children detained in adult prisons and those 18 years and over transferred from Youth Justice to adult custody.

<sup>78</sup> The Victorian Equal Opportunity and Human Rights Commission receives complaints about discrimination under equal opportunity laws and conducts investigations. It also has a role in reviewing policies for compatibility with the Charter, provides education programs and reports to Parliament.

<sup>79</sup> The Office of the Public Advocate has specific roles and responsibilities to protect the rights and interests of people with disability, including people in custody with a disability.

<sup>80</sup> The Health Complaints Commissioner receives complaints from people in custody in relation to health services delivered in prison.

<sup>81</sup> WorkSafe has responsibility for oversight of compliance under the *Occupational Health and Safety Act*.

<sup>82</sup> See for example, Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021); Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022); Victorian Ombudsman, *Good practice when conducting prison disciplinary hearings* (Report, 2021).

## Creation of an independent Inspectorate of Custodial Services

A range of other jurisdictions use independent inspections of prisons and correctional centres as an element in external monitoring and accountability.<sup>83</sup> For Victoria, an inspectorate that is independent from government will enable more consistent and transparent oversight and greater accountability for the adult custodial corrections system. This approach is also consistent with best practice at international law.<sup>84</sup>

The inspectorate should have dedicated resources and be led by an Inspector of Custodial Services and an Aboriginal Inspector of Custodial Services, which would be an identified role focused on oversight of cultural safety for Aboriginal people and compliance with legislative rights and standards. In Part 5 of this report, we discuss the need to work with the Aboriginal community to develop a model for the Aboriginal Inspector role, to ensure it provides culturally competent oversight of the system.

We anticipate that the creation of an inspectorate independent of government in Victoria would complement and extend the work of existing integrity agencies through functions that include regular monitoring and inspection of all adult custodial locations across Victoria and consideration of thematic issues affecting the safety and integrity of the adult custodial corrections system.

It would also generate a more complete picture of the operation of both public and private prisons, identify opportunities to improve systems, policies, capability and operational practice, and help monitor how implemented recommendations have resulted in positive change within the system.

### Proposed functions of an independent Inspectorate of Custodial Services

Based on the approach in other jurisdictions, we propose following core functions for the Independent Inspectorate of Adult Custodial Services:

- ▶ **Regular inspections of public and private prisons**, with a requirement that each location be inspected at specified maximum intervals. The Aboriginal Inspector of Custodial Services should lead reviews into the cultural safety of Aboriginal people in custody, including compliance with the proposed legislative safeguards for cultural safety and cultural rights (see Recommendation 2.3).
- ▶ **Thematic reviews** to identify system-wide issues that affect conditions in custody, the experiences of staff and outcomes for people in custody.

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<sup>83</sup> See for example NSW Inspector of Custodial Services; ACT Inspector of Custodial Services; Queensland Office of the Chief Inspector and Office of the Custodial Inspector Tasmania. See also the Western Australia Office of the Inspector of Custodial Services, noting however that the WA Inspector is subject to the directions of a Minister in accordance with section 17 of the Inspector of Custodial Services Act 2003 (WA).

<sup>84</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rules 83-85 mandate and set out the requirements of a twofold system for regular inspections of prisons, including both internal or administrative inspections conducted by the prison administration and external inspections conducted by an independent body.



- ▶ **Development of inspection standards**, based on international human rights standards and best practice, which should inform regular inspections and ongoing monitoring.<sup>85</sup>
- ▶ **Administration of a Healthy Prison survey** to regularly test the experiences of people living and working within the system and inform recommendations for continuous improvement at the local and systemic level.
- ▶ **Recommend improvements** to the adult custodial corrections system based on the inspection standards and other relevant information.
- ▶ **Administration of IPV Scheme** to support increased independence for IPV's and Aboriginal IPV's and clear lines of accountability for their recommendations.
- ▶ **Public reporting** of its visits, reviews and annual reports to support increased accountability and transparency in the operation of the adult custodial corrections system.
- ▶ **Continuous dialogue and collaboration** with corrections staff and management, DJCS and the Minister for Corrections, through regular monitoring or liaison visits (less formal and more frequent than inspections) and meetings, to identify risks and concerns, and provide feedback and advice at regular intervals.<sup>86</sup>
- ▶ **The discretion to review of deaths and other critical incidents** where it is in the public interest.

Consistent with the approach in other jurisdictions, the two inspector positions should be statutory roles appointed under legislation which sets out the purpose, functions, powers and relationships with other integrity agencies.<sup>87</sup> The inspector roles should report to the Victorian Parliament and be required to report on their inspections and thematic reviews, as well as produce annual reports of their

<sup>85</sup> See for example, Western Australian Office of the Inspector of Custodial Services, *Revised Code of Inspection Standards for Adult Custodial Services - Standards to assess the treatment of and conditions for prisoners in Western Australia* (September 2020).

<sup>86</sup> See for example, the Western Australian Office of the Inspector of Custodial Services, Annual Report 2019-20 (Report, 2020) 18–19.

<sup>87</sup> For example, the NSW Inspector of Custodial Services is a statutory body established under the *Inspector of Custodial Services Act 2012* (NSW). Its primary functions are to inspect each adult custodial environment at least once every five years and provide a public report to Parliament, including recommendations for improvement. It also has a role to report to Parliament on any issues if directed to do so by the Minister. It has a broad range of powers, including full access to records and places of detention, and power that requires staff to produce information and participate in interview. The NSW Inspector of Custodial Services also sets the standards against which the prison is assessed and manages the Official Visitors Program. The ACT Inspector of Custodial Services has a similar role and similar powers. It is established under legislation, but unlike in NSW, includes a clear purpose to promote continuous improvement through systematic review and scrutiny, and independent and transparent reporting. The Western Australian Office of the Inspector of Custodial Service has a similar role with a purpose to improve public confidence in the justice custodial system, reduce offending and ensure value for money. It undertakes formal inspections at each prison once every three years and also has a more informal liaison function. These liaison visits 'are a crucial element in monitoring performance, risk and improvement opportunities. In addition to liaison visits, [the Inspector] also visits sites on a less formal basis.': Office of the Inspector of Custodial Services, *What we do* (Web page, October 2022) [https://www.oics.wa.gov.au/about-oics/what-we-do/?doing\\_wp\\_cron=1656839206.4770390987396240234375](https://www.oics.wa.gov.au/about-oics/what-we-do/?doing_wp_cron=1656839206.4770390987396240234375).

operations. The inspectorate should be able to collaborate and share data and information with other public sector agencies.

### Functions of ACT's Inspector of Correctional Services

ACT's Inspector of Correctional Services role was established in 2017 to provide independent oversight of correctional and youth justice facilities. The inspector does not accept individual complaints but works to identify systemic issues and make recommendations.

The inspector conducts reviews of facilities and critical incidents, with broad powers to enter correctional facilities without notice, inspect the facility, request relevant documentation, and speak with people in custody.

The functions of the inspector are set out in section 17 of the *Inspector of Correctional Services Act 2017* (ACT). The inspector must review correctional facilities at least every two years<sup>88</sup> and must report to the ACT Legislative Assembly on its reviews.

Under the independent inspectorate model we propose, the two inspectors should have powers to:

- ▶ enter a custodial site at any time without notice
- ▶ inspect any documents relating to a person in custody or the provision of a correctional service
- ▶ speak to or privately interview a person at the custodial site, including people in custody with their consent
- ▶ obtain information or documents.<sup>89</sup>

The inspectorate should also have statutory powers to review the system's compliance against the proposed system purpose, principles and standards, including reviewing whether DJCS is meeting its obligations to ensure the cultural safety and uphold the cultural rights of Aboriginal people in custody.

Following the model in other Australian jurisdictions we do not propose the Inspectorate of Custodial Services would have complaint-handling functions, although suggest the inspector should be able to consider systemic themes that arise from the experience of individuals or groups of detainees. Our view is that individual complaints should continue to be dealt with by existing mechanisms.

We also note most recent developments in Queensland with the passage of the *Inspector of Detention Services Act 2022* (Qld), establishing an independent Inspector to promote improvements of detention services and the humane treatment of detainees. The role of the Inspector is held by the Queensland Ombudsman.

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<sup>88</sup> *Inspector of Correctional Services Act 2017* (ACT) s 18.

<sup>89</sup> Other functions should be considered with reference to best practice in other jurisdictions and the requirements of an NPM, should the Inspectorate be designated as an NPM body.

## Functions of Queensland's Inspector of Detention Services

Queensland established an Inspector of Detention Services in 2022. The inspector does not investigate specific incidents or complaints, but may consider systemic themes that arise from the experience of individuals or groups of people detained.

The inspector has broad powers to enter and inspect facilities without notice, require the production of information and speak with detainees.

The functions of the inspector are set out in section 8 of the *Inspector of Detention Services Act 2022* (Qld) and include regularly reviewing and inspecting detention services and facilities and preparing and publishing standards.

The role of inspector is held by the Queensland Ombudsman, meaning the model takes advantage of the Ombudsman's functional independence and established expertise while ensuring the preventive inspection mandate is effectively resourced and not subject to competing priorities and demands.<sup>90</sup>

## Creation of inspection standards

A critical function of the proposed independent inspectorate would be to establish new inspection standards based on international human rights standards and best practice custodial standards in Australia. The new standards should inform the inspectorate's inspection and monitoring functions and provide benchmarks for regular inspections and performance reporting.

The inspection standards should also reference WHO's Healthy Prison test, a conceptual framework used in other jurisdictions to guide independent oversight and assess the treatment and care of people in custody.<sup>91</sup>

WHO takes a 'whole climate' approach to improving the health of custodial settings, identifying safety, dignity and meaningful engagement as preconditions for the health of people in custody.<sup>92</sup> The test is now accepted as a best-practice benchmarking tool to measure the performance of prisons against human rights principles and rehabilitative aims.

Broadly, to achieve 'healthy prison' status, prisons and correctional centres must guarantee that people in custody are safe and respected and have access to purposeful activity and rehabilitative supports and services. These four pillars of the Healthy Prison test have been endorsed and adopted by other jurisdictions including the ACT Office of the Inspector of Custodial Services, the Queensland Office of the Chief Inspector, and the United Kingdom's HM Inspectorate of Prisons.<sup>93</sup> They have also been influential, informing the DJCS's periodic survey of people in custody.

<sup>90</sup> Inspector of Detention Services Act 2022 (Qld), sections 34 and 35.

<sup>91</sup> DJCS has advised that the 'Healthy Prison Test' framework has also been used by Corrections Victoria in the past to guide the methodology of periodic surveys conducted with people in custody.

<sup>92</sup> Nick De Viggiani, 'A new approach to prison public health? Challenging and advancing the agenda for prison health', (2006) 16(4) *Critical Public Health* 307, 311.

<sup>93</sup> HM Inspectorate of Prisons, *Our Expectations* (Web Page, 2021) [Our Expectations \(justiceinspectorates.gov.uk\)](https://justiceinspectorates.gov.uk); ACT Inspector of Custodial Services, *Standards for Adult Custodial Correctional Services* (2019) [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services\\_final\\_web.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services_final_web.pdf); Queensland Corrective Services, *Healthy Prison Report* (Web page, October 2019) <https://corrections.qld.gov.au/documents/reviews-and-reports/healthy-prison-report/>.

## Putting the Healthy Prison test into action – the ACT Standards for Adult Correctional Services

The ACT Office of the Inspector of Correctional Services carries out reviews of correctional centres against criteria known as the ACT Standards for Adult Correctional Services, which provide a tool to examine whether the facility meets the Healthy Prison test.

The standards reflect the preventive approach to oversight that underpins OPCAT and are tailored to ACT's legislative context and correctional operating environment. The four pillars of the Healthy Prison test – safety, respect, purposeful activity and rehabilitation – form the framework for the standards. Under each pillar there are detailed standards, indicators and a list of evidence sources that the inspector can consult.<sup>94</sup>

The inspector surveys both staff and people in custody, conducts onsite research, considers reports from other oversight bodies, invites written submissions from the community and facilitates focus groups with relevant stakeholders to inform its reviews.

Within six months of a review, the inspector delivers a report to the ACT Legislative Assembly which measures the correctional centre's performance against each standard and provides an overall rating for each of the four pillars of the Healthy Prison test.<sup>95</sup>

The ratings help track a correctional centre's performance over time, and the inspector may monitor actions taken to address a review's findings and recommendations.<sup>96</sup>

The inspection standards should also be informed by the proposed legislative system purpose, the *Guiding Principles for Corrections in Australia* and international law including:

- ▶ the Mandela Rules
- ▶ United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)
- ▶ the Yogyakarta Principles (which address a broad range of international human rights standards and their application to sexuality and gender identity issues)
- ▶ European prison rules.<sup>97</sup>

Other relevant standards to consider include those used by Western Australia's Office of the Inspector of Custodial Services, ACT's Inspector of Correctional Services, and the United Kingdom's HM Inspectorate of Prisons and the New Zealand's Office of the Inspectorate *Te Tari Tirohia*.<sup>98</sup>

<sup>94</sup> ACT Inspector of Correctional Services, *Healthy Prison Review of the Alexander Maconochie Centre 2019* (Report, 2019) 24.

<sup>95</sup> ACT Inspector of Correctional Services, *Review Framework* (2019) 11.

<sup>96</sup> ACT Inspector of Correctional Services, *Review Framework* (2019) 11.

<sup>97</sup> Council of Europe, *European Prison Rules* (2006), Available at: <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

<sup>98</sup> Office of the Inspectorate, Department of Corrections (NZ), *Inspection Standards - Criteria for assessing the treatment of and conditions for prisoners* (2019), Available at: [https://inspectorate.corrections.govt.nz/data/assets/pdf\\_file/0018/39042/Inspection\\_Standards.PDF](https://inspectorate.corrections.govt.nz/data/assets/pdf_file/0018/39042/Inspection_Standards.PDF)

As discussed below, there should also be specific inspection standards for the assessment of a culturally responsive system and the protection of cultural rights in custodial environments for Aboriginal people.<sup>99</sup>

While the standards must be developed independently by the inspectorate and not be constrained by operational practice, the inspectorate should consult with the DJCS, integrity and oversight bodies and the NPM (nationally and in Victoria) to ensure the standards represent best practice and to support complementarity of internal and external oversight activities. The inspectorate should update the standards over time, in line with best practice, as articulated by the Western Australia's first Inspector of Custodial Services, Professor Richard Harding, in 2007:

'The Western Australian Department of Corrective Services has been consulted during the development of the Code. However, the Code remains the Inspector's Code. It is the view of the Inspector that to develop joint standards, so that prisons could be both managed and inspected against mutually agreed standards would be to reduce inspections to an audit function and would negate the value of an independent inspection. Standards must change and develop as societies change, and an autonomous inspectorate is best placed to achieve this if it is not tied to the day-to-day operational expectations of the administering department.'<sup>100</sup>

DJCS should also consider these standards in updating its own approach to system performance audits and monitoring internally (in addition to using SDOs and KPIs) and alignment with the system purpose and legislative framework.

### **Creation of an identified Aboriginal Inspector of Custodial Services role and inspection standards**

As part of the proposed independent inspectorate, we recommend the creation of an identified role for an Aboriginal person with specific responsibilities for inspecting custodial locations and the conditions in custody for Aboriginal people – see Part 5 for the full detail of this recommendation. Inspections by the Aboriginal Inspector of Custodial Services would assess prisons and correctional centres against dedicated cultural safety inspection standards. This approach aligns feedback we heard from stakeholders regarding OPCAT implementation:

<sup>99</sup> See, for example, Western Australian Office of the Inspector of Custodial Services, *Inspection Standards for Aboriginal Prisoners* (2008), Available at: [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0009/1311777/Final\\_Aboriginal\\_Prisoner\\_Standards\\_v\\_11.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0009/1311777/Final_Aboriginal_Prisoner_Standards_v_11.pdf).

<sup>100</sup> Western Australian Inspector of Custodial Services, *Code of Inspection Standards for Adult Custodial Services* (April 2007) 5. Available at: [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0008/1311776/WA\\_Code\\_of\\_Inspection\\_Standards\\_v11.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0008/1311776/WA_Code_of_Inspection_Standards_v11.pdf).

'Effective and culturally appropriate implementation of OPCAT is critical to prevent many of the primary concerns in prison environments, including excessive use of force, inappropriate strip searching, excessive use of isolation and lockdowns and woefully inadequate healthcare and mental healthcare.'<sup>101</sup>

**Victorian Aboriginal Legal Service**

Equivalent standards exist in New South Wales, Western Australia and the ACT providing the basis for inspections and consideration of the experiences of Aboriginal people in custody.<sup>102</sup>

While a number of other jurisdictions have developed specific custodial inspection standards to support the rights of Aboriginal people in custody, a dedicated Aboriginal Inspector of Custodial Services role overseeing inspections against those standards is a novel approach.<sup>103</sup> It is an important opportunity for Victoria to strengthen its commitment to improving outcomes and cultural safety for Aboriginal people in custody. It would also ensure ongoing monitoring of the adult custodial corrections system has an eye to unconscious bias, interpersonal racism and systemic racism.

The development of the inspection standards for Aboriginal people in custody should be a function performed by the proposed Aboriginal Inspector of Custodial Services in close consultation with Victoria's Aboriginal Justice Caucus and the Aboriginal community, taking into account the International Covenant on the Rights of Indigenous Persons,<sup>104</sup> the Mandela Rules,<sup>105</sup> section 19(2) of Victoria's Charter of Human Rights and Responsibilities,<sup>106</sup> the Royal Commission into Aboriginal Deaths in Custody<sup>107</sup> and subsequent integrity body and coronial recommendations into Aboriginal deaths in custody,<sup>108</sup> and the relevant considerations in the Corrective Service Administrators' Council's Indigenous Strategic Framework.<sup>109</sup>

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<sup>101</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 105.

<sup>102</sup> See, for example, New South Wales Inspector of Custodial Services, *Inspection Standards for adult custodial services in NSW* (2020); Western Australian Office of the Inspector of Custodial Services, *Inspection Standards for Aboriginal Prisoners* (2008); ACT Inspector of Custodial Services, *Standards for Adult Custodial Correctional Services* (2019).

<sup>103</sup> See for example, Western Australian Office of the Inspector of Custodial Services, *Inspection Standards for Aboriginal Prisoners* (2008).

<sup>104</sup> United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, Agenda item 68 (13 September 2007).

<sup>105</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules').

<sup>106</sup> Section 19(2) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) states that Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community, to enjoy their identify and culture, maintain and use their language, maintain kinship ties, and maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

<sup>107</sup> *Royal Commission into Aboriginal Deaths in Custody* (Report, 1991).

<sup>108</sup> See, for example, Coronial Inquest into the Death of a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman at the Dame Phyllis Frost Centre (DPFC) in January 2020; Victorian Ombudsman, *Investigation into deaths and harm in custody* (Report, 2014).

<sup>109</sup> Corrective Service Administrators' Council, *Indigenous Strategic Framework* (2016).

The inspectorate should also have statutory powers to review system compliance with the legislative system purpose and principles as well as compliance with cultural safety rights and standards, which should be included in the new legislation. There may also be a specific role for the Aboriginal inspector in conduct reviews of critical incidents involving Aboriginal people.

### **Complementing the work of JARO and external oversight bodies**

It is intended that a new statutory inspectorate will work alongside and complement the mandate of existing internal and external oversight bodies – aided by information-sharing and other arrangements to support collaboration, clarity of roles and cooperation to support accountability within the system.

The role of the inspectorate would provide comprehensive independent oversight of the adult custodial corrections system through its dedicated, singular focus to conduct regular preventive inspections and reviews. It should also ensure a greater level of system transparency, publishing inspection, thematic and annual reports.

Existing bodies should continue to handle complaints and conduct investigations in accordance with their mandate. We would expect that the inspectorate would work collaboratively with existing oversight bodies and use relevant complaint and enquires data to identify systemic issues that may require closer examination.

Legislation, relationship protocols and memorandums of understanding will assist to ensure there is no duplication of effort and the accountabilities of each body are clear and understood.<sup>110</sup>

We consider that the establishment of an independent Inspectorate of Custodial Services creates an opportunity for JARO to focus on its internal assurance and review role and provide important clarity on its mandate and function. It is envisioned that JARO would continue to carry out its incident reports including reviews of deaths in custody (discussed below) however, the inspectorate should have discretion to conduct its own critical incident reviews. This function does not seek to duplicate work of JARO, including briefing the coroner in relation to deaths. Instead, the proposed discretionary mandate for the inspectorate to conduct a review of a critical incident represents another layer of oversight and information gathering and will support transparency and public accountability.

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<sup>110</sup> See, for example, *Memorandum of Understanding between the Inspector of Custodial Services and the NSW Ombudsman*, signed 2 December 2014 [https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0011/136982/Memorandum-of-understanding-between-the-Inspector-of-Custodial-Services-and-the-NSW-Ombudsman-December-2014.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0011/136982/Memorandum-of-understanding-between-the-Inspector-of-Custodial-Services-and-the-NSW-Ombudsman-December-2014.pdf); *Memorandum of Understanding between ACT Inspector of Corrective Services and ACT Corrective Services concerning critical incidents*, 4 September 2018. [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0004/1327261/MOU-ACT-Inspector-of-Correctional-Services-and-ACTCS-Re-Critical-Incidents-no-Annexure.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0004/1327261/MOU-ACT-Inspector-of-Correctional-Services-and-ACTCS-Re-Critical-Incidents-no-Annexure.pdf). The Western Australian Inspector of Custodial Services also has 'agreed protocols, including a Memorandum of Understanding between [it] and the Department, further embed due process practices': Office of the Inspector of Custodial Services, *What we do* (Web page, October 2022) [https://www.oics.wa.gov.au/about-oics/what-we-do/?doing\\_wp\\_cron=1656839206.4770390987396240234375](https://www.oics.wa.gov.au/about-oics/what-we-do/?doing_wp_cron=1656839206.4770390987396240234375).

## **Reviews of deaths in custody and other critical incidents**

When people die in custody or there is a critical incident where a person's life is endangered, a thorough examination of the circumstances and facts are required. As well as supporting coronial processes, reviewing deaths and other critical incidents in custody is vital for identifying risks within the adult custodial corrections system, holding the system to account and building public trust. JARO is responsible for preparing reports on deaths in custody as part of its internal assurance function, which it then provides to the Coroners Court of Victoria. In addition to reporting on deaths in custody, JARO also reports on other critical incidents.<sup>111</sup>

We support the continued role for JARO in conducting internal reviews of critical incidents on behalf of DJCS, however, we also support improvements to these reviews and additional external oversight.

The issue of deaths in custody is particularly distressing for Victoria's Aboriginal communities. In the thirty-one years since the 1991 Royal Commission into Aboriginal Deaths in Custody, some 517 Aboriginal people have died in custody.<sup>112</sup> It is unacceptable that Aboriginal people continue to die while in the care of the adult custodial corrections system.

At the time of writing, a new approach to governance and administration of reviews of Aboriginal deaths in custody is under consideration by DJCS. This is in part due to criticisms raised by the Coroners Court about the quality of a recent review of the deaths of an Aboriginal person in custody. We support reform that will improve the quality of reviews of deaths in custody and incorporate more culturally appropriate and independent investigations.

In addition to the reforms to enhance reviews carried out by JARO and other internal review processes, the proposed Inspectorate should also have discretion to conduct independent reviews of deaths in custody and critical incidents, drawing on the experience of the ACT Inspectorate of Custodial Services. In particular, the proposed Aboriginal Inspector of Custodial Services could play a role in ensuring an independent, transparent and culturally safe review when an Aboriginal person passes in custody.

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<sup>111</sup> In recognition of the importance of both internal and external oversight mechanisms, we consider that along with its internal assurance and review function, JARO would continue to review all other critical incidents.

<sup>112</sup> Australian Institute of Criminology, 'Deaths in custody in Australia' (June 2022), <https://www.aic.gov.au/statistics/deaths-custody-australia>.



As an example of this model, the ACT Inspector of Custodial Services has a role in reviewing and providing guidance in relation to critical incidents including deaths, serious fires, escapes, riots and hostage situations.<sup>113</sup> Under section 18(1)(c) of the ACT Inspector of Correctional Services legislation and operating procedure, the inspector may conduct a review where the critical incident is considered by the Inspector as sufficiently serious, engages human rights and where it may be in the public interest to produce a public report.<sup>114</sup>

It is suggested that a similar function be built into the mandate of a Victorian Inspectorate and would only be exercised after considering a similar criterion including necessity and public interest in conducting the review. The review may seek to expand upon or test the evidence and findings made by JARO and offer an additional perspective, information and solutions to address systemic issues of concern. The review could also be carried out focussed on one area of concern and include the option of a joint review with JARO.

Subject to consultation with Aboriginal community and stakeholders, an independent Aboriginal-led review of an Aboriginal person's passing in custody should complement any related coronial and internal corrections processes with specific attention to opportunities to improve cultural safety, staff culture and practice. Alternatively, the Aboriginal community may determine that an alternative independent body or advisory group be engaged to ensure the immediate response is appropriate and the investigation thorough – considering issues such as the experience of racism and cultural safety in contributing to the incident.

### **Continuous dialogue model and power to make recommendations**

Best practice models for independent monitoring and oversight of prisons and correctional centres recognise the importance of continuous dialogue and cooperation between independent integrity bodies, responsible government agencies, and operational management. This model of ongoing engagement creates opportunities to 'support the development of better prison practices,<sup>115</sup> as well as enabling 'preventive oversight' to identify possible areas for improvement and address risks before they arise.<sup>116</sup>

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<sup>113</sup> These critical incident reviews are publicly released and include a response from government. The Inspector also publishes a summary of recommendations and government responses to the Critical Incident Reviews: ACT Inspector of Correctional Services, *Critical Incident Reviews* <https://www.ics.act.gov.au/reports-and-publications/critical-incident-reviews>; *Inspector of Correctional Services Act 2017* (ACT) s 17.

<sup>114</sup> *Inspector of Correctional Services Act 2017* (ACT) s 18(1)(c); ACT Inspector of Correctional Services, *OICS Operating procedure - exercising discretion to review a critical incident* (3 May 2021). Available at: [FINAL-ACT-ICS-operating-procedure\\_discretion-to-review-critical-incident.pdf](#).

<sup>115</sup> Mary Rogan, 'Prison Inspection and Monitoring: The Need to Reform European Law and Policy' (2019) 27 *European Journal on Criminal Policy and Research*, 298; Silvia Casale, 'The Importance of Dialogues and Cooperation in Prison Oversight' (2010) 30(5) *Pace Law Review* 1490.

<sup>116</sup> Silvia Casale, 'The Importance of Dialogues and Cooperation in Prison Oversight' (2010) 30(5) *Pace Law Review* 1490, 1493.

Under a continuous dialogue model, the inspectorate's mandate should include:

- ▶ power to make recommendations to relevant agencies to improve the adult custodial corrections system including, for example, DJCS and the Department of Health
- ▶ regular meetings with the Minister for Corrections, DJCS and Corrections Victoria executive and custodial management
- ▶ the sharing of periodic updates, advice, feedback and information on performance, risk, progress and concerns
- ▶ periodic liaison or monitoring visits to build relationships and identify risks
- ▶ power to publish reports and information for the public on the performance of the adult custodial corrections system.

This is consistent with the approach of inspection bodies in other jurisdictions, including Western Australia's Inspector of Custodial Services.<sup>117</sup> It is also the recommended approach for a NPM to enter a meaningful process of dialogue with the State concerning the implementation and follow-up of recommendations.<sup>118</sup>

## Complementary approach to the NPM

While Australia ratified OPCAT in 2017, work on its implementation is still underway. OPCAT requires governments to establish a system of regular preventive visits to places of detention by an independent body or bodies, known as an NPM(s). Under the initial implementation timeline, Australia was required to designate or establish NPMs by January 2022, however, national implementation has since been deferred to January 2023 following an extension granted by the United Nations Committee against Torture. The Victorian Government has not yet designated its NPM – DJCS have advised there are continuing negotiations with Commonwealth agencies in relation to the funding for independent oversight processes.<sup>119</sup>

An OPCAT compliant NPM will be a valuable mechanism to support ongoing and independent monitoring of culture and conduct within the adult custodial corrections system and other places where people are deprived of their liberty.<sup>120</sup> This position is shared by many stakeholders including the Human Rights Law Centre and the

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<sup>117</sup> Western Australian Office of the Inspector of Custodial Services, Annual Report 2019-2020 (Report 2020), 18-19.

<sup>118</sup> Office of the United Nations High Commissioner for Human Rights, *The Role of National Preventive Mechanisms: a practice guide* (2018); Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on national preventive mechanism*, (November 2010) 15-19.

<sup>119</sup> See statement by DJCS provided as part of the recent Inquiry into Victoria's Criminal Justice System: Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Report, 2022) vol 1, 630.

<sup>120</sup> We note that the Victorian Ombudsman has, over a long period of time, called for the designation of an NPM in Victoria and has conducted two OPCAT style inspections in recent years: Victorian Ombudsman, *OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people* (Report, 2019); Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017). The Victorian Ombudsman has formally recommended a unified model whereby a single independent body should be designated as an NPM with an Advisory Group.

Victorian Aboriginal Legal Service<sup>121</sup> and has been the subject of formal findings and recommendations from the Victorian Ombudsman.<sup>122</sup>

'To enhance oversight and support improvements to culture, safety and integrity, the Victorian Government must urgently establish and adequately resource a National Preventive Mechanism dedicated to overseeing conditions and the treatment of people in prisons as part of implementing their obligations pursuant to the United Nation's anti-torture protocol – OPCAT.'<sup>123</sup>

**Human Rights Law Centre**

OPCAT sets out key characteristics that the NPMs must have, including:

- ▶ functional independence and adequate resourcing
- ▶ power to regularly examine treatment of detainees and make recommendations to authorities for improvement
- ▶ ability to conduct private interviews and share information with the United Nations Subcommittee on the Prevention of Torture
- ▶ access to places of detention and to all relevant information and data.<sup>124</sup>

Where an existing body takes on the role of NPM, it is important that dedicated resources are provided to ensure the occurrence of regular inspections are not subject to competing priorities and demands of the organisation. It is also important to note that the work of an NPM is distinct from, although may be complimentary to, complaint handling or investigative functions.

In designating an NPM, Victoria may nominate a single body such as the Victorian Ombudsman, or a group of bodies to work together as a multi-body NPM – as is the case in Western Australia and the ACT – which have designated their respective Ombudsman, inspector of custodial services and human rights commissioner (in the case of the ACT) as joint NPMs.<sup>125</sup>

<sup>121</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021) 20; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 105. See also Office of the Public Advocate, Submission to the Cultural Review (December 2021) 16-18; Youthlaw, Submission to the Cultural Review (December 2021) 5; Jesuit Social Services, Submission to the Cultural Review (December 2021) 26-9.

<sup>122</sup> Human Rights Law Centre, Submission to the Cultural Review (date, page); VALS, Submission to the Cultural Review (date, page). See also Office of the Public Advocate, Submission to the Cultural Review (December 2021), 16-18; Youthlaw, Submission to the Cultural Review (December 2021) 5; Jesuit Social Services, Submission to the Cultural Review (December 2021) 26-9.

<sup>123</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021) 20.

<sup>124</sup> United Nations General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, GA Res 57/199, UN Doc A/RES/57/199 (Adopted 18 December 2002).

<sup>125</sup> Internationally, New Zealand and the United Kingdom are examples of jurisdictions that have implemented a 'decentralised model' of NPM where the function is split across multiple bodies based on specific areas of expertise/existing jurisdiction. See Victorian Ombudsman, OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people (2019), pg. 39-44.

A multi-agency approach offers additional multi-disciplinary expertise and would require broader legislative reform to provide specific information-sharing arrangements between agencies and additional resources including a dedicated staff or secretariat to coordinate the function.

The Victorian Ombudsman has investigated what effective implementation should look like in Victoria and recommended a single independent body be designated NPM for Victoria, to operate with a legislatively mandated Advisory Group. This model would create operational efficiencies and could incorporate the separate inspectorate functions.

While we do not seek to recommend a preferred model or body to be designated as Victoria's NPM, we do recommend the government take steps towards nominating its NPM body or bodies as soon as possible. A number of stakeholders have criticised the delay in implementing OPCAT, noting that it should be urgently implemented to improve the culture, integrity and safety of the adult custodial corrections system and help address many of the issues experienced by people in custody.<sup>126</sup>

We note that our recommendation for a new independent Inspectorate of Custodial Services should have functions consistent with the requirements of an NPM under OPCAT and could either complement or contribute to the future NPM as a member body. Regardless of what action is taken in Victoria to establish its NPM, there is an imperative to ensure dedicated, external oversight of the adult custodial corrections system including through the resourcing of regular prison visits and inspections.

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<sup>126</sup> See Human Right Law Centre, Submission to the Cultural Review (December 2021); Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021); Bronwyn Naylor, RMIT, Submission to the Cultural Review (December 2021).

**Recommendation 2.3****A new independent  
Inspectorate of  
Custodial Services**

The Government should establish a new independent statutory Inspectorate of Custodial Services, with roles of Inspector of Adult Custodial Services and Aboriginal Inspector of Adult Custodial Services to provide monitoring and inspection of the adult custodial corrections system.

These new independent statutory roles should:

- a) be established in legislation and be fully independent of any government department or the direction or control of a Minister
- b) report publicly to the Parliament of Victoria
- c) have broad powers to regularly inspect and report on public and private custodial locations, including through unannounced visits
- d) have powers to make recommendations to relevant public and private agencies to improve the adult custodial corrections system
- e) undertake thematic and systemic reviews of issues within the adult custodial corrections system
- f) develop specific custodial inspection standards based on international human rights law, including specific culturally safe inspection standards
- g) administer the Independent Prison Visitor Scheme, including the Koori Independent Prison Visitor Scheme
- h) administer a 'Healthy Prison' survey adopting the World Health Organisation's methodology, to inform their understanding of the custodial culture and issues
- i) conduct regular liaison and monitoring visits and have discretion to provide informal advice, feedback and information to the relevant Minister and department
- j) have discretion to conduct reviews of critical incidents and deaths in custody when systemic and serious human rights issues are raised, and it determines that a review and public report would be in the public interest
- k) be properly resourced with necessary staff to support these functions.

Subject to consultation with Aboriginal Justice Caucus, the Aboriginal Inspector of Adult Custodial Services may have a role in reviewing and responding to certain critical incidents involving Aboriginal people, and reviewing compliance with the proposed statutory duty to ensure cultural safety for Aboriginal people in custody.

**Recommendation 2.4**  
**Priority action to**  
**implement OPCAT in**  
**Victoria**

Noting previous recommendations and reports to Parliament, the government should take priority action in Victoria to designate National Preventive Mechanism functions and commence monitoring in accordance with the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as practicable.

## Strengthening the role and independence IPV

We were fortunate to spend some time with a group of IPV who play a critical role visiting, monitoring and raising concerns about the treatment and wellbeing of people in custody. It is clear that IPV feel privileged to perform this important role; however, they also shared a number of ways to enhance their roles including:

- ▶ more consistent access to general managers and senior leaders within Corrections Victoria to share feedback and follow up local issues
- ▶ stronger focus on contributing to systemic reform, facilitated through JARO
- ▶ greater visibility of how DJCS has responded to reports from IPV
- ▶ greater support, coordination and information-sharing across the IPV group
- ▶ independence from DJCS and ability to publish reports and advocate for responses to the issues they have raised.

### **IPV plays a critical role in oversight and monitoring of custodial sites**

IPV, including senior Aboriginal IPV, are volunteers who provide independent advice to the Minister for Corrections on the operation of Victoria's prisons and correctional centres. There are currently 25 IPV in Victoria, which includes seven Aboriginal IPV.<sup>127</sup> Aunty Lois Peeler is the chair of the Koori IPV Scheme.

IPV contribute to the oversight of the adult custodial corrections system through monthly visits to custodial locations. During those visits, they observe the routines and activities of their assigned location and report on any issues of concern. IPV are not advocates, but are able to speak to people in custody, staff and visitors.

IPV are appointed to a specific prison by the Minister for Corrections under the Corrections Act.<sup>128</sup> The legislative framework does not provide guidance on the specific role or duties of IPV. IPV are appointed for a maximum term of 10 years.<sup>129</sup> In practice, these appointments are made by the Minister for Corrections on the advice of JARO, and IPV are supported by and report through JARO. IPV come from a range of backgrounds, and there are no formal qualifications required. The arrangements for the appointment of IPV in Victoria are similar to those in

<sup>127</sup> As of 31 March 2022, there were 25 IPV across the system of which seven were Aboriginal IPV. Source: DJCS data – 'IPV numbers and visits per prison'.

<sup>128</sup> *Corrections Act 1986*, s 35.

<sup>129</sup> There is no maximum appointment term provided for in the *Corrections Act 1986*. The maximum term is an administrative practice.

other jurisdictions;<sup>130</sup> however, there are some notable differences including the level of independence, requirements of the role and public reporting arrangements.

JARO administers the IPV scheme and, as discussed above, is not independent of DJCS.

### **General managers should make themselves available to debrief with IPVs and respond to reports**

General managers of each prison location (including private prisons) are required to meet regularly with IPVs to discuss and resolve any issues.<sup>131</sup>

We heard from some IPVs that they work closely with the general manager of their assigned prison location; however, some other IPVs told us that they did not meet regularly with the general manager of their location.<sup>132</sup> Aboriginal IPVs work closely with Aboriginal wellbeing officers (AWO) at their locations and are often invited to perform smoking ceremonies and other cultural practices in prison as well as to visit with and support Aboriginal people in custody.

IPVs we spoke to noted that the approach of the general manager influences both their access to the location, their experience onsite and their capacity to identify systemic issues.<sup>133</sup> Some IPVs also noted the importance of engaging with the general manager rather than more junior staff to understand the issues of a particular prison:

'You really need to be talking to at least the general manager or deputy general manager, somebody who has a broad view. Because just talking to the director of programs or the director of intel ... they are unable to provide that overview when you are trying to gauge the climate [of the prison].'

**Independent Prison Visitor**

On balance, the IPVs we spoke to considered that they had sufficient access and supportive relationships with staff and people in custody and were able to undertake their roles effectively.<sup>134</sup>

As part of the processes set out in the Deputy Commissioner's Instructions, there is a formal debriefing process for IPVs' prison visits, which includes the IPV preparing a written report after each visit. In practice, we heard that this usually involves IPVs lodging a document through an online portal, and JARO then liaising with relevant departmental business units to respond to any issues raised.

Between June 2020 and June 2021, IPVs submitted 120 reports to JARO about matters they observed onsite.<sup>135</sup> Where an IPV raises serious issues, JARO may decide to brief the Secretary of DJCS and the Minister for Corrections. We understand that the Minister receives a quarterly summary of issues raised by

<sup>130</sup> See further *Crimes (Administration of Sentences) Act 1999* (NSW), s 228.

<sup>131</sup> Corrections Victoria, *Deputy Commissioner's Instruction 4.02 - Independent Prison Visitors* (13 March 2020).

<sup>132</sup> Independent Prison Visitor - Focus group with the Cultural Review.

<sup>133</sup> Independent Prison Visitor - Focus group with the Cultural Review.

<sup>134</sup> Independent Prison Visitor - Focus group with the Cultural Review.

<sup>135</sup> Department of Justice and Community Safety, *Annual Report 2020-21* (Report, 2021) 180.

IPVs.<sup>136</sup> JARO may also discuss parts of reports with the relevant prison or correctional centre and escalate significant issues to Corrections Victoria. However, we heard from Corrections Victoria leadership that they do not regularly receive copies of reports submitted by IPVs and are notified of issues raised on an ad hoc basis. It is unclear how much information general managers receive about the issues raised in IPV reports other than through informal debriefing with the IPV onsite. However, we support a process of dialogue between the IPV and general manager as well as DJCS more broadly.

Most IPVs reported positive experiences and strong working relationships with JARO and prison management; however, they expressed some concerns about the level of follow up by DJCS in response to issues they raised:

'For the last several years at the annual conference we used to regularly raise the idea of giving us some feedback from JARO after our visits. It hadn't been happening. But it has been happening [more] in a routine way. It is a *pro forma* one now "thank you for your visit, nothing of consequence was raised". I'm not criticising that. That's better than nothing ... I get very little feedback.'

**Independent Prison Visitor**

IPVs also shared concerns about limited transparency and limited communication about any action taken in response to their reports and recommendations. For example, one IPV noted that they felt like they were considered an 'annoyance' with limited follow up by JARO or general managers on the concerns raised. IPVs also reported that they had not been provided with copies of the quarterly briefings to the Minister or any thematic reviews and reports prepared by JARO.<sup>137</sup> They perceived that their reports were mainly used to resolve local complaints rather than contributing to a systemic view of the operation of the adult custodial corrections system.

### **A more independent IPV Scheme would provide more effective oversight and enhanced accountability**

The Victorian Aboriginal Legal Service has suggested that making IPVs independent from DJCS would improve oversight of issues within prisons.<sup>138</sup> We support a more transparent and effective process for IPVs to report their concerns and for DJCS to respond, to ensure this independent source of advice enhances oversight and continuous improvement within the adult custodial corrections system. For this reason, we recommend administration of the IPV Scheme be transferred to the proposed new independent Inspectorate for Custodial Services.

This recommendation strengthens the independence of IPVs, as evidenced in other jurisdictions that have adopted similar structures. For example, in the United

<sup>136</sup> Department of Justice and Community Safety (Corrections Victoria), 'Independent Prison Visitor Scheme Quarterly Activity Reports', Data provided to the Cultural Review.

<sup>137</sup> While DJCS has advised that the IPV Scheme is designed to report directly to the Minister for Corrections and that as such, it is not appropriate for them to receive copies of confidential reports, the Expert Panel considers that sharing information in relation to actions taken in response to the concerns of IPVs would improve transparency and accountability as well as contribute to sustaining the motivation and commitment of people who volunteer to be IPVs.

<sup>138</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 131-2.



Kingdom, Independent Monitoring Boards provide community oversight of correctional facilities. These boards comprise independent volunteers who undertake two to three visits per month to ensure that people in custody are treated fairly and humanely. There are strong public reporting requirements and they publish a ministerial response to their annual reports on their website.<sup>139</sup>

### **Review of the Koori IPV Scheme**

JARO is currently reviewing the Koori IPV Scheme, and we understand that the secretariat function for the scheme recently moved to the Koori Justice Unit, a separate Aboriginal-led business unit within DJCS. This review of the Koori IPV Scheme is being undertaken in consultation with current Aboriginal IPVs and the Aboriginal Justice Caucus.<sup>140</sup> We supports any findings and outcomes of that review being used to inform the implementation of our recommendation for an expanded and newly constituted IPV Scheme.

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<sup>139</sup> Independent Monitoring Boards, *Annual reports & ministerial responses* (Web page), [https://imb.org.uk/documents/?doc\\_search=&doc\\_type=0&doc\\_category=226&doc\\_location=0](https://imb.org.uk/documents/?doc_search=&doc_type=0&doc_category=226&doc_location=0).

<sup>140</sup> Victorian Government, 'Koori Independent Prison Visitor Scheme', *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4* (Web page, 17 October 2022) <<https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-31-the-needs-of-aboriginal-people-are-14>>.

**Recommendation 2.5**  
**An expanded and newly constituted Independent Prison Visitor (IPV) Scheme**

The Department of Justice and Community Safety should strengthen and expand the role of the Independent Prison Visitor Scheme to introduce additional diversity and coverage and increase transparency and independent oversight of the adult custodial corrections system. This should include:

- a) appointment of additional Independent Prison Visitors to enable:
  - assignment of at least two Independent Prison Visitors to each custodial location
  - assignment of at least two Aboriginal Independent Prison Visitors to each custodial location.
- b) appointment of Independent Prison Visitors for a period of four years and a maximum of two terms
- c) a requirement for Independent Prison Visitors to visit their allocated custodial location at least once a month and report on their observations and findings
- d) a requirement for prison management and the Department of Justice and Community Safety to respond in writing to each report from an Independent Prison Visitor, noting any action being taken in response to concerns raised
- e) provisions allowing for the publication in annual reports of Independent Prison Visitors' observations and findings and actions taken by the Department of Justice and Community Safety in response to those observations and findings
- f) transitioning responsibility for the Independent Prison Visitor Scheme to the new Inspectorate of Custodial Services and providing support through a dedicated secretariat function
- g) Revisions to the *Corrections Act 1986* should specify the eligibility requirements and the roles and responsibilities of Independent Prison Visitors, considering diversity and experience including people of diverse ages, skills and experience and from culturally and linguistically diverse backgrounds, people with disability, people with lived experience of incarceration and LGBTIQ+ people.

The application of this recommendation to the Koori Independent Prison Visitor Scheme should consider any recommendations from the review of the scheme underway currently as part of the Aboriginal Justice Agreement 4.

## Increasing judicial oversight of the custodial environment

The Corrections Act includes provisions that enable judges and magistrates to visit prison locations and provide reports and recommendations to the Minister for Corrections.<sup>141</sup> We understand that this opportunity is rarely taken up by judicial officers.<sup>142</sup>

Increased use of this statutory power could build closer connection between justice processes and the administration of sentences.

We also see value in an increased judicial role in the oversight of prisons and correctional centres – an opportunity for increased scrutiny of procedural fairness within the system, including as part of prison disciplinary processes. While the involvement of judicial officers would not diminish the authority of general managers in disciplinary processes, judicial officers could be included in hearings to observe or be provided with a more formal role in conducting a merits review of a disciplinary decision.<sup>143</sup>

Other jurisdictions have processes in place to ensure there is regular scrutiny of custodial environments from other parts of the criminal justice system. For example, New South Wales has a Visiting Magistrates Scheme with oversight of custodial environments. New South Wales also involves visiting magistrates in prison disciplinary processes. The minister can also request that a visiting magistrate (or another person) conduct an inquiry into issues relating to the custodial environment.<sup>144</sup> These processes are intended to increase supervision of the custodial corrections system.

In developing a new legislative framework, we suggest DJCS consider increased scrutiny of the custodial system by judges and magistrates through visits and continuing judicial education programs about the operation of the adult custodial corrections system and the administration of sentences.

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<sup>141</sup> *Corrections Act 1986* (Vic) s 34.

<sup>142</sup> DJCS have advised that judicial visits have recommenced post COVID.

<sup>143</sup> We note that there is currently a process for judicial review of disciplinary decisions through the Supreme Court however there is also benefit in a more accessible, review of administrative decisions.

<sup>144</sup> *Crimes (Administration of Sentences) Act 1999* (NSW) s 230.



## 6 Data capability and information management systems

Access to detailed, accurate data is a critical input for understanding the performance of the adult custodial corrections system. Data integrity and robust information management processes also support effective oversight and transparency, identifying any emerging risks or trends that may require preventive action. Within the adult custodial corrections system, more can be done to build data integrity and capability to support continuous improvement, a more joined up approach and accountability.

A data-driven approach will be critical to achieving the system reform proposed in our recommendations, to improve the safety, integrity and to support the rehabilitative purpose of the adult custodial corrections system.

Robust data collection, management and processes should support Corrections Victoria and corrections staff to capture, analyse and communicate data about operations, staff conduct and wellbeing, complaints and incidents within the adult custodial corrections system. The insights gained from analysing this data will help DJCS build a detailed, real-time understanding of the how the system is performing.

The collection, management and application of data is a longstanding and widely canvassed limitation of the adult custodial corrections system and the Victorian criminal justice system more broadly.<sup>145</sup> Various external agencies have made recommendations in previous years to improve the way the adult custodial corrections system captures and uses data, to support better planning and decision-making and, ultimately, to improve outcomes for people in custody and improve community safety.<sup>146</sup>

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<sup>145</sup> Recommendation 1 of the 2022 Inquiry into Victoria's criminal justice system called for an improved approach to data collection, accessibility, and transparency across the system to foster accountability, improve transparency and inform ongoing reform and improvement across all areas of the system: Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Report, 2022) vol 1, xxxi.

<sup>146</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, 2015) 153; Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 80; Victorian Auditor-General's Office, *Safety and cost effectiveness of private prisons* (Report, 2018) 12; Coroners Court of Victoria, *Inquest into the death of Darren Brandon* (6 April 2020) 56.

We found that information about custodial operations and the experience of system users remains patchy and, at times, accessing it was encumbered by decentralised and outdated record-keeping and data management processes.

In other jurisdictions, data and analytics-driven strategies are providing evidence that links improvements in programs and services with reduced rates of recidivism and greater rehabilitative outcomes.<sup>147</sup>

We recognise that building data capability will require significant investment in system infrastructure, resources and capacity, as well as alignment across the system to determine what is recorded locally and what is recorded centrally.

### Key findings – Data capability and information management systems

- ▶ DJCS relies on a range of outdated systems with limited functionality and integration, which impede analysis and prevent a more integrated approach to case management.
- ▶ There are significant gaps in datasets which limit DJCS's understanding of the needs of people in custody, workforce demographics and integrity risks.
- ▶ Reliance on locally held records and lack of central oversight of data makes it difficult for DJCS to look out for systemic issues, trends and patterns and identify integrity and safety risks.
- ▶ Lack of integration with systems in the broader justice system limits information-sharing and opportunities for DJCS to build a more detailed understanding of the experiences, background and needs of people in custody.
- ▶ The adult custodial corrections system does not have the appropriate technological capability required to use data to support continuous improvement and inform strategic decision-making.
- ▶ Making data more accessible and engaging with external researchers could help build a deeper understanding of the adult custodial corrections system and improve transparency.

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<sup>147</sup> Tina Zuzek-Arden and Greg Boison, Boston Consulting Group, *Data can help reduce recidivism and reform criminal justice* (Web page, 26 March 2021) <https://www.bcg.com/publications/2021/reducing-recidivism-using-data>.

## Improving data collection, management and use

### Outdated systems with limited functionality prevent a more integrated approach to case management

There are significant technical limitations in the current systems for information management utilised across the adult custodial system.

We regularly heard that many of the electronic databases and platforms used by Corrections Victoria and DJCS are outdated and no longer fit for purpose or lack the necessary functionality to collect or extract the breadth of data required to fulfil important functions. Integration and communication across and between systems is also limited.

The Prison Information Management System (PIMS), for example, does not have a data reporting function, meaning that extraction of data into a reporting format is difficult and laborious. We also heard that some related data is fragmented across multiple information management systems and managed by several different divisions of Corrections Victoria. For example, progress toward integrated and coordinated case management has been hindered by the array of systems used to store information about people in custody and their needs.

Lack of integration between different information management systems and ongoing use of paper record-keeping presents barriers to understanding the experience of people in custody as they move between different locations. For example, information about the health needs, requests and complaints of people in custody is stored in an array of outdated databases, locally managed files, offline spreadsheets and paper-based registers. Extracting and analysing data from this array of systems is both manual and difficult.

We also observed a concerning reliance on site-level recording of complaints or requests made by people in custody (see Part 6) and complaints of workplace harm (see Part 4). We also make recommendations about the central oversight of data related to these functions of the system.

Discontinuing locally held-paper records and moving toward centrally maintained data systems offers significant opportunities to streamline processes, improve service delivery and provide more insights into the performance of the adult custodial corrections system. This should be accompanied by clear requirements for record-keeping and regular review of local and central data to identify trends and emerging risks.

We understand that DJCS recognises the weaknesses associated with outdated systems and manual data collection mechanisms. However, to date it has not committed funding for an integrated offender management system.

## Gaps in datasets limit DJCS's understanding of the needs of people in custody, workforce demographics and integrity risks

One of our major concerns were the gaps in critical datasets and data collection methodologies used by DJCS.

As an example, the Prisoner Information Management System (PIMS) – used to record key information about people in custody – does not currently record a person's cultural or linguistic background, information about their assessment and package under the National Disability Insurance Scheme or their gender identity or intersex status.<sup>148</sup>

We encountered similar difficulties in accessing data related to the workforce, including the diversity of the custodial workforce, comprehensive details about people in custody involved in use of force incidents, and records of local-level complaints about workplace conduct. See Part 4 of this report for further discussion of these particular data constraints.

We also became concerned about the poor documenting of matters with significant human rights implications, such as strip-searching and use of force incidents more generally. This information is predominantly stored onsite in paper-based registers, files or Excel spreadsheets, with little or no consistency across different prison locations.

While these examples of current data gaps are not exhaustive, they demonstrate that the lack of system-wide and comprehensive data constrains the adult custodial corrections system's capacity to recognise the complex needs of people in custody, respond to emerging integrity risks, and proactively address issues related to workplace conduct.

Throughout this report, we have identified specific data we believe DJCS should collect and manage centrally, including information related to:

- ▶ workforce demographics, training and professional development uptake (see Part 3)
- ▶ workplace harm and integrity risks and issues including tied to specific corrections staff files (see Part 4)
- ▶ the demographics and needs of people in custody and experiences of force, strip-searching, seclusion and restrictive practices (see Part 6).

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<sup>148</sup> We understand PIMS recorded country of birth, nationality and intellectual disability, among a limited number of other flags.



## Lack of central oversight of data and information management enables integrity risks to persist

Reliance on fragmented and outdated systems and locally held records also limits central oversight of what data is held within the adult custodial corrections system. It prevents DJCS from using data to readily identify systemic issues, trends and patterns and proactively respond to integrity and safety risks.

For example, the current use of locally held records means it would be almost impossible to establish how many times an individual had been strip-searched or isolated in a management unit during their time in custody.

While we did not seek to determine the prevalence of these practices or assess how individual incidents were documented, we noted that DJCS's inability to readily collect and aggregate data limits capacity for auditing or systemic assessment. This is a significant weakness in oversight and accountability processes. We note that a key objective of Corrections Victoria's Separation Reform Project is to provide a new structure for the authorisation and oversight of the use of separation regimes in prison facilities in Victoria.<sup>149</sup>

## Improving information-sharing to better understand the experiences of people in custody

Each function of the adult custodial corrections system, the criminal justice system and the social services system generates significant data about individuals moving through these systems. However, collecting this data is not enough; for it to be useful, it must be collected consistently and accurately, analysed carefully and shared appropriately.

Information about people in the criminal justice system is collected inconsistently by different agencies and stored across multiple databases, and there is limited integration between these various systems. This creates a disconnected patchwork of information. Even within the adult custodial corrections system, private prisons utilise their own systems and processes, some of which are more sophisticated than DJCS's systems.

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<sup>149</sup> Department of Justice and Community Safety (Sentence Management Division), 'Project Plan - Separation Reform Project', Data provided to the Cultural Review, 5.

In line with responsible collection and management of personal information, we are not advocating blind collection and storage of data about people in custody. Rather, we are more interested in how the adult custodial corrections system can collect quality data and use it to build a more detailed and comprehensive understanding of the backgrounds, experiences and needs of people in custody and subsequently provide more tailored rehabilitative interventions and reintegration support services. This is consistent with the Victorian Government's evidence and outcomes reform approach.<sup>150</sup>

## Improving data capability to inform strategic decision-making and support continuous improvement

While robust and coordinated information management systems are critical, they must be complemented by strategies that champion data management to ensure corrections staff and system administrators at every level understand how data collection contributes to the system's purpose and can improve the operational landscape and day-to-day experience of the workforce.<sup>151</sup>

In our conversations with leaders in DJCS, some reflected on the limited role that data insights currently contribute to overall system monitoring:

'There's [no] dashboard with regular reporting on trends and how we're tracking. That is briefed up. It is very much like there's an incident and we respond rather than having the tools in place to monitor the system.'

Expert interview

For data to be useful and support accountability and systemic change, there must be a willingness to interrogate and analyse the data, which can challenge the predominant views or assumptions:

'When you give [Corrections Victoria] data that really does not align with their world view, they try to re-prosecute the data and basically go into bureaucratic attack mode looking for holes in the data and you can answer them all, and they'll keep coming back at you.'

Expert interview

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<sup>150</sup> Victorian Government, *Outcomes reform in Victoria* (Web page, 17 October 2022) <https://www.vic.gov.au/outcomes-reform-victoria>; Victorian Government, *Evidence reform in Victoria* (Web page, 17 October 2022) <https://www.vic.gov.au/evidence-reform-victoria>.

<sup>151</sup> Joe Russo, Michael J. D. Vermeer, Dulani Woods and Brian A. Jackson, 'Data informed Jails: Challenges and Opportunities' (Priority Criminal Justice Needs Initiative, RAND Corporation, 2020) 10.

We heard that, in some instances, a reluctance to share and use data is due to technological constraints and outdated legacy systems that make extraction of particular datasets impossible or laborious.

Better collection, storage and analysis of data will be an essential foundation for DJCS to improve its risk management, service delivery and overall performance:

'Leaders of healthy and safe organisations are not averse to receiving 'bad news'. A well-designed reporting system is integral to facilitating this outcome, particularly in a setting as large and multi-faceted as the Victorian [adult custodial corrections system].'<sup>152</sup>

**Australian Institute of Health and Safety**

However, being able to draw insights from its data will rely on greater investment in system infrastructure, clear requirements and accountability for data collection, effective risk mitigation strategies, and enhanced capability in managing and analysing the complex data available across the adult custodial corrections system.

The Digital, Data and Technology Strategy 2021–22 developed by His Majesty's Prison and Probation Service in the United Kingdom is a good example of a strategy that elevates the role of high-quality data as a tool for better and faster decision-making. The strategy recognises that legacy systems place an administrative burden on corrections staff and impede their ability to focus on the individual needs of people in custody.<sup>153</sup> Along with replacing outdated systems and modernising information management infrastructure, the United Kingdom will build the capacity of staff through training and implementing data standards to ensure the Prison and Probation Service recognises data insights as a central tenet of service provision and improvement.

We recommend that DJCS explore options for a central dashboard to support real-time reporting of, for example, demographic information about people in custody or current performance against integrity-related performance indicators. Using a similar model to Victoria Police, DJCS could identify benchmarks that would trigger alerts and reporting on areas of emerging risk across the system.

<sup>152</sup> Australian Institute of Health and Safety, Submission to the Cultural Review (December 2021) 6.

<sup>153</sup> HM Prison & Probation Service, *Digital, Data & Technology Strategy: What to expect in 2021/22* (Web page, 15 June 2021) [2.1] <https://www.gov.uk/government/publications/hmpps-digital-data-and-technology-strategy-what-to-expect-in-202122/hmpps-digital-data-technology-strategy-what-to-expect-in-202122>.

As part of the development of Western Plains Correctional Centre, there are plans to improve the technology available to staff and people in custody and to better capture data. This project, known as the Better Technology Tools Enabling Responsibility (BTTER), intends to deliver better technology solutions to staff and people in custody.<sup>154</sup> According to the BTTR project plan, the intended benefits of this project will include:

- ▶ a better working environment for staff and service providers
- ▶ sharing of information across the whole of the prison system
- ▶ increased security through improved availability of relevant information about people in custody
- ▶ increased exposure to technology for people in custody, supporting them to operate digital technology more confidently upon release (as a necessary tool for work and life)
- ▶ reduction in repetitive paper-based tasks for custodial officers associated with paper-based record keeping
- ▶ improvements to the quality of information recorded about people in custody, their demographics, circumstances and needs.

We understand that this system may be made available to other locations if it is implemented successfully at Western Plains Correctional Centre.<sup>155</sup>

## **Making data more accessible can help build understanding of the system and improve transparency**

We believe that any data reform must be accompanied by a fresh commitment to transparent and open sharing and use of data. This may require resetting relationships and information-sharing protocols across business units and bringing in external data experts to support independent data analysis.

As an example, Queensland Corrective Services accepts applications from individual researchers and organisations seeking to conduct research and generate data about its custodial environments, to support innovation and better practice across the system. A dedicated research and evaluation committee considers research proposals and approves them based on a number of criteria, including ethics and methodology, operational feasibility and potential value to the existing knowledge base.<sup>156</sup>

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<sup>154</sup> Department of Justice and Community Safety (Technology Solutions), 'Better Technology Tools Enabling Responsibility (BTTER) Project Plan' (PowerPoint presentation, 30 June 2021), Data provided to the Cultural Review.

<sup>155</sup> Staff member – Expert interview with the Cultural Review.

<sup>156</sup> Queensland Government, *Accessing data and conducting research about corrective services* (Web page, 2 June 2022) <https://www.qld.gov.au/law/sentencing-prisons-and-probation/data-and-research>.

We were pleased to hear that Corrections Victoria has contributed funding to establish a research hub focused on integrating best practice advice with emerging research to improve the management and rehabilitation of serious, persistent offenders.

We believe there is value in DJCS continuing to explore opportunities to partner with data and research experts to expand and refine existing datasets about the adult custodial corrections system.<sup>157</sup>

**Recommendation 2.6**  
**Enhanced data capability and information management systems**

The Department of Justice and Community Safety should invest in improving data capability and information management systems across the adult custodial corrections system. These changes should enable a more joined-up, efficient, person-centred approach to case management and system-wide risk identification and accountability by:

- a) rationalising and updating existing information management systems to ensure they capture clear and accurate information about the risks and needs (including the health needs) of people in custody; workforce demographics, workforce training, and complaints and reporting data
- b) reviewing and reconciling the gaps in datasets and collection methodologies outlined in this report
- c) adopting centralised information management systems to replace locally held paper-based files and registers to track and monitor restrictive practices and support a whole-of-system view of integrity risks
- d) building staff data capability through training and reviewing and updating requirements for record keeping and consistency in quality, form and completeness at an operational level
- e) development of a central dashboard to support real-time reporting of demographic information and integrity-related performance indicators.

Improvements should include an examination of record-keeping, data capability and information management systems within private prisons, to ensure consistency and information-sharing.

<sup>157</sup> DJCS has advised that the Corrections Victoria Research Committee was established ten years ago and provides an avenue for independent research in the Victoria. However, we were not provided with further information about the scope or activities of the Committee.



## 7 Involving system users in policy and operational changes

There is a growing recognition that listening to the lived experience of individuals can help public sector agencies to improve their systems and deliver more responsive services. For the adult custodial corrections system, providing avenues for system users to share their experiences will help fulfil the system's purpose, improve workplace culture and deliver better outcomes for people in custody.

Finding ways to genuinely engage with and listen to corrections staff, people in custody and other stakeholders, advocates and experts in policy and operational changes will help strengthen connections between central policy processes and the everyday operation of the adult custodial corrections system. We saw the benefits of this approach firsthand: listening to the experiences of people living and working within the system played a key role in shaping our own understanding of the issues of culture, safety and integrity in the custodial environment.

Within the social services sector, recognition of the value of lived experience has been a feature of policy and service responses for some time, particularly within the mental health and disability sectors.<sup>158</sup> Drawing on lived experience can provide deep insights into policy issues that would not be revealed through typical policy and service design processes. This 'person-centred' approach is 'essential for improving the quality of services, stimulating innovation ... and building accountability'.<sup>159</sup> Embedding lived experience can also enhance the legitimacy of policy and service changes, by ensuring that those affected are actively involved in identifying issues and developing solutions. It can also help repair and build trust and contribute to more productive relationships.

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<sup>158</sup> Sophie De'Ath, Catherine Flynn and Melanie Field-Pimm, 'Building knowledge of consumer participation in criminal justice in Australia: A case study' (2018) 7(1) *International Journal for Crime, Justice and Social Democracy* 76, 77; See also Beth Weaver, 'Co-producing community justice: The transformative potential of personalisation for Penal Sanctions' (2011) 41(6) *British Journal of Social Work* 1038.

<sup>159</sup> Caroline Doyle, Karen Gardner and Karen Wells, 'The importance of incorporating lived experience in efforts to reduce Australian reincarceration rates' (2021) 10(2) *International Journal for Crime, Justice and Social Democracy* 83, 86.

## Key findings – Involving system users in policy and operational changes

- ▶ Unlike other social services sectors, the criminal justice system and the adult custodial corrections system do not routinely embed lived experience into the design and delivery of corrections policies and programs.
- ▶ People living and working within the adult custodial corrections system are motivated to support positive change in the system. DJCS needs to seek opportunities to incorporate the lived experience of system users in the design and delivery of custodial services.
- ▶ Incorporating lived experience into policy development and implementation will lead to programs and supports that better reflect the needs and experiences of staff and people in custody and enable better outcomes for all users.
- ▶ A range of operational, historical, cultural and institutional barriers can prevent people with lived experience from being involved in the planning and delivery of custodial services.

## Lived experience should shape custodial strategy and services

There are various ways that lived experience can be incorporated into policy development processes. This can range from targeted consultation with people with lived experience to fully consumer-led design processes. Other collaborative and advisory mechanisms, such as formal reference groups to support departmental decision-making, or legislative ministerial advisory groups can also provide a structured process for incorporating lived experience into strategy and service design.

## Lived experience is already embedded within other Victorian agencies

A number of legislative, policy and practice frameworks within Victoria embed the role of lived experience into the design and implementation of social services reform:

- ▶ As part of Victoria's 10-year Mental Health Plan, a Lived Experience Leadership Expert Reference Group was convened to provide advice to government. The reference group developed the Mental Health Lived Experience Engagement Framework, which proposes strategies to ensure engagement, capabilities,



training and reform are directly informed by people with lived experience of mental illness.<sup>160</sup>

- ▶ Recommendations from the recent Royal Commission into Victoria's Mental Health System supported consistent engagement of people with lived experience of mental illness, including ensuring that key decision-making bodies provided opportunities for meaningful representation by people with lived experience.<sup>161</sup>
- ▶ The Victorian Disability Advisory Council established under the *Disability Act 2006* (Vic) provides advice to the Minister for Disability, Ageing and Carers on government policy directions and strategic planning initiatives for people with disability, as well as advising government on barriers to full inclusion. Under the Act, the majority of members must be people with disability.<sup>162</sup>
- ▶ The Department of Families, Fairness and Housing's Client Voice Framework for Community Services prioritises the include of clients' voices in all aspects of the design and delivery of services for the community.<sup>163</sup>

## Lived experience within the criminal justice system

The nature of the current custodial environment means that it is easy for people in custody to feel disempowered and disconnected from the decisions that affect their lives. There is also a persistent public perception that people in custody should have no agency or influence on the conditions of their incarceration.<sup>164</sup> The power imbalance between corrections staff and people in custody can also limit opportunities for collaborative input into policy and operations.<sup>165</sup>

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<sup>160</sup> Department of Health, *Mental health lived experience engagement framework* (9 June 2022) <https://www.health.vic.gov.au/publications/mental-health-lived-experience-engagement-framework>.

<sup>161</sup> See Recommendations 28 and 29 of the *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) Summary and recommendations, 64-5.

<sup>162</sup> *Disability Act 2006* (Vic) s 11(4).

<sup>163</sup> Department of Families, Fairness and Housing, *Client voice framework for community services* <https://www.dffh.vic.gov.au/publications/client-voice-framework-community-services>.

<sup>164</sup> Sophie De'Ath, Catherine Flynn and Melanie Field-Pimm, 'Building knowledge of consumer participation in criminal justice in Australia: A case study' (2018) 7(1) *International Journal for Crime, Justice and Social Democracy* 76, 81, 85.

<sup>165</sup> Sophie De'Ath, Catherine Flynn and Melanie Field-Pimm, 'Building knowledge of consumer participation in criminal justice in Australia: A case study' (2018) 7(1) *International Journal for Crime, Justice and Social Democracy* 76, 86.

Across the adult custodial correction system, there are some existing programs and opportunities for people in custody to share their experiences, including:

- ▶ Peer Listener and Peer Educator programs, which train people in custody to support others<sup>166</sup>

'You usually speak to people in your unit, they guide you through how to access to programs. When new men come into the unit, you guide them. The peer listeners/mentors are a great program and [are] really supportive. They help with things like that.'

Person in custody

- ▶ Corrections Victoria's periodic survey of people in custody<sup>167</sup>
- ▶ Prisoner representative groups, who come together to discuss issues at their location and provide feedback to management<sup>168</sup>
- ▶ 'Beyond the Bars', a Victorian prison radio program broadcast during NAIDOC Week, which aims to give voice to Aboriginal people in custody and includes songs, stories, opinions and poems.<sup>169</sup>

Notwithstanding these programs, there is an important opportunity for the DJCS to do more to ensure that lived experience is better valued and more consistently and meaningfully incorporated into strategic and operational reform.

## Lived experience is valued in other jurisdictions

In the United Kingdom, advocacy organisations document the experiences of people in custody to ensure their voices are represented in advocacy to government— for example, through the Prison Reform Trust's Prisoner Policy Network.<sup>170</sup> This network uses research, consultation and reports to gather and share the experiences of people currently and previously in custody with policy makers.

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<sup>166</sup> Department of Justice and Community Safety (Corrections Victoria), 'Overview of Peer Listener and Peer Educator roles', Data provided to the Cultural Review; Corrections Victoria, *Deputy Commissioner's Instruction 3.17 – Peer Listener Support for Prisoners* (25 August 2020).

<sup>167</sup> The delivery of this survey is one of the performance measures set out in the Service Delivery Outcomes.

<sup>168</sup> We understand that prisoner representative groups at some prisons meet with management and prison staff (including Operations Managers, Supervisors, General Managers and Offender Services managers, as required) to discuss issues occurring within the prison and to raise issues about processes affecting people in custody, request improvements in services or additional items for prisoner use.

<sup>169</sup> 3CR Community Radio, *3CR live prison radio: Beyond the Bars*. Available at: <https://www.3cr.org.au/beyondthebars2021>.

<sup>170</sup> See, for example, *User Voice* at <https://www.uservoice.org>; *Positive Prisons? Positive Futures* at <https://www.positiveprison.org>; *Prison Reform Trust* at <http://www.prisonreformtrust.org.uk/>.

In our conversation with the Prison Reform Trust, it became clear that there is broader acceptance in the United Kingdom of the role of lived experience within the system. They noted that inclusive planning and service delivery processes involving people with lived experience of custody are well understood and facilitated through formal and informal engagement pathways, such as prison newspapers and prison radio.<sup>171</sup> A further example was the active citizen panels convened by the Prison Reform Trust, which engages people in custody to work on a specific operational problem or issue and propose solutions to prison leadership.<sup>172</sup>

There are further examples of prisoner representative groups working to directly influence how custodial services are delivered. Some of these adopt formal structures – for example, prisoner councils which enable consultation with people in custody on a wide range of issues and create a dialogue between people in custody and decision-makers.<sup>173</sup>

A version of this model has been implemented in the Victorian Youth Justice system. The establishment of youth representative councils have provided a channel for the direct experience of young people to inform changes to the system.<sup>174</sup> Young people have also been directly involved in the design of the new youth justice facility in Victoria and are involved in other decisions about the facilities and programs.<sup>175</sup> The Commissioner for Youth Justice noted the positive impact of such initiatives, supporting young people to express and advocate for themselves in an organised and constructive way.<sup>176</sup>

Stakeholder, advocates and experts we spoke to strongly supported increased opportunities for people in custody to share their expertise and contribute to policy development and service changes. For example, RMIT University and Flat Out shared some of the ideas and successes that had emerged from RMIT's prison-focused think tanks as a model that has helped to raise the voices of people in custody and influence decision-making.<sup>177</sup> The Office of the Public Advocate recommended that new disability awareness training for custodial staff include direct input from people with disability who are in custody.<sup>178</sup>

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<sup>171</sup> See, for example, *Inside Time* at <https://insidetime.org/>; *Prison Radio Association* at <https://prison.radio/>.

<sup>172</sup> Prison Reform Trust, *Prisoners reforming prisons: Active citizens panels' suggestions for improving their prison* (Report, August 2019); Prison Reform Trust, *A Different Lens: Report on a pilot programme of active citizen forums in prison* (Report, December 2017).

<sup>173</sup> Enver Solomon and Kimmett Edgar, Prison Reform Trust, *Having Their Say: The work of prisoner councils Prison Reform Trust* (Report, 1 January 2004) 1.

<sup>174</sup> Youth Justice Commissioner - Expert interview with the Cultural Review

<sup>175</sup> *Ibid.*

<sup>176</sup> *Ibid.*

<sup>177</sup> See, for example, RMIT Changing Faces Think Tank, Submission to the Cultural Review, (December 2021); RMIT Beyond the Blue and Green Think Tanks, Submission to the Cultural Review (December 2021)

<sup>178</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021); Office of the Public Advocate, Submission to Inquiry into Victoria's Criminal Justice System (24 September 2021).

We also heard of opportunities for people with previous experience of custody being considered for employment or additional roles with service providers, noting the benefit of mentoring and transitional support being provided by people who have experienced the system. We heard how recruitment and screening processes may exclude people with a criminal record being employed in the adult custodial corrections system and proposed that these barriers be examined.

'At the end of the day I think having more peer support in prisons would result in a reduction in recidivism because it's the hope factor. You talk to most guys that aren't prepared to challenge the norm. A lot of them are running around saying, and it's reinforced by TV and all the rest of it, "I've got a criminal record, I can't get a job now." Well that's a myth, you can get a job. You just might have to take a lesser job than you actually want for now. And we all do that... at the end of the day it's up to the organisation if they're prepared to accept the risk [of hiring someone with a criminal record]. There's nothing to say that [someone who has] a criminal record disqualifies them from doing anything. We know that there are certain policies within organisations that says, "We don't employ people with a criminal record." So that's a policy decision as opposed to legislation.'

**Staff member**

To support a constructive, safe and supportive process for embedding lived experience into policy and operational change processes, we recommend the development of a Lived Experience Charter, to ensure the adult custodial corrections system recognises the value of lived experience as an input in the development of policy and operational processes. To ensure lived experience can be successfully embedded in this way, DCJS should examine and address any barriers that may deter people in custody from sharing their experiences and ideas.

**Recommendation 2.7**  
**A lived experience reference group and charter for the adult custodial corrections system**

The Department of Justice and Community Safety should establish a reference group of people with lived experience of custody (including both people currently in custody, and those who have previously been in custody) alongside other experts, to provide advice on the development and implementation of key policies and ensure opportunities for system users to shape the adult custodial corrections system.

The reference group should be supported and properly resourced by the Department of Justice and Community Safety, including appropriate remuneration for members of the reference group.

The reference group should co-design a Lived Experience Charter to establish the arrangements for safe and supported participation by people with lived experience.

# Part 3

## Workforce

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Understanding the experiences of the corrections workforce is essential to understanding the culture of the adult custodial system. In many ways the 'on the ground' workforce are the keepers of the culture – they are the men and women who will most directly influence the experience of people in custody through their daily interactions, conversations, attitudes and the carrying out of their duties.

To make the most of this unique opportunity for system reform, to ensure a safer and more rewarding work experience for staff and to create a more rehabilitative culture for people in custody, investing in the wellbeing, capability and leadership potential of the workforce is fundamental.

Throughout our engagement with the corrections workforce, we heard from many proud and hardworking individuals who are committed to their colleagues, to keeping the community safe and having a positive impact on the lives of people in custody. However, this commitment and motivation varied across the workforce. We heard that many staff felt undervalued, unsupported, stressed and unsafe in their difficult working environment.

We observed that there are critical gaps in the support staff receive, including a lack of consistent support for their wellbeing, their training and ongoing professional development. We found that there are unclear pathways for career progression and inadequate investment in specialist skills.

The public perception of the corrections workforce has been shaped over time by cultural depictions which are predominantly negative, particularly when compared to other operational workforces including paramedics, police, fire services and emergency workforces. In short, the public does not often perceive the value of the complex work performed by the corrections workforce. It is work that happens behind closed doors.

When paired with high rates of occupational violence, as well as an underinvestment in the skills training and professional development of the workforce, this undervaluing of the corrections workforce has contributed to poor staff wellbeing and problematic and harmful workplace cultures and norms. It has also created challenges for attracting, retaining and motivating staff to do the complex and important work of helping people in custody to rehabilitate.

Much more can be done to value, strengthen, support and modernise the corrections workforce. Ensuring that staff feel safe and prepared, clear and aligned in their purpose, well led and respected in their workplace will help to shape a safer system where people in custody are supported and respected.

The recommendations in this section position the Department of Justice and Community Safety (DJCS) to proactively address the serious wellbeing risks facing the corrections workforce. We have also recommended reforms to ensure that the current and future workforce are supported in their professional development, with pipelines to attract diverse talent, improvements to recruitment processes and measures to ensure the current workforce are equipped with essential skills and capabilities. The development of the workforce should be supported by the creation of a Centre for Correctional Practice to centralise recruitment, training and ongoing professional development in an environment that supports continuous learning.

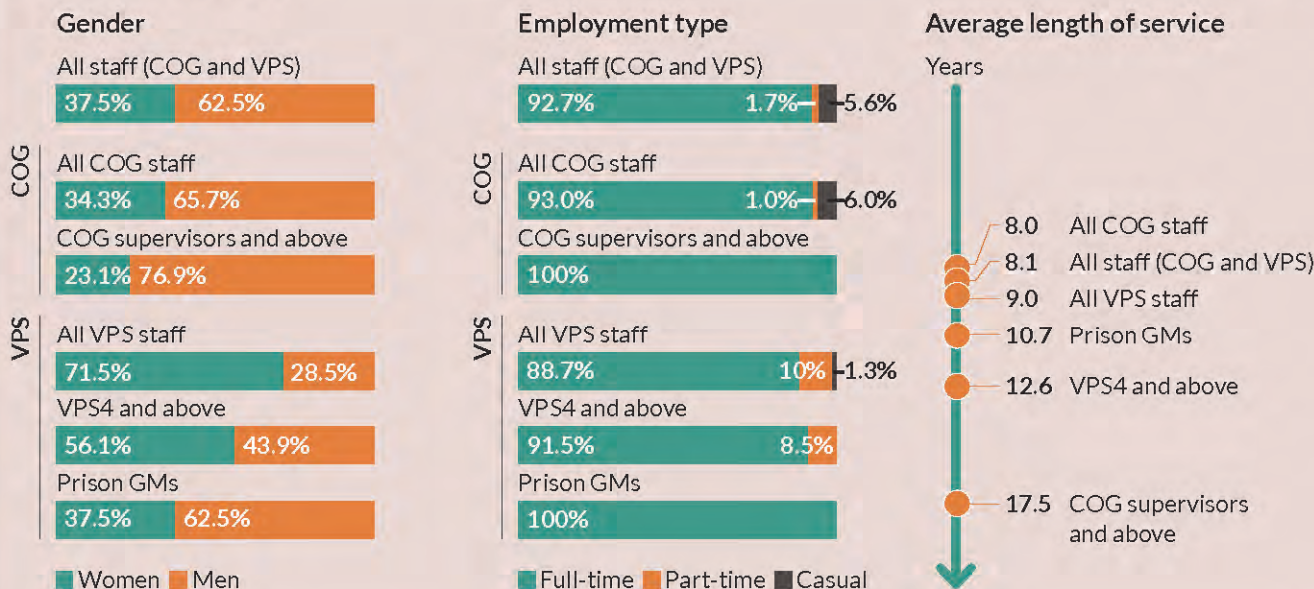
Finally, we set out a pathway to ensure that corrections leadership have the strategic acumen and people-management skills to drive and maintain integrity-oriented workplaces for all corrections staff.

Our recommendations acknowledge that many parts of the workforce have an appetite for reform and need continued investment from DJCS to achieve it. They position the corrections workforce to support reform in line with a renewed system purpose – in a safer, more supportive workplace for all corrections staff.

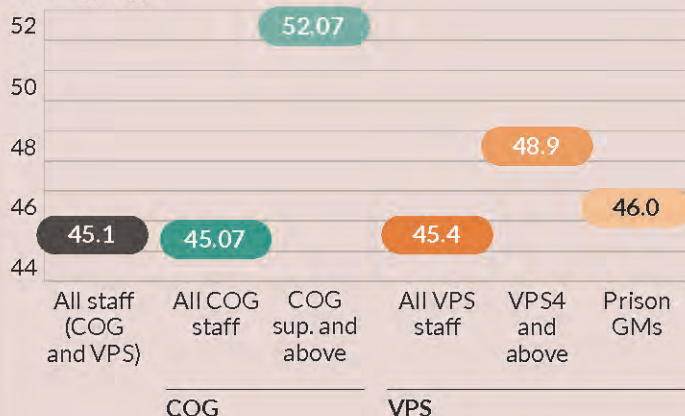
# Workforce composition

## PUBLIC PRISONS

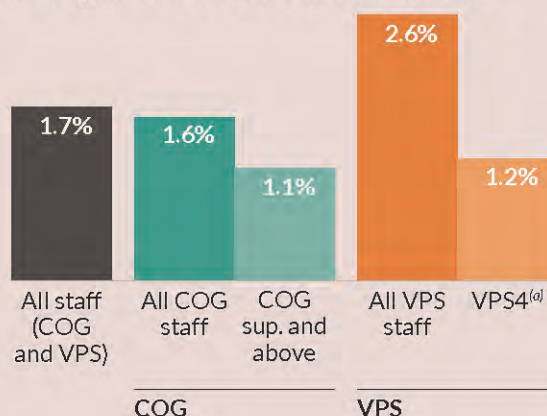
At April 2022



### Average age



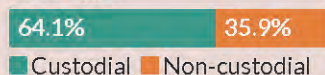
### Aboriginal and Torres Strait Islander staff



## RAVENHALL<sup>(b)</sup>

At March 2022

### Role type



### Gender



### Employment type



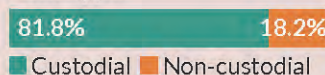
0.5% Aboriginal and Torres Strait Islander staff

3.4 Average length of service (years)

39 Average age (years)

## PORT PHILLIP<sup>(b)</sup>

### Role type



### Gender



### Employment type



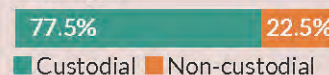
0.8% Aboriginal and Torres Strait Islander staff

8.2 Average length of service (years)

45 Average age (years)

## FULHAM<sup>(b)</sup>

### Role type



### Gender



7.5 Average length of service (years)

46 Average age (years)

(a) At the time of writing, there were no Aboriginal or Torres Strait Islander people above VPS4 in the public prison workforce.

(b) Some workforce data was unavailable for private prison locations.

## Terminology

In this part we discuss and make recommendations relating to all staff – including both custodial staff and Victorian Public Service (VPS) staff and others – who ordinarily work in Victorian prisons or correctional centres.

In some places, we distinguish the experience and needs of custodial staff, in recognition of the unique risks and challenges faced by people working in these roles.

The discussion of wellbeing, capability and leadership needs and related recommendations in this part should be considered to apply to all staff unless otherwise specified.

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 8. Wellbeing** assesses the current wellbeing of the corrections workforce, addresses key factors that impact the psychological safety of corrections staff and recommends measures to increase wellbeing and value.
- ▶ **Chapter 9. Capability** describes the current professional development and support provided to corrections staff and the reforms required to increase the capability and skills across the system.
- ▶ **Chapter 10. Leadership** sets out the current state of leadership and recommends measures to increase leadership acumen and accountability to support the workforce and facilitate cultural change.



## Acronyms and abbreviations

AWO	Aboriginal wellbeing officer
COG	Custodial Officer Grade
CPSU	Community and Public Sector Union
Cultural Review	Cultural Review of the Adult Custodial Corrections System
CALD	culturally and linguistically diverse
DJCS	Department of Justice and Community Safety
EAP	Employee Assistance Program
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
PDP	professional development plan
PTSD	post-traumatic stress disorder
RTO	registered training organisation
Tac-ops	tactical operations
VPS	Victorian Public Service
VPSC	Victorian Public Sector Commission



## 8 Supporting staff wellbeing

Prisons are volatile working environments that can lurch from relative mundanity to a critical incident within moments. A prison has many environmental and cultural factors that increase the risk of psychological and physical harm for its workforce. DJCS has a responsibility to proactively address these risks and ensure staff wellbeing.

The expectations of the role and the conditions under which many corrections staff work can be onerous. On any given day, along with a range of more straightforward duties, a custodial officer may be required to respond to an event of violence, abuse or self-harm. They are expected to provide support – often with limited training – to people affected by severe trauma, disability or extreme mental health issues, keep themselves, their colleagues and people in custody safe, and carry out effective case management, often with inadequate resourcing or supervision. Victorian Public Service (VPS) and other corrections staff who work in a broad range of roles which involve face-to-face contact with people in custody are also exposed to similar risks and challenges in their work.

Corrections staff are expected to acquit all of these duties with professionalism, patience, integrity and respect. In this context, ensuring that the wellbeing of the workforce is proactively supported is critical.

Employee wellbeing is closely linked to employee safety, productivity, morale, culture and organisational performance. We heard that many employees in the corrections workforce feel unsupported, constantly on edge or in a state of tension or hypervigilance. We heard from staff that they are experiencing psychological distress, mental health issues and post-traumatic stress disorder (PTSD).

Research highlights the connection between workplace stress and staff empathy for those in their care<sup>1</sup> – when staff experience high levels of occupational stress and cumulative trauma, they have a more limited capacity to provide an empathetic response to the needs of people in custody. Improving the wellbeing of the corrections workforce will better ensure that staff are safe to perform their complex and essential roles.

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<sup>1</sup> Nina Fusco et al, 'When Our Work Hits Home: Trauma and Mental Disorders in Correctional Officers and Other Correctional Workers' 2020 11 *Front Psychiatry* 1

While we saw evidence of some positive local initiatives, overall we observed that DJCS has not provided sufficient attention to adequately support the wellbeing and psychological safety of the corrections workforce. This ultimately compromises the safety, productivity and morale of corrections staff and undermines important cultural reform.

In the same way that the system needs to focus on the wellbeing of people in custody, so too does it need to prioritise staff wellbeing – the wellbeing of staff and people in custody are mutually reinforcing:

'You've got to value the staff you have. Value their opinions and their concerns, and reach an agreement, and work through those problems and those issues, and they'll actually be at work. Because if you're supporting them, first and foremost, making them valued, they'll actually turn up for work. Your sick leave won't be through the roof... People will be happy in the workplace and you're on a good path to actually – your SDOs [service delivery outcomes] will take care of themselves. You don't need to worry about them.'

**Staff member**

### Key findings – Wellbeing

- ▶ There are significant, ongoing risks to the psychological safety and wellbeing of corrections staff in custodial workplaces. These are not being met by proactive measures to both improve wellbeing and prevent psychological harm from occurring.
- ▶ There is a close connection between the psychological impacts of work within the custodial environment and the ability for staff to perform their role, impacting staff capability and the treatment of people in custody.
- ▶ Help-seeking behaviours and appreciation for the benefits of regular access to psychological support are not embedded in the cultural norms of the corrections workforce – corrections staff are unlikely to access wellbeing support to help manage their mental health.
- ▶ Corrections staff are not currently provided with sufficient and ongoing supervision and support to address their ongoing exposure to traumatic and stressful incidents, with negatives consequences for their health and wellbeing.
- ▶ Corrections staff do not feel that their experience is properly understood or valued by DJCS leadership.
- ▶ Corrections staff do not receive the same recognition and support from the public for their contribution toward community safety as other frontline workers. As a result, they perceive that their work is not valued in the same way as other uniformed workforces.

# What staff told us about **WELLBEING**

**Staff working in the system do not feel valued and supported.**

🌀 My resilience is waning. I'm not valued terribly highly here; I'm replaceable.'

🌀 [Management] talks down to us. Your opinion is not valued - whether it's a good opinion or a bad opinion. To go and speak to [management] now you have to make an appointment. It's like the door is always open but it's locked."

🌀 I respect the rank and the job, but I just think a lot of people have lost their compassion. We work in a prison so they're quite desensitised to treating people like numbers and I think that's how they now treat the staff.'

**Staff need increased access to wellbeing support.**

🌀 We probably debrief ourselves by poking shit at each other. I've been in this job since '89 and my wife has no idea what I deal with every day.'

🌀 People need a break. And I get that they might be short-staffed and stuff, but they wouldn't have as many sickies if they just sort of managed their staff better.'

🌀 [This site] are not looking after staff. You are always on guard and wondering if you will be next to be whacked.'

🌀 Staff are traumatised and assaults are now in double figures. I've raised my concerns about staff welfare with my manager. It's important to acknowledge the fatigue and the trauma.'

**Staff training should be revised to align with role duties and system purpose.**

🌀 At the end of the day the underlying thing is people are poorly trained, poorly recruited and poorly managed for the role. You can't have it both ways, you can't have it as a minimum wage job with no training and then expect people - no training, no requirements, and then expect people to operate and manage these complex situations without it.'

🌀 How do we seek change in culture when we don't educate staff?'

🌀 One of the issues is that we talk about reintegration, rehabilitation and behaviour change - but there isn't real understanding of what that means and what it looks like.'

## Responding to the wellbeing needs of the corrections workforce

While corrections staff undertake a wide range of scheduled and administrative tasks in their day-to-day work, the high-stress nature of the environment means they are frequently exposed to traumatic incidents. The unique physical and psychological risks associated with the custodial environment mean it is essential that systems and processes support staff's physical and psychological safety and that leaders take proactive steps to minimise risks. Employers also have legal obligations to ensure that staff experience physical and psychological safety at work.

The *Occupational Health and Safety Act 2004* requires employers to provide a healthy and safe environment for staff to work in. Employers must eliminate risks to employees' health, including their psychological health. This includes a duty to:

- ▶ provide and maintain safe systems of work
- ▶ provide information, instruction, training and supervision so employees can perform their work safely and without risks to health
- ▶ monitor workplaces conditions under the employer's management and control
- ▶ monitor employee health
- ▶ consult with employees and any health and safety representatives.

## Psychosocial hazards in the custodial workplace

A psychosocial hazard is a risk factor in the workplace that increases workplace stress and heightens the risk that an employee will experience psychological or physical harm.<sup>2</sup> Recent research has identified a number of psychosocial hazards that are common in the custodial workplace:

- ▶ Staff experience **high job demands**, including working in distressing situations where people in custody demonstrate volatile, aggressive and threatening behaviours toward staff. Almost all staff who responded to our workforce survey expected to experience these behaviours from a person in custody in the next 12 months – 91 per cent expected to be verbally abused at work, and 81 per cent expected to be threatened at work. Across our engagement, we observed consistent examples of corrections staff being subjected to verbal abuse, threats and intimidating behaviours by people in custody. Many staff told us that exposure to these behaviours was so common that they considered them as expected, albeit harrowing, parts of their daily work.

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<sup>2</sup> Worksafe, *Psychosocial hazards contributing to work-related stress* (Website, 2022) <https://www.worksafe.vic.gov.au/psychosocial-hazards-contributing-work-related-stress>.

- ▶ The system operates with **low resourcing and limited flexibility**, including understaffing and an inflexible rostering system. We heard from many staff and Corrections Victoria executives that low resourcing added to corrections staff's workload and increased their workday stress. In its submission to the Cultural Review, the Community and Public Sector Union (CPSU) noted that low resourcing was causing high levels of fatigue, exhaustion and hypervigilance within the custodial workplace – 'when staff are excessively fatigued, the risk of trauma induced psychological issues is increased.'<sup>3</sup> See Chapter 9 for discussion of workplace flexibility and rostering.
- ▶ **Exposure to distressing material and traumatic events** is a common experience, including information on the nature and impact of offending behaviours and exposure to self-harm by people in custody. Corrections staff told us about the significant impact of being exposed this type of information, particularly regarding sexual violence. We also observed and heard about many incidents of self-harm and other traumatic and volatile behaviours by people in custody, which were particularly common in front-end, maximum-security locations.
- ▶ Many staff **experiences workplace harm**, including bullying, sexual harassment and discrimination by corrections staff. We found that workplace harm is currently widespread and that there is a high tolerance for such behaviour. This has a significant impact on the psychological wellbeing and capability of the corrections workforce. In Part 4, we undertake a detailed analysis of the experiences and impact of unwelcome, unlawful behaviours in the custodial workplace.

We note that some roles across the system are exposed to more psychosocial hazards in their workplace than others, including those in front-end locations and in units where people in custody have complex needs. This includes staff in Aboriginal wellbeing officer (AWO) roles who carry an additional cultural load, coupled with significant under resourcing. See Part 5 for discussion of the specific measures needed to better support Aboriginal staff.<sup>4</sup>

WorkSafe Victoria identifies a greater risk of work-related stress when staff experience multiple psychosocial hazards together,<sup>5</sup> noting that employers should be careful not to consider individual psychosocial hazards in isolation. Through our conversations with corrections staff and stakeholders, it was clear that in the custodial workplace, many of these psychosocial hazards operate in tandem, and we heard multiple accounts of staff experiencing concurrent hazards and cumulative impacts. For example, a corrections employee may be exposed to multiple traumatic events, be affected by the increased workload from under-resourcing in their workplace, and experience verbal abuse from a person in custody.

<sup>3</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021).

<sup>4</sup> Recommendations in this part seek to improve custodial workplaces for the benefit of all staff, including Aboriginal staff.

<sup>5</sup> Worksafe, 'Psychosocial hazards contributing to work-related stress' (Website, 2022) <https://www.worksafe.vic.gov.au/psychosocial-hazards-contributing-work-related-stress>.

WorkSafe describes a range of negative health impacts, injuries and illnesses associated with psychosocial hazards in the workplace – including depression, anxiety, burnout, emotional distress, self-harm or suicidal thoughts, trauma or stressor-related disorders and PTSD. Exposure to psychosocial hazards can also contribute to other health conditions, including cardiovascular disease.<sup>6</sup>

Psychosocial hazards also impact the capability of staff and their ability to perform their duties. In some situations, it may result in staff treating their colleagues and people in custody poorly. Other impacts include:

- ▶ reduced productivity and efficiency
- ▶ decline in job satisfaction, morale and team unity
- ▶ increased absenteeism
- ▶ increased staff turnover
- ▶ avoidable/unexplained errors
- ▶ increased incidents and injuries
- ▶ increased conflict
- ▶ decline in the quality of relationships
- ▶ reduced client satisfaction
- ▶ increased healthcare expenditure and employee compensation claims.<sup>7</sup>

Across this report, we reference the unique challenges of working within the adult custodial corrections system. Given the nature of the prison environment, it is unlikely that all physical and psychological risks will be eliminated from the workplace; however, we consider that much more can be done to identify and respond to the distinct wellbeing needs of the corrections workforce.

## Understanding the impact of exposure to psychosocial hazards in the Victorian corrections workforce

The available research indicates that corrections staff experience high levels of stress, burnout, vicarious trauma and post-traumatic stress disorder (PTSD).<sup>8</sup>

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<sup>6</sup> Worksafe, 'The effects of work-related stress' (Web page, 2022) <https://www.worksafe.vic.gov.au/effects-work-related-stress>.

<sup>7</sup> Ibid.

<sup>8</sup> See for example, Benjamin Steiner and John Wooldredge. 'Individual and environmental sources of work stress among prison officers' (2015) 42(8) *Criminal Justice and Behavior* 800-818; Nina Fusco et al, 'When Our Work Hits Home: Trauma and Mental Disorders in Correctional Officers and Other Correctional Workers' 2020 11 *Front Psychiatry*.



The personal impact of working within the custodial environment was reflected in responses to our workforce survey. Just over one-third of respondents (35 per cent) reported having been told by a doctor, counsellor or psychologist that they have or are at risk of developing a stress-related illness such as depression, anxiety or PTSD. Nearly four in 10 respondents (38 per cent) also told us that they have taken leave due to work-related stress in the last two years.<sup>9</sup>

Data provided by DJCS provides further evidence of the high levels of psychological harm experienced by people working within the custodial system. According to that data, claims for mental injury account for 30 per cent of WorkCover claims from Corrections Victoria in the last financial year.<sup>10</sup> As noted above, people working at front-end and maximum-security locations are most at risk, with 70 per cent of mental injury claims coming from staff working at maximum-security locations.<sup>11</sup>

The negative impacts of workplace experiences on staff wellbeing extend beyond the workplace. More than half of the respondents to our workforce survey (55 per cent) said that work has had a 'negative' or 'very negative' impact on their physical health in the last two years, while 45 per cent said it had negatively impacted their family life.

In our workforce survey, respondents also reported a range of negative emotions experienced at work. The most common were anxiety or agitation (68 per cent of respondents), loss of interest or motivation (58 per cent) and feeling disconnected or 'checked out' (42 per cent). More than a quarter of respondents (27 per cent) reported feeling dread, panic or fear about their work. A high percentage of respondents (38 per cent) indicated that they have taken leave due to work-related stress in the past two years while working for Corrections Victoria.<sup>12</sup>

## Recognising the impact of physical violence on staff

Through our engagement with corrections staff, we heard about a wide range of experiences of physical violence at work, including serious injuries. One in five custodial staff responding to our workforce survey reported that they had been physically injured by a person in custody in the past five years. This included experiences of being punched, scratched, spat on, headbutted, strangled and bitten. Others reported sprained fingers, fractured ribs and other physical injuries. Staff recounted regular experiences of occupational violence in the forms of physical and verbal abuse including threats and psychological abuse.

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<sup>9</sup> Cultural Review, Corrections workforce survey (2021).

<sup>10</sup> Department of Justice and Community Safety (Corrections Victoria), 'Workcover Claims Information', Data provided to the Cultural Review; Department of Justice and Community Safety (Corrections Victoria), 'Health, Safety and Wellbeing Metrics', Data provided to the Cultural Review.

<sup>11</sup> Department of Justice and Community Safety (Corrections Victoria), 'Workcover Claims Information', Data provided to the Cultural Review.

<sup>12</sup> Cultural Review, Corrections workforce survey (2021).

Staff told us about how the everyday experience of occupational violence can have a distressing and lasting impact. Many staff made the connection between these experiences and their own mental health and wellbeing:

'I think mental health in particular, I think they're trying stuff but I think they're so far short of what needs to be done, so far short ... the nature of the industry is it's quite a violent industry. We see things that people would have no clue that we saw, like faeces being smeared on walls and fights and assaults and stabbing and things – you name it, we see that stuff. And I think we tend to keep it inside quite a lot, because it is – traditionally it's a very – it's almost a secretive job ... It's like everything inside the walls stays inside the walls, and people outside have no clue what goes on in here. And I think there's not really much of an opportunity to sort of debrief once you leave the building, the facility. And people don't want to take it home to their families ... So I think from a physical health and safety, yes we're doing pretty well. From a mental health and safety, there's a lot to be done.'

**Staff member**

In its submission to the Cultural Review, Forensicare also recognised how the nature of the custodial officer role impacts staff wellbeing:

'Staff are sometimes called on to perform confronting tasks – some of which are considered frightening, humiliating and/or degrading by prisoners – such as strip-searches, cell extractions, and management of mentally ill prisoners ... Staff may also be exposed to situations involving behaviours such as incoherent yelling, smearing or throwing of faeces, and hostile abuse. These tasks are stressful and, over time, can be potentially brutalising for staff.'<sup>13</sup>

**Forensicare**

DJCS data on assaults across the system indicated that, in the past five years, there have been 480 assaults on staff by people in custody.<sup>14</sup> The most common locations for assaults on staff by people in custody were maximum-security and front-end locations, confirming the higher risk and volatility associated with these locations. Assaults on staff at Port Phillip Prison, the Metropolitan Remand Centre, the Melbourne Assessment Prison and Ravenhall Correctional Centre made up 70 per cent of assaults on staff across the adult custodial corrections system.<sup>15</sup>

Corrections staff also expressed concern and frustration that their employers did not appear to recognise the impact of their experiences and, when action was taken, it was insufficient and cursory.<sup>16</sup> This perceived lack of care contributed to feeling that

<sup>13</sup> Forensicare, Submission to the Cultural Review (December 2021) 5.

<sup>14</sup> Department of Justice and Community Safety (Corrections Victoria), 'Data on Notifiable Incidents', Data provided to the Cultural Review (2021). Includes assaults on staff requiring hospitalisation and those not requiring hospitalisation, and assaults of a sexual nature. Does not include assaults where there was no injury.

<sup>15</sup> Port Phillip Prison (103), Melbourne Remand Centre (86), Melbourne Assessment Prison (83) and Ravenhall Correctional Centre (66), collectively making up 70 per cent of 480 assaults in the past five years.

<sup>16</sup> We note that prison disciplinary processes often require Corrections Victoria leaders to balance the promotion of good order and the safety of custodial staff and people in custody with proportionate

the rights and experiences of staff were not valued at the same level as the experiences of people in custody:

'[People in custody] call you all these things and they'll say what they want, and they'll call you a dog, and they'll call you this, and they'll call you a whatever under the sun, threaten to kill you, threaten to kill your family, threaten this. When they do, you raise it. You write a report, you raise the incident, you raise the issue, and then it gets thrown out, or they don't move the prisoner. They don't do anything about it. There's no repercussion for them. They throw piss and shit ... You go to charge them and they go, "Oh, you're a naughty boy. Don't do it again. Here's a \$10 fine" – \$10 fine and the three-month concurrent from a judge, six months down the track, after it's raised with VicPol because it's an assault.'

**Staff member**

Many staff told us that instead of receiving support from their manager or supervisor after a confronting or upsetting incident, they were made to feel they were not 'tough' or 'resilient' enough for the role and that threats of assault and abuse were considered 'part of the job':

'They don't support staff. I was told that "Maybe it's not the job for you". I don't get paid to get threatened and worry about the security of my family. I'm now seeing my doctor and am on medication. I feel like I'm not supported here. They protect the prisoner rather than their own staff.'

**Staff member**

The perceptions and experiences of staff, including the extent to which they feel valued, have a direct influence on how they carry out their duties. One important theme that emerged in our conversations with staff was that, while they did not expect occupational harm to be eliminated from the system, they wanted their employers and others to understand the impact of these experiences.

## **There is a connection between wellbeing issues and staff conduct**

When staff perceive that the community, management, leadership and the adult custodial corrections system as a whole do not care about their work or their wellbeing, it can result in them feeling resentful toward their duties and the people in their care. In addition, the significant wellbeing risks and the experience of vicarious trauma can affect staff members' ability to perform their role, make good decisions and remain engaged.

Research has shown that mental health is likely to impact on the ability for corrections staff to create a therapeutic environment.<sup>17</sup> People exposed to psychologically traumatic events and who work with people with complex needs are susceptible to 'compassion fatigue' and burnout. This can impact the care provided

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consequences for assault. Prison disciplinary processes are discussed further in Part 6. People in custody.

<sup>17</sup> Nina Fusco et al, 'When Our Work Hits Home: Trauma and Mental Disorders in Correctional Officers and Other Correctional Workers' 2020 11 *Front Psychiatry* 1.

to people in custody, resulting in 'poor judgment, apathy, desire to quit, lack of energy, unresponsiveness, callousness, and indifference'.<sup>18</sup> One staff member we spoke to reflected on the link between psychological wellbeing and staff developing a punitive approach to their interactions with people in custody:

'It's frowned upon, amongst correctional staff in general to say, "I'm not coping". I've been saying ...that just about every [unit] staff member needs to get out of there because they've become punitive. They've really become punitive. If a prisoner is like giving them the shits, or being abusive or aggressive through the day, then that prisoner suffers. Things like, they don't get their canteen. They don't get an airing. They don't get a shower. They don't get cleaning products. You know, all the things that makes a [human] a [human] ... I acknowledge that I need to take some responsibility for that myself. But I'm one person and I can't fight the system ... And it's sad ... you can see the deterioration of ... staff because obviously, getting abused every day has its toll.'

**Staff member**

Stakeholders also identified the impact of stress, trauma and fatigue on custodial officers and how this can lead to indifference and poor outcomes for people in custody.<sup>19</sup> They flagged that traumatic experiences at work may require specific wellbeing interventions to ensure that people are able to support their own mental health while providing support to people in custody:

'Staff need support that facilitates adaptive coping, to prevent them from becoming indifferent to the trauma involved.'<sup>20</sup>

**Forensicare**

One of the potential consequences of trauma or persistently being 'on guard' is hypervigilance – a state of increased arousal and alertness, used as a key diagnostic criterion for PTSD.<sup>21</sup> As the CPSU noted:

'Consideration must also be given to the environment staff work in. Prison work requires constant vigilance and staff must always be assessing the environment for danger. At any time, an incident can escalate without notice.'<sup>22</sup>

**Community and Public Sector Union**

Corrections staff displaying hypervigilance are more likely to overreact to perceived risk and assess a situation as dangerous.<sup>23</sup> The ability to proportionately respond to risks – both actual and perceived – in a way that aligns with the rehabilitative purpose of the system is a critical part of the role:

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<sup>18</sup> Ibid 11.

<sup>19</sup> See for example, Forensicare, Submission to the Cultural Review (December 2021); Caraniche, Submission to the Cultural Review (December 2021).

<sup>20</sup> Forensicare, Submission to the Cultural Review (December 2021) 5.

<sup>21</sup> See generally Charlotte Fritz et al, 'On Guard: the costs of work-related hypervigilance in the correctional setting' 2018 *Occup Health Sci* 2, 67–8.

<sup>22</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021).

<sup>23</sup> Substance Abuse and Mental Health Services Administration, *Trauma-informed care in behavioural health services*, (Substance Abuse and Mental health Services Administration, 2014) 12.

'I struggled in my professional and personal life. It impacted my work with the service users and my relationships towards my colleagues, due to increased anxiety and hypervigilance.'

**Staff member**

These negative emotional experiences also heighten the risk that staff will either engage in behaviours that breach expected integrity standards, such as unlawful use of force. In Chapter 12, we address integrity risks across the adult custodial corrections system and consider measures to mitigate these risks.

## Corrections staff experience barriers accessing wellbeing support

Through our workforce survey, site visits and confidential interviews with corrections staff, we heard that while many staff report psychological impacts, very few access support.

Only one in four respondents to our survey (25 per cent) said that the wellbeing supports available meet their needs when it comes to their experience of work-related stress. The proportion was even lower for those in custodial roles – only 20 per cent said that the wellbeing supports met their needs.

Around a quarter of respondents (24 per cent) agreed that they receive enough support through work to help them manage work-related stress. Once again, a lower rate was recorded for respondents who identified as custodial staff (19 per cent).

This data is broadly consistent with responses to the Victorian Public Sector Commission (VPSC) People Matter survey. In the 2021 survey results, only 39 per cent of respondents from the custodial system agreed that there are effective procedures to support employees experiencing stress, compared to 58 per cent for the Victorian public sector overall.<sup>24</sup>

Concerningly, one in five respondents to our workforce survey (20 per cent) said that they have not accessed any wellbeing support in the workplace, including post-incident debriefing, informal 1:1 support from a supervisor or manager, or counselling through the Employee Assistance Program (EAP). Further, 40 per cent of respondents said they did not receive the right support from their manager or supervisor following a critical incident.

Our engagement with staff suggests there is a stigma within the corrections workforce associated with seeking help and that staff are more likely to 'get on with the job' or seek help informally from their supervisor/manager rather than access professional support or take time off work.<sup>25</sup>

<sup>24</sup> Victorian Public Sector Commission, People Matter survey data provided to the Cultural Review (2021).

<sup>25</sup> Multiple responses from Cultural Review, Corrections workforce survey (2021); Multiple confidential interviews.

**'The last time I decided to open-up to a manager about how I was feeling, I was looked in the eye and told "You are a prison officer; you need to be a little bit more resilient".'**

'It doesn't get spoken about or acknowledged as often as it should, the effect that this environment has on our mental health, and most of the time we don't even recognise it because we haven't been equipped with the tools to do so. Compassion fatigue, incident trauma, toxic behavioural change, these are all things that most of us have experienced – and mostly been fortunate enough to get through – but the repercussions speak for themselves within the culture we perpetuate, and the effect that this has on many staff members' lives outside of the job.

When I began to recognise how burned out and mentally fatigued I was becoming, during my time off last year, confiding in my then-management team for support did not even occur to me as an option. Why would I confide in a team that seemed distant and out of touch, whom I'd never really felt supported by before, and go through the effort to be vulnerable and ask for help and try to convince them that I was having a hard time, when historically I had no reason to believe I would be supported. The last time I decided to open up to a manager about how I was feeling, I was looked in the eye and told "you are a prison officer; you need to be a little bit more resilient". Why would I allow myself to be belittled in such a manner again?

It is not an irregular occurrence for me to find myself just mutually venting with my colleagues about the impact that our role has on their lives, and while conversations like these are fantastic and go a long way to help, I do believe that more formalised and professional support is needed.'

*A corrections staff member*

A common theme of our engagement was the inadequacy of the psychological support provided to staff. We understand that EAP details are provided to new recruits, displayed on posters at prison locations and often included in staff communications, however many staff that we spoke to did not know the EAP was available. While the small number of people we spoke to who had accessed the EAP service spoke positively about the psychological support provided, others commented that the EAP was a reactive service and may not target the specific needs and experiences of the corrections workforce:

'Every other service has something around maintaining your wellbeing, your mental health, identifying mental health issues, whereas we don't ... We don't even have counselling, or the Employee Assistance Program advertised anywhere in the unit. We don't have it advertised anywhere in the staffroom. There is a team that we have that we can go and talk to and, if we need to see somebody, we can ask about it. But I've said this to HR before, that that counselling system or those options should be everywhere for staff to see because we're constantly being challenged in our daily tasks, we're constantly being abused on a daily basis ... We shouldn't have to think "Who do I have to go and ask if I need to speak to someone?". We should be able to open an office door and do it off our own back ... How many staff do we need to lose to suicide before you actually do anything?'

**Staff member**

During the Cultural Review, we heard that Corrections Victoria is undertaking some focused work to improve access to psychological support, including ensuring that the EAP provider, Converge International, make monthly visits to each prison.<sup>26</sup>

We also understand that some corrections staff can access the Psychological Wellbeing Service, which is specifically aimed at addressing the nuanced challenges of working within a correctional environment. Data provided by DJCS to the Cultural Review suggests that uptake of this service is low. More should be done to evaluate the suitability of this service, and, if effective, promote and expand its access across the corrections workforce. We also note that mandatory monthly debriefing sessions are only provided to staff working in post-sentence residential facilities. We suggest DJCS consider mandatory debriefing sessions led with the appropriate expertise and decoupled from performance conversations, are made available to all custodial staff.

### Improving processes to support staff wellbeing

There is an urgent need to improve support for the specific wellbeing and psychological needs of the corrections workforce. These changes should be actioned through the creation of a Custodial Mental Health and Wellbeing Action Plan and contain proactive, routine and responsive supports as outlined below:

- ▶ **proactive** – recognising existing psychosocial hazards in the custodial workplace as ongoing, present operational health and safety risks that must be proactively mitigated
- ▶ **routine** – provided as part of ongoing ordinary supervision for all corrections staff that is unrelated to performance management
- ▶ **responsive** – with triggers for increased support following exposure to a critical or traumatic incident.

### A comprehensive approach to wellbeing

We acknowledge that it is not possible to eliminate many of the psychosocial risks in the custodial environment; however, more can be done to proactively support the mental health and wellbeing of the corrections workforce.

To address work-related stress, WorkSafe Victoria recommends creating dedicated processes:

1. **Identify the psychosocial hazards** in the workplace.
2. **Assess the risks of these psychosocial hazards**, including the frequency, duration and likelihood the risk will occur, and the potential consequences.

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<sup>26</sup> Department of Justice and Community Safety (Corrections Victoria), *Corrections Victoria Prison Cultural Reform Strategy 2019-2022*, Data provided to the Cultural Review

3. **Identify measures to control the risks** – these could include changes to job design where possible, such as addressing resourcing issues; increased managerial support; providing tailored external assistance; offering assistance to staff to address the demands of the job; and promoting early intervention when issues arise. Where risk elimination is not reasonably practical, take measures to minimise the risk.
4. **Regularly review risk control measures** through feedback and evaluation, to ensure they are working effectively to address the identified hazards and reduce the risk of work-related stress. Where necessary, revise and update control measures to ensure they are effective.<sup>27</sup>

### **Routine, ongoing debriefing support for staff**

Structured, regular debriefing can have a powerful positive impact on the experiences of employees regularly exposed to workplace trauma. Research from the United Kingdom identified that custodial staff who received group debriefing had a significant reduction in traumatic stress, anxiety and depression compared to those who did not.<sup>28</sup>

At present, the corrections workforce lacks structured, mandatory debriefing processes, professional supervision and access to an EAP that is adapted to their workplace. The adult custodial corrections system does not currently use reflective practice – structured opportunities to reflect on past experiences, make sense of them and identify any lessons that might influence one's actions in the future – to support staff on a regular basis. Some corrections staff we spoke to only realised the important role of debriefing or structured reflection when the work had already had a deep impact on their wellbeing and their lives:

'I realise now I should have been debriefing and seeking professional support before this incident, I notice that I had changed, and I wasn't liking who I was becoming when I got home and how I started speaking to my kids. I see this now that I am getting the right support and I have been given coping skills to be able to manage those hard days at work. The occupational violence is through the roof, you are constantly sworn at, abused, threatened and have the most horrible things said about you, this is day in and day out.'

**Staff member**

Routine debriefing after a critical incident can provide critical support for staff. Some important principles underpin debriefing processes:

- ▶ Regular debriefing and reflective practice must form part of the ordinary, ongoing support provided to corrections staff to address the psychosocial hazards in the custodial workplace and mitigate the risk of vicarious trauma and other psychological harm.

<sup>27</sup> WorkSafe, *A guide for employers: Preventing and managing work-related stress* (Report, February 2021) 9, 10 <https://content-v2.api.worksafe.vic.gov.au/sites/default/files/2021-02/ISBN-Preventing-and-managing-work-related-stress-guide-2021-02.pdf>.

<sup>28</sup> See generally, Sharon Ruck, Nicola Bowes and Noreen Tehrani, 'Evaluating debriefing within the UK Prison Service' (2013) 15(4) *Journal of Forensic Practice*.



- ▶ Increased opportunities for debriefing or reflection must be provided to:
  - corrections staff in high-risk, front-end environments
  - corrections staff in units accommodating people in custody with complex needs or security settings (for example, units that house sex offenders or people in custody with severe mental health issues)
  - new recruits.
- ▶ Debriefing should be delivered by senior staff who are not the direct supervisors for the attendees in a group, and who have expertise in trauma-informed practice. While corrections leadership build this capacity, DJCS should consider support from external providers with relevant expertise.
- ▶ Mandatory post-incident debriefing should increase and follow all critical incidents in the custodial workplace, including following self-harm incidents, experiencing and witnessing occupational violence, and deaths and suicides in custody.
- ▶ Debriefing must be supported by supervision that is distinct from performance management, clear communication and constructive feedback.<sup>29</sup> See *Chapter 10* for further discussion of the need to increase the capability of corrections leadership to provide support to staff.

### Improving staff spaces

During our site visits, we noted how the physical conditions of the custodial environment impact corrections staff. Staff do not have regular access to personal devices, there are lengthy processes for entry into the prison and, as available break areas are located within the secured area of the facility, limited options for respite from the challenges of the workplace. Research has demonstrated that specific conditions of prisons and correctional centres – including limited access to natural light, high noise levels, and a lack of privacy in spaces intended for rest – contribute to psychological distress among corrections staff and high rates of sick leave and substance abuse.<sup>30</sup>

We observed many of the staff areas within Victoria's prisons and correctional centres are run-down and lacking many of the features of other workplace break rooms, such as those within DJCS's central offices. We heard that most initiatives to improve the amenity of staff areas were led by staff – for example, at one location, staff-led fundraising covered the cost of upgrades to a staff break area.

We also observed that many locations did not include designated spaces for staff with specific needs, including for staff who are breastfeeding or require a prayer room. Ensuring staff have access to spaces that are safe, separate from the

<sup>29</sup> See for example Northeastern University Institute on Urban Health Research and Practice, *Guidelines for a vicarious trauma-informed organization* (Guideline, no date) 1. [https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/os\\_hr\\_guidelines-508.pdf](https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/os_hr_guidelines-508.pdf).

<sup>30</sup> See for example David M Bierie, 'The impact of prison conditions on staff wellbeing', (2012) 56(1) *International Journal of Offender Therapy and Comparative Criminology*, 81-95.

operational environment and include facilities that cater to individual needs will increase staff wellbeing.

**Recommendation 3.1**  
**A Custodial Mental Health and Wellbeing Action Plan**

The Department of Justice and Community Safety should develop and resource a Custodial Mental Health and Wellbeing Action Plan. The action plan should clearly address the psychosocial drivers of psychological harm in the custodial workplace and create objectives for change, including:

- a) creating a culture of support and recognition for staff that acknowledges the operational challenges of their roles and the safety risks in the custodial workplace
- b) responding to, and developing initiatives to eliminate, reduce or, where not practicable, mitigate, psychosocial risks in the custodial workplace including exposure to traumatic incidents or content, managing challenging behaviours and occupational violence
- c) introducing supportive mandatory debriefing and reflective practice for all corrections staff at regular intervals, with increased mandatory debriefing for staff in high-risk and reception environments
- d) ensuring individual mandatory debriefing immediately following staff exposure to a critical or traumatic incident – this should not be connected to performance management
- e) increasing the mental health literacy of the workforce and their understanding of how to promote their own psychological wellbeing, reduce stigma, and identify where and how they can access support
- f) developing clear measures to improve and support employee wellbeing and mental health across their work lives, including ongoing and regular support for employees who disclose that they have a wellbeing or mental health issue that requires additional assistance, and increased access to appropriate mental health providers including but not limited to a specialist employee assistance program for corrections staff
- g) building the confidence, capability and accountability of leaders to create and maintain mentally healthy workplaces
- h) identifying and improving the physical components of workplaces that support wellbeing, including built infrastructure that facilitates a safe workplace
- i) ensuring that there are adequate facilities for the workforce, including for staff who are breastfeeding or require prayer rooms.

The action plan should be developed in consultation with staff and the Community and Public Sector Union and ensure that it meets new psychological health regulations under the *Occupational Health and Safety Act 2004*.

## Valuing and recognising staff

### Communicating and recognising the role of corrections staff

People working in the adult custodial corrections system perform an essential public service that makes an important contribution to community safety. However, many corrections staff told us that they do not feel that their work is valued or understood by the community, particularly in comparison to other frontline workforces.

Custodial officers described that people in the community tended to view them negatively and generally had no idea of what they did. This is in stark contrast to other first responders such as police, paramedics and firefighters who are generally viewed as providing a highly valued social contribution and afforded a 'status' for doing so. The lack of feeling 'validated' seemed to be a significant driver of pockets of low morale across the workforce.

The influence of public perceptions of corrections staff is one of the institutional elements recognised in the United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules). These rules recognise the need to emphasise the role of custodial officers in public communications:

'The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.'<sup>31</sup>

**Mandela Rules, Rule 46.2**

Media reporting can also impact whether corrections staff feel the community values their work. Negative reporting about the adult custodial correction system is common – we heard from staff and management that there are few positive news stories about people working within the system, and a focus on stories that portray prison staff as corrupt, dishonest and violent, showing a limited understanding of the nature of their work. As noted above, this representation contrasts sharply with coverage involving similar operational or emergency workforces, which often presents them as more deserving of protection from workplace harm.<sup>32</sup>

<sup>31</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 46(2).

<sup>32</sup> See for example, Benjamin Preiss and Melissa Cunningham, 'Premier says ambo attackers will get same treatment as rapists, murderers', *The Age*, (Online, 21 May, 2018). <https://www.theage.com.au/national/victoria/premier-says-ambo-attackers-will-get-same-treatment-as-rapists-murderers-20180521-p4zqlg.html>. Note that the actual legislative change was for all emergency workers including custodial officers, however, the public announcement focusses on ambulance workers. See also Joe Russo et al, 'Building a High-Quality Correctional Workforce', (2018) *RAND Corporation* 6-7.

'How do we actually raise the profile and the value and break down the wall of what is the role of a prison officer, and what is the value that they do and the good things that they do? It's so unfortunate that the tone we only ever see in the media is all the bad things. And I think it goes to people feeling valued and feeling rewarded and wanting to stand up and being attracted to a job.'

**Expert interview**

We have heard that the low public value attached to work within the adult custodial corrections system has a direct influence on the workforce. This can be linked to perceptions that working within custodial environments is 'dirty work' and enduring stereotypes about the nature of custodial work.<sup>33</sup>

'I don't think there's enough insight of the community as to what happens in prison. I think the perception of what happens in prison is a lot of "we lock people up and throw away the key". I don't think a lot of the community understand that there's so much personal interaction with men and women inside jail.'

**Staff member**

The CPSU also reflected these sentiments:

'Prison officers and other staff who work in these important roles deserve a system that addresses the commitment and one that acknowledges the professional work they all do to make and keep the Victorian community safe.'<sup>34</sup>

'Unless people know a prison officer, most people assume officers spend their days turning keys or breaking up fights between inmates. The dramatic portrayal of prisons as dens of corruption and violence don't assist with changing the views of the broader community.'<sup>35</sup>

**Community and Public Sector Union**

There is more work to be done to communicate the value of corrections work and the contribution staff make toward public safety. Building the profile of the workforce and helping the community understand the nature of the environment and their work with people in custody will encourage better recognition of the contribution made by the workforce. This work should build from the earlier recommendation to ensure a shared understanding of the system purpose.

<sup>33</sup> See generally, Anna Eriksson 'The Taint of the Other: Prison Work as "Dirty Work" In Australia', (2021) *Punishment and Society*.

<sup>34</sup> Community and Public Sector Union, Submission to Cultural Review (November 2021) 26.

<sup>35</sup> *Ibid.*

**Recommendation 3.2**  
**Recognition of the work of the corrections workforce**

The Department of Justice and Community Safety should develop a public engagement and communications strategy to enhance the visibility of the corrections workforce and increase the Victorian community's understanding of the adult custodial corrections system and the people working within it.

The strategy should recognise the critical role of the corrections workforce in the justice system and emphasise the range of professional opportunities across a custodial career.

This public engagement and communications strategy should reflect a renewed recruitment approach focused on a more diverse and capable workforce and a clear commitment to ensuring the corrections workforce is safe and supported in their roles.

## Inclusion of staff perspectives in system design and decision-making processes

One of the ways to ensure staff feel valued is to engage them in decision-making processes that affect their workplace and the performance of their duties.

Corrections staff told us that they felt their ideas and experiences were not valued and that they had little opportunity to contribute to the overall strategy and decision-making associated with the adult custodial corrections system. Many perceive that DJCS and Corrections Victoria do not recognise or consider operational expertise in policy and decision-making processes:

'Decisions are made above our head; we're not asked to give our opinions, asked for advice on it. People make decisions who have never worked in here. ... A lot of decisions are being made about how we process prisoners, directs from the police cells and staff – they don't ask us. We just get a piece of paper saying that's what you're doing.'

**Staff member**

This experience was shared by Aboriginal staff working within the system. We heard that there were only limited opportunities to contribute their expertise on issues affecting Aboriginal people in custody:

'[Regarding a cultural monument] I don't know [who designed it]; I got no idea because I never got any consultation in regard to it. I get consultation on nothing. They've been doing an advertisement for a new AWO, obviously because Corrections are funded for a new AWO position. I won't have a say in that either.'

**Staff member**

In *Part 5. Aboriginal cultural safety*, we make recommendations for ensuring that Aboriginal expertise and leadership is embedded in the system.

Building on our recommendations to ensure that the system planning and decision-making is informed by the lived experience of system users (see Recommendation 2.7), we support processes that build closer understanding of the experiences and expertise of corrections staff and actively include the voices and experiences of employees from diverse backgrounds into system planning and design.

There are some existing mechanisms for corrections staff to help shape policy and operations, including staff representative groups at some locations. However, there is no consistent or system-wide approach to bring the direct experience of corrections staff into system planning processes at a local or central level.

We spoke with CPSU delegates at some locations who indicated that management support for union activities was inconsistent and that they were rarely consulted on staff wellbeing support.<sup>36</sup> Embedding these mechanisms to ensure that staff feel valued and heard in system decision-making can have a positive effect on job satisfaction, staff wellbeing and retention.<sup>37</sup>

**Recommendation 3.3**  
**Staff experience and expertise informs system delivery**

The Department of Justice and Community Safety should increase opportunities for corrections staff to contribute their ideas and experiences as part of system governance, to improve service delivery, build closer connection between system planning and operations, and support staff wellbeing. These processes should complement consultation obligations and procedures under the Victorian Public Service Enterprise Agreement.

<sup>36</sup> DJCS advised the Review that at some locations, consultation regarding staff wellbeing and supports is not conducted directly with union delegates in recognition that some staff are not union members.

<sup>37</sup> Joe Russo et al, 'Building a High-Quality Correctional Workforce', (2018) *RAND Corporation* 21, 28.

## 9 Enhancing staff capability

On any given day, corrections staff must employ a wide range of skills and knowledge to successfully perform their roles – from managing security and identifying risks to case management, conflict resolution and administration. Creating a more modern and capable adult custodial corrections system will rely on building and supporting a capable, skilled and diverse workforce.

Capability means ensuring that:

- ▶ the right people are recruited into the system
- ▶ they are purposefully trained and receive ongoing professional development, mentoring and support
- ▶ there are equitable pathways for progression and career opportunity across the adult custodial corrections system
- ▶ their employment conditions are commensurate with their role and expertise
- ▶ they are clear about, and act in accordance with, the vision and purpose of the system.

Over the last two decades, work has been underway within Victoria's adult custodial corrections system to shift toward a more rehabilitative environment and create a shared understanding of the contribution that the system and its workforce can make toward reducing recidivism.

Over the course of the Cultural Review, we have heard and seen evidence of this transition toward a more therapeutic approach. However, we also observed significant issues with the recruitment of prospective staff, a critical underinvestment in the right balance of skills and knowledge to perform their role, limited professional development opportunities, an underinvestment in case management capability and a skewed emphasis on security and control.

While these observations apply generally across the system, we have also observed pockets of excellent practice in locations and units where dedicated resourcing and innovative leaders demonstrate that prioritising the development and capability of staff can improve their relationships between people in custody and staff.

## Key findings – Capability

- ▶ Custodial officers conceive of and perform their roles differently across the system. Despite a clearer focus on case management in entry level custodial position descriptions, many staff continue to see their role primarily as a 'security' role. This view is often supported by local leadership, particularly at the supervisory and operational manager level.
- ▶ Currently there are few pathways for lateral entry for corrections staff. Establishing recruitment pathways that recognise candidates' prior skills and experience will help increase the skills and diversity of the workforce at all levels of the adult custodial corrections system.
- ▶ Current recruitment systems and processes, including outsourced recruitment functions and bulk recruitment practices, enable limited scrutiny of the development of the corrections workforce. Recruitment systems and processes may allow negative cultural norms and practices to be perpetuated at a local level.
- ▶ Current training and professional development pathways do not sufficiently equip staff with the capability and skills they require to perform their roles and create positive relationships with people in custody, to support their rehabilitation and meet their diverse and complex needs.
- ▶ The current pre-service training program requires an enhanced focus on the underlying purpose of the corrections system and role of corrections staff, the diverse needs of people in custody, interpersonal and de-escalation skills, and case management. More opportunities for placement and mentoring will enhance pre-service training.
- ▶ Additional resourcing, including a review of the ratio of staff to people in custody, may be required to ensure that custodial staff are able to adequately fulfil the case management aspects of their roles.
- ▶ The current resourcing and rostering system prevent staff from accessing training and professional development.
- ▶ Corrections staff are not currently receiving sufficient one-on-one supervision to support professional development, and many staff are not being supported to participate in the mandatory public sector professional development processes.



# What staff told us about **CAPABILITY**

The system needs to prioritise ongoing staff supervision, training and development.

☞ You must be self-motivated about your training, must be proactive and put yourself out there to explore “training options”.

☞ We have been running a training program that isn't really fit-for-purpose and I've got a whole boatload of staff that have gone through that unfit-for-purpose training. So, not only do we have to fix that training but we also have to find a way of re-educating staff that have already gone through it.'

Structural and cultural barriers continue to limit diversity within the workforce.

☞ This cultural thing, like it could be solved by giving people more training or making them aware of the consequences, and the accountability of their actions and stop the hypocrisy. We want a more diverse cultural workforce – well, address the problems first, and then it will be more diverse. Otherwise, it's just not going to happen.'

☞ It is a continuing culture or discrimination or a separate set of conditions for women in the job there. There is a much higher standard of performance, behaviour and aptitude required from a women.'

Building capability and accountability in leadership should be a priority.

☞ My colleagues [in leadership roles], there's a significant proportion of them that don't see staff support and staff training as part of their role. Which it should be.'

☞ In corrections, we don't seem to recruit managers or leaders to the senior positions. We recruit prison officers who have worked their way through the system for 20 plus years.'

☞ I don't think [management] has an understanding of the way to communicate to people, to make them feel good, feel valued.'



## Ensuring roles align with the expected duties and overall system purpose

Ensuring that people have the right attitude and orientation for working within the adult custodial corrections system requires a clear articulation of the role requirements and expectations. It is important that candidates have a realistic understanding of the nature of the role and the duties they would be expected to perform. This will fortify the capacity of the system to deliver against its vision, values and purpose. Over time, it will also support the renewal of culture in line with the shared understanding of the system purpose and objectives.

Over the course of our engagement, we have heard from senior leaders and staff about the important skills and attributes for corrections staff. People consistently identified the interpersonal skills required to perform duties effectively and to provide support to people in custody. Such skills are essential to the safety and security of the custodial environment in that they equip staff to de-escalate and resolve conflict without the use of force or restrictive practices.

This emphasis is reflected in the material provided to prospective employees through the DJCS website. It includes guidance on an overall system approach to influencing positive outcomes for people in custody and the expectations for case management and other elements of a modern custodial system.<sup>38</sup>

 <p><b>Prison officers can positively influence the behaviour of prisoners by supporting them to make better choices and reduce their risk of reoffending. At the same time, prison officers keep prison facilities, prisoners and staff, safe and secure.'</b></p>	 <p><b>Prison officers support prisoners with their rehabilitation so that prisoners can be more constructive members of the community when they are released.'</b></p>
 <p><b>Prison officers maintain high levels of integrity in all their conversations and actions.'</b></p>	 <p><b>Prison officers are role models.'</b></p>

Notably, however, the position description for trainee custodial officers has a much stronger emphasis on the security and good order elements of the role. The broader focus on rehabilitation and case management responses are not reflected in their position descriptions.

<sup>38</sup> Department of Justice and Community Safety (Corrections Victoria), *Corrections Jobs*, (Web Page, 2021) [www.correctionsjobs.vic.gov.au](http://www.correctionsjobs.vic.gov.au).

The position description for a prison officer provides as follows:

'The main responsibility of the prison officer is to assist in maintaining the security and good order of the prison. This is achieved through searches, escorting duties, observing and assessing prisoner behaviour, operating security equipment, collating information, preparing reports and effectively responding to prison incidents.'<sup>39</sup>

We encourage DJCS to undertake a close review of position descriptions to ensure they align with the expectations of the role and the broader Victorian Public Sector Capability Framework.<sup>40</sup>

### Attracting and retaining a more diverse workforce

As well as a greater focus on the right orientation and skill set required to conduct corrections roles, there should also be specific effort and strategies to attract and retain a more diverse workforce.

There is widespread recognition of the value a diverse workforce can bring to an organisation and the people it serves.<sup>41</sup> Diversity and inclusion has been shown to improve organisational performance, sharpen decision making and help to mitigate the risk of harmful behaviours including racism, bullying and sexual harassment and assault.

In its submission to the Cultural Review, the Australian Institute of Health and Safety reflected on the contribution a diverse workforce can make to workplace safety and integrity:

'A lack of diversity, including gender, age, racial and ethnic diversity, is commonly linked to inappropriate workplace behaviour going undetected and/or undisciplined. A diversity of perspectives increases the likelihood of these behaviours being reported, and fosters a broader expectation that matters are appropriately investigated and dealt with in a timely, equitable manner.'<sup>42</sup>

**Australian Institute of Health and Safety**

Other stakeholders also recognised that having more people from culturally and linguistically diverse backgrounds in the workforce benefits people in custody and the workforce itself.<sup>43</sup> The Centre for Multicultural Youth's submission to the Cultural Review highlighted the value of bicultural staff:

<sup>39</sup> Department of Justice and Community Safety (Corrections Victoria), *Position Description - Prison Officer*, Data provided to the Cultural Review (2021).

<sup>40</sup> Victorian Public Sector Commission, *Victorian Public Service Capability Framework* (2021) <https://vpssc.vic.gov.au/wp-content/uploads/2020/09/VPS-Capability-Framework.pdf>.

<sup>41</sup> See for example, Department of Premier and Cabinet Victoria and the Centre for Ethical Leadership, University of Melbourne, *Recruit Smarter: Report Findings* (Report, 2018).

<sup>42</sup> Australian Institute of Health & Safety, Submission to Cultural Review (December 2021).

<sup>43</sup> Australian Institute of Health and Safety, Submission to the Cultural Review (December 2021) 5; Youthlaw, Submission to the Cultural Review (December 2021) 4; Jesuit Social Services, Submission to the Cultural Review (December 2021) 21.

'Alongside greater staffing in medium and high-risk facilities, CMY strongly recommends the specific employment of qualified bicultural workers to drive cultural change and facilitate positive connections between young people from refugee and migrant backgrounds, and corrections staff.'<sup>44</sup>

**Centre for Multicultural Youth**

This position was also reflected in our discussion with the Islamic Council of Victoria.

'Most prison staff are white so that's what we see and that's what the prisoners see. I think it's getting people and also people keeping an open mind about other faiths ... in terms of employing people from culturally and linguistically diverse communities, preferably multi-religious as well. The reality is that 50 per cent of Australians are either born overseas or their parents are born overseas.'

**Islamic Council of Victoria**

DJCS does not currently collect sufficient workforce data on the diversity of the custodial workforce. While information in relation to gender, age and Aboriginality are collected, cultural or religious background is not. As a result, workforce demographic data is incomplete, which limits DJCS's ability to understand the diversity of the custodial workforce, identify specific barriers to inclusion and create initiatives to increase cultural and linguistic diversity within the workforce.

We note that in recent times DJCS has developed a greater focus on gender equality and inclusion through changes to its recruitment promotional material and cross department initiatives, including the Gender Equality Plan 2021–2025 for the *Gender Equality Act 2020* (Vic). We also recognise planned initiatives under the Disability Action Plan. It is too early to assess the effectiveness of these initiatives but important to note that collecting better workforce diversity data will be critical to understand whether targets are being met and proposed strategies are working. Increased data collection, analysis and reporting should enable DJCS to:

- ▶ monitor the diversity of the workforce at every level, including pre-selection for recruits
- ▶ identify and respond to barriers that prevent it from attracting, recruiting and retaining staff from culturally and linguistically diverse backgrounds and enabling them to progress in their careers
- ▶ take action to increase the safety of the workforce
- ▶ create clear targets for its recruitment and workforce development initiatives to increase the diversity of the workforce over time.

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<sup>44</sup> Centre for Multicultural Youth, Submission to the Cultural Review (December 2021) 6.

We note that, while having a more diverse workforce is an important protective factor for the safety and inclusion of employees, we heard many accounts of corrections staff from culturally and linguistically diverse backgrounds experiencing racism and discrimination at work, which suggests the corrections workplace is currently not safe for all people who come into it. In Part 4 and Part 5, we make recommendations to ensure staff are safe from racism and discrimination in the workplace. We emphasise that ensuring the safety of all employees must precede measures to increase the diversity of the system.

## Enhancing screening processes to assess the suitability of candidates for custodial roles

Given the particular requirements of the custodial environment, it's essential that there are screening processes in place to effectively evaluate candidates' suitability for roles in the adult custodial corrections system. While there are currently some screening processes in place, more can be done to screen potential employees for inappropriate attitudes and behaviours.

Currently, candidates for operational roles in the adult custodial corrections system undergo psychometric testing and participate in role play, competency and scenario-based activities to provide a general assessment of their suitability.

While it may not be possible to fully understand a candidate's values and worldview through a recruitment process, screening processes can help identify attitudes and characteristics that align with the values and purpose of the adult custodial corrections system.

At a high level, specific attributes that may indicate that a candidate is well suited to the custodial environment include:

- ▶ the ability to create clear and consistent professional and personal boundaries
- ▶ effective and unambiguous communication
- ▶ a clear focus on integrity and humanity.<sup>45</sup>

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<sup>45</sup>Andrew Coyle and Helen Fair, *A Human Rights Approach to Prison Management: Handbook for prison staff* (Institute for Criminal Policy Research, 3rd edition, 2018).

Beyond the current screening processes in place, DJCS might consider adding further screening tools, which have been used in other jurisdictions' processes for recruiting custodial staff. For example:

- ▶ in South Australia, candidates are assessed for literacy and numeracy skills before their application is able to progress<sup>46</sup>
- ▶ in Western Australia, candidates for some roles are interviewed by a psychologist as part of the recruitment process.<sup>47</sup>

However, DJCS should ensure these screening processes do not invertedly perpetuate racial bias by creating unnecessary barriers for diverse applicants. This should include ensuring recruitment material is in plain English and is accessible. DJCS should also consider how to address barriers to the employment of people with lived experience, for example, who may have a criminal record.

There are other recent examples of processes being used to identify systemic bias and problematic attitudes as part of employment screening processes. These are issues that may not necessarily rise to the surface through psychometric or situational testing and require conscious attention.

Enhancing screening processes in recruitment is consistent with the direction of other recent workplace safety reviews that have noted the importance of behavioural and character assessment to ensure that candidates do not exhibit harmful behaviours.<sup>48</sup>

Increased screening of the custodial workforce has also been supported by other agencies and reform processes. For example, the Royal Commission into Aboriginal Deaths in Custody recognised the need to eliminate racism from the custodial workforce, noting how racism from custodial staff causes Aboriginal people in custody to feel distressed and isolated.<sup>49</sup>

More recently, the Victorian Ombudsman's investigation into the use of force in select Victorian prisons found that, despite some of Corrections Victoria's recruitment material focusing on 'soft skills' and building relationships, 'hiring and

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<sup>46</sup> Government of South Australia, Department for Correctional Services, *Pre-recruitment tests*, (Web Page, 2022) <https://www.corrections.sa.gov.au/careers/Working-with-prisoners-and-offenders/correctional-officers/recruitment-process/pre-recruitment-tests>.

<sup>47</sup> Western Australian Department of Justice, *Prison Officer* (Web page, 16 November 2022) <https://www.wa.gov.au/organisation/departments-of-justice/prison-officer>.

<sup>48</sup> See for example Dr Helen Szoke AO, *Review of Sexual Harassment in Victorian Courts and VCAT* (Report, 2021) 66; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase 2 Audit* (Report, 2017) 121.

<sup>49</sup> *Royal Commission into Aboriginal Deaths in Custody* (Report, 1991) vol 3. Recommendation 177 which provides: 'That appropriate screening procedures should be implemented to ensure that potential officers who will have contact with Aboriginal people in their duties are not recruited or retained by police and prison departments whilst holding racist views which cannot be eliminated by training or re-training programs. In addition, Corrective Services authorities should ensure that all correctional officers receive cross-cultural education and an understanding of Aboriginal-non-Aboriginal relations in the past and the present. Where possible, that aspect of training should be conducted by Aboriginal people (including Aboriginal ex-prisoners). Such training should be aimed at enhancing the correctional officers' skills in cross-cultural communication with and relating to Aboriginal prisoners.'

vetting practice are not always effective in filtering out inappropriate applicants.<sup>50</sup> In response to this finding, the Ombudsman recommended that DJCS review recruitment, vetting and probation processes for public prisons to ensure they are rigorous and effective in screening out unsuitable candidates.<sup>51</sup> We support this recommendation.

#### Recommendation 3.4

**A more diverse and capable workforce that is aligned to system purpose and values**

The Department of Justice and Community Safety should review recruitment and screening processes for the custodial workforce, to help build and retain a more diverse, capable and values aligned workforce.

This review should ensure recruitment and screening processes:

- a) better align selection criteria for custodial roles with the requirements of a modern and diverse custodial workforce that reflects system purposes of safety and rehabilitation
- b) include a stronger emphasis on communication, interpersonal skills and ethical decision-making
- c) actively promote cultural and gender diversity and embed conscious inclusion initiatives at each stage of the recruitment process, to attract candidates from diverse backgrounds and ensure support during the recruitment process and across their employment
- d) more rigorously assess candidates' alignment with all Victorian Public Sector values including integrity, respect, human rights and accountability.

## Increasing lateral entry in the corrections workforce

Career progression within the adult custodial corrections system, particularly in custodial roles, has traditionally involved staff 'starting at the bottom' and working their way into supervisory and management roles.

This model is not unique to corrections settings, and it often results in supervisory and leadership teams with detailed operational knowledge. However, this model can also limit opportunities to bring in diverse skills and experience from other industries or workplaces, particularly in more senior roles.

To address this issue, other operational workforces, such as police, fire services and defence, are increasingly introducing lateral entry pathways – tailored recruitment strategies that recognise candidates' prior skills and experience, enabling them to enter at a more senior level or progress more quickly through training. Lateral entry pathways can help to increase workforce skills and diversity and address staff shortages.

<sup>50</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 37.

<sup>51</sup> *Ibid*, Recommendation 8, 83. DJCS has accepted this recommendation.

Currently there are few pathways for lateral entry in the adult custodial corrections system. Lateral entry pathways would provide an opportunity to increase the capability and diversity of a workforce at all levels and build the skills of its future leaders.

While DJCS has attempted to attract, retain and promote staff with different backgrounds, disciplines, ways of working and perspectives, a limited notion of what makes a good custodial officer – 'oriented to security' 'tough' 'stoic' continues to prevail. This notion influences decisions around recruitment and progression, as well as shaping cultural norms and behaviours. Further, it limits opportunities to bring in new skills and fresh perspectives, including recruiting from other allied workforces.

'You're kind of mocked I guess if you're not like [the majority]. When I came off squad, I'd done my degree and when I said that to people, they would mock me for it. They're just like, "Oh, what you think you're going to save everyone with your university degree?" There's so many people here who studied and done that, but that's mocked out there. [Being educated] actually intimidates people ... I think that's good in a sense, that we welcome everyone from any kind of experience or background. That's what makes you a good prisoner officer. But that's why we also [should] honour that in each person. I think it's really poor for people to actually go, "Oh, well because you studied you think you're going to save people." Well, they might bring something to your unit that you need, mate. What you've been doing for the last 20 years clearly isn't working, how about you try something else?'

**Staff member**

Promoting and recruiting within the existing structures can make it difficult to encourage lateral entry of people into the organisation from areas outside CV, particularly if prior relevant skills and experience are not sufficiently recognised.

In the same way that higher education enables recognition of prior learning, the adult custodial corrections system could create opportunities for candidates who have 'demonstrated skills and experience' in certain relevant areas so that they are able to enter the corrections workforce at more senior levels.<sup>52</sup> While new recruits would still be required to complete mandatory operational training, recruits with relevant experience in social work or a services industry could commence their role within the custodial workforce above the base rate of pay or at a higher grade. Similar recruitment pathways might exist for other specialist non-custodial roles if candidates are already trained in a relevant profession, such as teachers, instructors and healthcare staff:<sup>53</sup>

<sup>52</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021) 12.

<sup>53</sup> Andrew Coyle and Helen Fair, A Human Rights Approach to Prison Management: Handbook for prison staff (Institute for Criminal Policy Research, 3rd edition, 2018) 26.



'Consideration should be given to assessing new recruits' skills and experience during recruitment processes and training. This way, new recruits can be matched to specific work areas based on their skills and temperament, and be provided with targeted training to enable them to perform their roles more effectively.'<sup>54</sup>

**Forensicare**

The workforce model for the recently completed Western Plains Correctional Centre contemplates this issue and has a focus on ways in which it can bring in staff with specialisation in social work and a strong focus on rehabilitation. We welcome this more flexible and inclusive approach to recruitment.

'Just because [people] know what it's like to work in a prison doesn't necessarily make them good leaders of people, and doesn't necessarily make them experts in good case practice and social work skills, which is absolutely critical as well. So we kind of end up perpetuating our safety/security culture because of the way that our training is structured rather than promoting that really important balance.'

**Expert interview**

'The skills you look for [in a lateral hire] are communication skills, empathy, ability to relate, ability to care for people, ability to hold the line. Because, again, you see people go one way or the other, and the rest you can teach. It is something you can do, but it's finding that right moral fibre to be able to do that.'

**Expert interview**

Other jurisdictions have taken more active steps to attract people with these experiences to work within the adult custodial corrections system. For example, in Queensland, prospective custodial staff with qualifications in areas such as education, social work, counselling and psychology may be eligible to commence at a higher salary and have a higher salary cap.<sup>55</sup>

Other jurisdictions have adopted an even more targeted approach to attracting skilled candidates to work within the adult custodial corrections system, including the United Kingdom's Unlocked Graduates program.

<sup>54</sup> Forensicare, Submission to the Cultural Review (December 2021) 2.

<sup>55</sup> Queensland Corrective Services, *Applicant Guide: Custodial Correctional Officer*, (November, 2018) 10, 11 <https://corrections.qld.gov.au/wp-content/uploads/2019/04/CCO-Applicant-Guide-November-2018.pdf>.

### **A dedicated entry pathway for new graduates – the United Kingdom's Unlocked Graduates program**

Operating since 2016, the United Kingdom's Unlocked Graduates program recruits recent graduates and people seeking a career change into prison officer roles. The program is based on the idea that recent graduates and those with other life experience may 'inject new ideas, insights, and energy into the rehabilitation of prisoners'.

Since its inception, the program has placed 500 prison officers in 29 correctional facilities across the United Kingdom.<sup>56</sup> The program has attracted graduates from a range of different subject areas and provides a number of incentives, including participation in a master's program focused on leadership and rehabilitation, a competitive salary, and ongoing mentoring and continuing professional development.

DJCS should prioritise adopting creative approaches to attracting a more diverse workforce with compatible skills and experience to work within the adult custodial corrections system. Parallel work will be required to make sure the existing workforce accepts and values recruits with qualifications and experience and the diversity of skills that they can bring.

#### **Recommendation 3.5 A more diverse workforce through the promotion of lateral entry pathways and prior skills recognition**

The Department of Justice and Community Safety should create a program for lateral entry across the adult custodial corrections system, to increase the diversity of skills and experience in the custodial workforce. The program should have a particular emphasis on lateral entry for new recruits and leadership positions across both custodial and Victorian Public Service roles within the adult custodial corrections system.

The lateral entry program should recognise prior experience and education in relevant fields across government and the social services sector and provide access to accelerated training and development programs where appropriate.

The lateral entry program should emphasise the value of attracting candidates with the specialist skills required to meet the needs of people in custody, including experience in supporting mental health, trauma-informed practice, diverse cohorts, case management, addiction and substance misuse.

<sup>56</sup> Unlocked Graduates, *What we do* (Web page, 2022) <https://unlockedgrads.org.uk/about/what-we-do/>.

## Supporting a workforce in transition

While the cultural transformation of Victoria's adult custodial corrections system is in progress, one of the challenges for recruitment and retention will be recognising the gap between the system's aspirations and current reality – and supporting staff accordingly.

It is critical that DJCS's efforts to bring in staff with diverse skills and commitment to the wellbeing and rehabilitation of people in their care occur alongside internal preparation to ensure new staff are safe and supported, and do not experience pressure to conform to the predominant culture. This is particularly relevant for custodial staff.

We have heard that DJCS's central human resources team has made recent efforts to bring in custodial candidates with more diverse skills in recent recruitment rounds, including those with a focus on service delivery and supporting rehabilitation. Anecdotally, we heard that this has resulted in a younger and more gender balanced group of new recruits at some locations, coming to corrections from different professional backgrounds than 'traditional' recruits, such as customer service and social work.

While this approach supports cultural renewal within the adult custodial corrections system, we also heard that some new recruits experience backlash or a lack of support. This suggests that the change in approach for recruitment has not been paired with equal action to prepare the existing workforce for change.

During our site visits, we heard staff discussing whether new recruits are 'too soft' or 'care bears' and whether they have the perceived prerequisite of 'resilience' and ability to meet the security demands of the role. Some staff also suggested that some young women are not suitable for the role because they may be sexually harassed by their colleagues or groomed by men in custody. Similarly, we heard that new recruits face social pressure to join in banter or conduct that is at odds with the culture they may have expected.

'There's no real supports for these young recruits coming in. If that's who we're going to recruit, that's fine; we need to be able to bring them in and support them through, and I find that these guys come into the mix and either disappear out of the system very quickly or hang around in an environment that's not really conducive to their development ... They're not getting support, they're getting knocked down because they're new, they're young. They get seen as whingers or complainers, and then when they do have a complaint they're not really taken seriously. It's brushed aside as "They've got no work ethic, no resilience".'

**Staff member**

We heard that these dual issues – an existing workforce not adequately prepared for change, and new recruits whose expectations don't match what they encounter on the ground – have led to high attrition rates for new recruits in their first 12 months.

## Building custodial workforce capability

Corrections staff are responsible for the complex task of translating the purpose and objectives of the adult custodial corrections system into the everyday operation of a prison or correctional centre.

Enhanced training for custodial staff to build their capability was a proposal that received consistent support from the staff, executives and stakeholders we spoke to.

'At the end of the day the underlying thing is people are poorly trained, poorly recruited and poorly managed for the role. You can't have it both ways, you can't have it as a minimum wage job with no training and then expect people – no training, no requirements, and then expect people to operate and manage these complex situations without it.'

**Staff member**

We heard that the custodial training program has not been updated to align with the changing profile of the prison population or shifts in best practice for custodial management. While some efforts have been made to include content relating to case management, cultural awareness and trauma-informed practice, the current approach to training is still anchored in a penal system that was developed for a prison population that was young and male. As a result, current pre-service training emphasises skills and capabilities related to physical security.

However, custodial staff are also responsible for a range of duties related to the wellbeing and rehabilitation of people in custody, including case management. To enable custodial staff to contribute to positive outcomes for people in custody, the training staff receive must more clearly identify wellbeing and rehabilitation as priorities and clearly articulate the link between a safe workplace and positive community outcomes.

In its submission to the Cultural Review, the CPSU noted the complex nature of the custodial role:

'[W]hat most people ... wouldn't appreciate is that a prison officer's role is multi-faceted and complex, dramatically varying in tasks within a single shift.'<sup>57</sup>

**Community and Public Sector Union**

Caraniche echoed these ideas, highlighting the unique nature of the role and its influence on people in custody:

'Corrections staff represent one of the most frequent and consistent points of contact for prisoners whilst in custody and therefore have a significant impact on an offender's experience throughout their sentence. It is through these relationships that custodial staff have the unique ability to assist with both prisoner management and rehabilitation.'<sup>58</sup>

**Caraniche**

<sup>57</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021) 26.

<sup>58</sup> Caraniche, Submission to the Cultural Review (December 2021) 3.

Custodial staff at all levels of seniority expressed concern that the emphasis on 'on the job' learning and the influence of local custom and practice perpetuates inconsistency and cultural norms, which can overwhelm expected performance standards.

Through our engagement, we found that custodial staff require a broad range of skills and capabilities to adequately balance the complexity of their role and meet the diverse needs of people in custody – this includes skills relating to case management, communication and engagement, tactical operations and cultural safety.

Available research shows that an effective training program can have an impact on improving outcomes across custodial systems. Best practice training programs typically:

- ▶ support staff to attain mandatory minimum qualifications
- ▶ include mandatory pre-service and ongoing training on relationship building and working with vulnerable cohorts
- ▶ are delivered centrally, coupled with rotating work placements
- ▶ supported by an apprenticeship like model of on-the-job mentoring.

The current Victorian pre-service training program is not adequate and does not provide a strong foundation for custodial officers to perform their duties consistent with the purpose of the system and meet the individual and complex needs of people in custody. The current pre-service training places too much emphasis on security and procedure and not enough on case management and other necessary skills to maintain safety and improve outcomes for people in custody, including specialised training relating to vulnerable cohorts.

We also heard that there are limited opportunities for staff to apply what they have learnt through formal training to practical situations as part of a continuous improvement model. Increased exposure to the custodial environment during pre-service training would benefit staff.

Staff delivering training do not require formal skills or accreditation, with training programs often delivered by existing custodial staff with varied skills and levels of experience. This results in inconsistent training delivery and standards across different prison locations and can further perpetuate cultural norms that may not reflect acceptable standards of conduct or performance of duties.

## Current training does not reflect the diverse skills required to support a modern correctional environment

Currently, all newly recruited custodial staff complete eight weeks of paid training. This includes a combination of theoretical and practical learning, including a short placement at a prison or correctional centre.<sup>59</sup> Delivered by DJCS, the training program is designed to meet the competency requirements of the Certificate III in Correctional Practice (Adult Custodial) and align with the Commissioner's Requirements and Deputy Commissioner's Instructions.

The training covers a number of topics including:

- ▶ **staff and offender welfare** – legal and operational frameworks, staff wellbeing, privacy awareness, ethics, offender management, professional boundaries, cultural awareness, performance and development planning
- ▶ **incident management** – fire awareness, tactical options, formations, prisoner disciplinary processes, hostage awareness, incident reporting
- ▶ **health, safety and security** – searches and patrols, infection control, prisoner escorts, health and safety, prisoner counts, family violence training, barrier control, dangerous goods, key locks
- ▶ **offender management** – prisoner visits, prisoner monies, prisoner communications, case management, prisoner programs and services, suicide and self-harm, skills reflection and practice.

People moving into specialist roles – such as the Security and Emergency Services Group – are required to undertake additional training relevant to their role.

In addition, all DJCS employees are required to complete a number of mandatory e-Learning modules within three months of commencing employment. This includes modules relating to respect in the workplace, record-keeping and privacy, security awareness, fraud and corruption awareness, the reportable conduct scheme and preventing sexual harassment.<sup>60</sup> These are general training modules provided for staff working across DJCS and are not specifically adapted for the custodial workforce.

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<sup>59</sup> Department of Justice and Community Safety (Corrections Victoria), 'Prison officer pre-service training: Guideline', Data provided to the Cultural Review (2021).

<sup>60</sup> Department of Justice and Community Safety, Mandatory e-learning modules for completion by all DJCS staff, Data provided to the Cultural Review (June 2021).

### Staff perceptions of training

In our workforce survey, a high proportion of respondents (84 per cent) indicated that they felt they were trained 'mostly' or 'fully' in maintaining the security and good order of the prison. Survey respondents indicated that the current training does not prepare them for the full breadth of what they will encounter once in the job:

- ▶ Only 39 per cent of respondents indicated that felt they were 'mostly' or 'fully' trained in promoting rehabilitation and reducing recidivism risks.
- ▶ Only 40 per cent of respondents felt they were 'mostly' or 'fully' trained in ensuring the mental health and wellbeing of people in custody.

This correlates with other feedback that the overall balance of the pre-service training is tipped toward modules related to security and good order.<sup>61</sup> Throughout our engagement, we heard repeatedly that the current approach to training does not equip custodial staff with the skills they require to provide a safe and humane environment that supports an increasingly complex custodial population.

'I've actually been involved in some of the pre-service training and what was amusing to me was, the pre-service training that was delivered to recruits, when I was the squad manager [a couple of years ago], was basically the same model that I received myself in 2008. The prisoners have changed a hell of a lot, in that time. I don't think we really tailor it to the specific prisoners of the location.'

**Staff member**

We also heard that the current training model does not support custodial staff to learn, understand and apply the various operational policies and procedures that are intended to guide the performance of their duties, including Commissioner's Requirements and Deputy Commissioner's Instructions.

'Prison Officer training is really rudimentary. I have to say it's fairly basic because our fundamental policies and procedures and the rules of the prison are our Deputy Commissioner's Instructions and our Commissioner's Requirements and they change. Every single day we come in and there's a change ... we follow those but we don't get trained to learn them.'

**Staff member**

A number of stakeholders also echoed these concerns about the adequacy of current training for custodial staff.<sup>62</sup>

'The training provided by the Department of Justice and Community Safety in their pre-service prison officer course is not fit for purpose. Once in the job, staff are largely unaware of what further training is available and how it may be accessed.'<sup>63</sup>

**Community and Public Sector Union**

<sup>61</sup> Cultural Review, Corrections workforce survey (2021).

<sup>62</sup> For example, Professor Bronwyn Naylor, Submission to the Cultural Review (December 2021) 2; Victorian Alcohol and Drug Association, Submission to the Cultural Review (December 2021) 2; Jesuit Social Services, Submission to the Cultural Review (December 2021) 12.

<sup>63</sup> Community and Public Sector Union Submission to the Cultural Review (December 2021) 10.

Beyond operational skills, staff told us they would benefit from further training in de-escalation techniques, communication skills and dynamic security principles. This was reflected in the responses to our workforce survey, where 84 per cent of staff said being a good communicator was one of the most important qualities a custodial officer could have.

Revising pre-service training for custodial staff is also an opportunity to link their role to the system's underlying purpose. In addition to making expectations clear, articulating the contribution staff make to the rehabilitation of people in custody may also increase staff wellbeing and job satisfaction:

'Reframing the role of custodial staff to focus on rehabilitation, in addition to security, is likely to increase job satisfaction, wellbeing, and shift the culture to one of being proactive rather than reactive to the needs of prisoners. Ultimately this has the combined effect of reducing incidents within the prison and improves people's abilities to effectively manage risk, improving safety. Whilst acknowledging the balance of dual priorities is a challenging one, supporting staff to operationalise the challenges and integrate this practice into their everyday tasks will assist them to mediate the desire to focus on corrective action to the detriment of rehabilitation.'<sup>64</sup>

Forensicare

## Providing specific training on complex needs and priority groups within custody

Beyond building operational capability and embedding the rehabilitative purpose of the system, revising pre-service training is also an opportunity to equip custodial staff with the skills to meet the needs of an increasingly complex custodial population.

Our discussions with staff and DJCS executives highlights some key areas for further training:

### Mental health awareness

There is no dedicated mental health awareness training provided to trainee custodial staff as part of their pre-service training.

Forensicare facilitates a half-day suicide and self-harm prevention workshop. It also provides introductory training on mental health to new recruits at Ravenhall Correctional Centre. This is not currently provided at any other sites.<sup>65</sup>

Staff we spoke to voiced their concerns about the lack of dedicated mental health training,<sup>66</sup> and these concerns were echoed by a number of stakeholders.<sup>67</sup>

<sup>64</sup> Forensicare, Submission to the Cultural Review (December 2021) 3.

<sup>65</sup> Forensicare, Submission to the Cultural Review (December 2021).

<sup>66</sup> 45 per cent of respondents to our workforce survey reported that they were dissatisfied with the amount of training they had received to deal with prisoners' needs relating to mental health.

<sup>67</sup> Forensicare, Submission to the Cultural Review (December 2021); Caraniche, Submission to the Cultural Review (December 2021).



<b>Disability awareness</b>	<p>There are no mandatory training modules on disability awareness in the standard custodial officer pre-service training.</p> <p>At Port Phillip Prison, staff permanently rostered in the Marlborough Unit are required to complete a minimum number of hours of specialist disability training each year, reflecting the particular skill and understanding required to support people with disability in the custodial context.<sup>68</sup> Fifty-eight per cent of respondents to our workforce survey indicated they were dissatisfied with the amount of training they had received to deal with the needs of people in custody who have a disability.<sup>69</sup></p>
<b>Older people in custody</b>	<p>There is no mandatory training for custodial staff to respond to the unique needs of older people in custody, including age-related physical and mental health decline.</p> <p>Staff also described the challenges of providing support to this growing cohort without any training, especially given the specialist nature of aged care services, and the need for dedicated training in age-related physical and mental health decline.<sup>70</sup></p>
<b>Aboriginal cultural safety</b>	<p>The pre-service training program includes cultural awareness training delivered by the Koori Heritage Trust.</p> <p>Staff<sup>71</sup> and stakeholders<sup>72</sup> strongly supported expanding this training, including ongoing and refresher training to build and reinforce cultural competency and cultural safety for Aboriginal people.<sup>73</sup></p>
<b>LGBTQIA+ inclusion</b>	<p>There is no specific training relating to people in custody (and staff) from the LGBTQIA+ community.</p> <p>Several stakeholders noted the need for training to increase cultural competency, healthcare awareness and empathy, to reduce experiences of homophobia and transphobia.<sup>74</sup> During our engagement, we also noted the need for tailored, in-depth transgender education and mentoring, to equip staff to support the complex health and mental needs of trans people and address transphobia.</p>

<sup>68</sup> Department of Justice and Community Safety (Corrections Victoria), 'Private Prison Service Delivery Outcome (SDO) Definitions' (SDO 25 – Disability Training) Data provided to the Cultural Review (2021).

<sup>69</sup> 58 per cent of respondents to our workforce survey reported that they were dissatisfied with the amount of training they had received to deal with prisoners' needs relating to disability.

<sup>70</sup> See also, Jesuit Social Services, Submission to the Cultural review (December 2021)18.

<sup>71</sup> 37 per cent of staff responding to our workforce survey reported being dissatisfied with the amount of training they had received to deal with prisoners' needs relating to Aboriginal cultural safety.

<sup>72</sup> Forensicare, Submission to the Cultural Review (December 2021); Djirra, Submission to the Cultural Review (December 2021); Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021).

Forensicare noted: "*Cultural awareness capability cannot be achieved after one training session or at a single endpoint. To truly embed cultural awareness that respects the First Nations culture, the learning program must be continuous and build a person's knowledge base over time.*"

<sup>74</sup> LGBTIQ Legal Service, Submission to the Cultural Review (December 2021) 6; Jesuit Social Services, Submission to the Cultural Review (December 2021) 20; Financial Counselling Victoria Inc., Submission to the Cultural Review (December 2021) 4.

<p><b>People from culturally and linguistically diverse communities</b></p>	<p>While cultural awareness training is provided as part of pre-service training for new recruits, staff told us that they do not receive enough training on responding to the needs of people from culturally and linguistically diverse backgrounds.<sup>75</sup> We have heard that ongoing training needs to include cross-cultural communication and religious and cultural traditions (e.g. Islamic practices such as obligatory prayers and fasting so that staff can accommodate Muslim inmates in a more faith/culturally appropriate way).<sup>76</sup></p>
<p><b>Women</b></p>	<p>Pre-service training for officers working in women's prisons includes some gender specific content and has recently been updated to incorporate information on trauma informed practice. However, several stakeholders noted that it is imperative that these training modules are expanded and revised to provide custodial staff with a more nuanced understanding of the complex interplay of issues that contribute to women's offending (including homelessness, family violence, victimisation, abuse and mental health issues) and the tools to respond to the particular healthcare needs of women in custody.<sup>77</sup></p>
<p><b>Young people</b></p>	<p>There is no specific training on the social and developmental needs of young people aged 18–25.</p> <p>Ensuring that services and decision-making is responsive to the specific developmental needs of young people will support more effective responses.<sup>78</sup></p>

Custodial staff should also be provided with training to assist them to understand the intersectional issues that may be experienced by people in custody, such as women with disability. A recent recommendation from the Victorian Ombudsman focused on this issue – it recommended that DJCS improve the training provided to staff at the Dame Phyllis Frost Centre, to help them better meet the needs of women with disability, mental health conditions or personality disorders, Aboriginal women, transgender people in custody and mothers in custody.<sup>79</sup>

Importantly, our recommendations to build the capability of the custodial workforce through additional training do not reduce the need for specialist roles and supports within the adult custodial corrections system. The Victorian Disability Worker Commission highlighted this theme in its submissions to the Cultural Review.<sup>80</sup> We consider that supporting staff to build their capability will support their own job satisfaction and wellbeing, as well as enabling staff to identify key issues and risks

<sup>75</sup> 53 per cent of respondents to the workforce survey reported that they were dissatisfied with the amount of training they had received to deal with prisoners' needs relating to culturally and linguistically diverse backgrounds.

<sup>76</sup> Islamic Council of Victoria (2021), Submission to the Cultural Review (November 2021).

<sup>77</sup> Women and Mentoring, Submission to the Cultural Review (February 2022) 2; RMIT Changing Faces Think Tank, Submission to the Cultural Review, (December 2021) 14.

<sup>78</sup> Youthlaw recommended specific training on the developmental needs of young people aged 18-25. Youthlaw, Submission to the Cultural Review (December 2021).

Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017) Recommendation 19. DJCS accepted this recommendation and has advised that it is 'complete'.

<sup>80</sup> Victorian Disability Worker Commission, Submission to the Cultural Review (November 2021) 3.

to the safety of people within custody and enable specialist responses. This is explored further in Part 6.

## Supporting custodial staff to build case management skills and capability

The adult custodial corrections system's ongoing shift toward rehabilitation as a core purpose has emphasised the importance of case management as part of the custodial officer's role. For many staff, a greater focus on case management represents a significant change in their duties and their understanding of their role within the system.

Case management typically involves custodial staff establishing a collaborative relationship with a person in custody and working with them to identify their needs and goals, reduce their risk of reoffending, manage any risks, monitor their progress and help prepare them to transition back into the community upon their release. Staff use tools and structured processes for assessment, planning and developing relevant interventions based on the individual needs of the person in custody. In some situations, case management may involve contributions from other staff or specialists.

Currently, the approach to case management in Corrections Victoria is set out in the Offender Management Framework, with specific guidance contained in *Case Management Practice Guidelines – What we do* and a supporting *Case Management Statement – Why we do what we do*. Corrections Victoria provides custodial staff with some case management training as part of the pre-service training package. This includes 20 hours of training delivered by the Offender Management Branch.

Across our engagement, we identified two interrelated issues affecting the provision of case management. First, many custodial staff told us they want more skills in providing effective case management for people in custody and feel they receive limited training and support following their pre-service training. Second, where a legacy orientation toward security persists, some staff perceive a focus on case management as evidence that the system has become too soft – and this can result in them actively undermining efforts to embed and prioritise case management:

'Prison officers don't see a purpose for case management and they're quite loud and proud about this. They're here for the security of the prison and [case management] is foreign to them. Getting to know the prisoner and their story and getting them to articulate their needs, a lot of them are really reluctant to engage in case management.'

**Staff member**

Corrections leaders also noted that custodial staff need more training to develop their capability in case management, including mandatory ongoing training and practical case management training provided during placements:

'The [pre-service training] syllabus is just not substantial enough. In eight weeks how can we teach people to be good case managers and embed that in them when we don't do any on the job, no they don't go out and do case management with prisoners, they go and do two weeks' placement, but they don't do any case management as such. It's just completely lacking in what we want to deliver, and we get what we're delivering.'

**Expert interview**

During the Cultural Review, we heard about several initiatives to build case management capability across the adult custodial corrections system.

- ▶ We understand that Corrections Victoria has implemented a Case Management Uplift Project which aims to improve the case management capability of custodial staff.<sup>81</sup>
- ▶ We have also heard that each location employs at least one offender management supervisor who is employed at a Custodial Officer Grade (COG) 3 level. These roles have been created to ensure that custodial staff receive mentoring and training to increase their case management capability, as well as undertaking quality assurance and auditing functions. We note that these roles are classified at a junior level and may not hold sufficient seniority to influence reforms to case management practice and shape the practice of custodial staff.

In *Part 6. People in custody*, we recommend the development of an enhanced and integrated case management approach to better meet the individual rehabilitation needs of people in custody. This recommendation builds on Corrections Victoria's work to embed person-centred care in its case management and rehabilitation. Implementation of our recommendation and other ongoing reforms will require increased support and training to equip the workforce with the skills and experience they need to deliver an improved, holistic and person-centred approach to case management.

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<sup>81</sup> Department of Justice and Community Safety (Corrections Victoria), 'Case Management Uplift Project 2022', Data provided to the Cultural Review.

The offender management supervisor roles are an important opportunity to build the case management capability of staff; however, DJCS needs to invest in these roles to ensure they are appropriately classified and resourced. We recommend that DJCS ensures that:

- ▶ senior leaders at each location have expertise in and accountability for implementing an enhanced approach to integrated case management (Recommendation 3.6)
- ▶ the classification and seniority of offender management supervisor roles reflect their level of responsibility and give them the influence they need to lead an organisation-wide approach to case management
- ▶ the training for offender management supervisor roles:
  - gives staff a comprehensive working understanding of the new principles and purpose of the adult custodial corrections system, approaches to advanced and integrated case management, and trauma-informed practice
  - is delivered by experts in case management from other parts of the criminal and social justice systems.

We note that there is also an important opportunity to bring expertise from beyond the existing custodial workforce into offender management supervisor roles and encourage DJCS to consider lateral entry pathways in establishing the recruitment processes for these roles. As part of the Case Management Uplift Project, a Community of Practice<sup>82</sup> pilot program was established in April 2022 at Melbourne Assessment Prison, Hopkins and Dhurringile. It is intended that these Communities of Practice will provide a forum for members to help each other with everyday work needs around case management by building skills and sharing knowledge of case management best practice, guidelines and strategies.<sup>83</sup> We understand that Communities of Practice are expected to be established in every public prison location by the end of January 2023.

These Communities of Practice may offer an opportunity to support those in offender management supervisor roles by providing them with regular formal opportunities to monitor the progress of implementing enhanced case management across the system and to learn from experts in social work and case management roles in other parts of the public sector.

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<sup>82</sup> A Community of Practice is a group of people who share a common concern, set of problems or an interest in a topic and who come together to fulfill both individual and group goals. Communities of Practice often focus on sharing best practices and creating new knowledge to advance a professional practice, such as case management.

<sup>83</sup> Department of Justice and Community Safety (Corrections Victoria), 'Community of Practice - Case Management, Member Induction Document', Data provided to the Cultural Review.

**Recommendation 3.6**  
**Clear expectations for the workforce to deliver enhanced, integrated case management**

The Department of Justice and Community Safety should clarify and better support the case management expectations of the custodial workforce, by:

- a) ensuring that there is a clear emphasis in position descriptions and performance development plans on the rehabilitative purpose of the system and the skill set required to carry out integrated case management functions
- b) ensuring that there is sufficient dedicated and senior expertise at each location to lead the implementation of an enhanced approach to integrated case management including through staff support, professional supervision and training
- c) in addition to this senior expertise, reviewing the functions and classification of the offender management supervisor role to ensure:
  - the role has sufficient seniority to lead and influence changes to case management practice across the custodial workforce
  - lateral entry pathways are available to increase the skills and capability of these roles
- d) ensuring that ongoing training provided to offender management supervisors:
  - includes trauma-informed practice
  - is supported by expert guidance on meeting the complex needs of people in custody
  - reflects the principles and purpose of the adult custodial corrections system.

## New recruits should gain experience of the system within and across different locations

The current training paradigm expects that custodial staff will learn most skills 'on the job' to support their pre-service training. New prison officers undertake on-the-job training at their prison location as part of the 'placement' component of their training. This involves trainee custodial officers rotating through different areas of the location and shadowing other staff rostered in that area.

We heard from many staff that the amount of time spent on placement within a prison should be increased. Staff reflected that the demands of the role and the nature of the prison environment cannot be taught effectively without significant structured training on the job:

'For new staff, sitting in the classroom doesn't prepare you for interacting with prisoners, and how you should act in situations and that kind of stuff ... You come off squad training and are pretty much thrown in the deep end. You are placed in certain situations that you're not prepared to handle because you don't have the prison experience ... More needs to be done to support new prison officers. [Some things only] come from experience and time in the prison ... There's a little bit of vulnerability, definitely a safety aspect there in that.'

**Staff member**

Staff undertaking pre-service training also value the opportunity to learn onsite – recent evaluation feedback from pre-service training describes recruits' experience of putting skills learned in the classroom into practice for the first time:

'[Placement is] without doubt listed as the most important two weeks of the training that assists them in preparing for the role of a prison officer. Trainees have the opportunity to implement the skills and techniques taught on squad for the first time and observe firsthand all the learnings they have received up to this point. Placement is often referenced by trainees as the time that solidifies in their own mind if they have made the correct decision or not in joining the corrections industry.'<sup>84</sup>

<sup>84</sup> Department of Justice and Community Safety (Corrections Victoria), 'Prison officer pre-service training, evaluation feedback', Data provided to the Cultural Review.

While many participants described the importance and value of pre-service training, some also identified weaknesses in the current approach, including that:

- ▶ the timing and duration of placements do not allow trainee custodial officers to experience the full range of duties, scenarios and responsibilities they may encounter once they finish their training and regular shifts
- ▶ the quality of experience trainees get from placements is influenced by the staff they are rostered on with and their approach to and degree of interest in mentoring new recruits.

Despite hearing repeatedly from participants that new recruits do not spend enough time on placement, DJCS recently advised that the placement portion of the pre-service training has now been reduced from 10 days to eight days, commencing 1 April 2022. Trainees now complete two days of placement per week for the final four weeks of their training, with their days changing each week so they can experience different areas, staff and routines within their location. Breaking up the placement over four weeks is also intended to enable trainees to debrief and reflect on their placement days more regularly.

While the renewed approach may provide a more diverse experience of the custodial environment for new recruits, we do not consider that this justifies less time on placement overall.

We recommend extending pre-service training to a minimum of six months and including additional time for placements. These placements should be facilitated across a range of different sites and units in the early part of training to expose trainees to different staff, practices, workplace cultures and operating environments, before they commence work in their usual location. We also see value in supporting staff to return to a central training facility during their first 12 months, to undertake further training and consolidate their on-the-job experience.



**Recommendation 3.7**  
**Investment in the skills**  
**and capability of new**  
**recruits**

The Department of Justice and Community Safety should develop a new pre-service training model that identifies and builds the skills and capabilities of the custodial workforce so that they are better able to create a safe, humane and fair custodial environment focused on positive outcomes for people in custody.

The pre-service training program should ensure that sufficient time is provided to cover the breadth of the role and help trainees understand the complex needs of people in custody. Across the first year of their employment, recruits should undertake six months of training including:

- a) initial pre-service training of four months delivered at the Centre for Custodial Practice
- b) six weeks of placement comprised of two weeks at two different custodial locations and security ratings, and two weeks at the trainee's permanent location
- c) an additional two weeks of training at the Centre for Custodial Practice after a period of site-based work at their permanent location.

The new expanded pre-service training should include specific components on:

- d) the purpose of the adult custodial corrections system and the role of corrections staff in promoting safety, respect and rehabilitation
- e) the profile and experiences of people involved in the criminal justice system, including the social determinants of offending and health, informed by the specific lived experience of people who have been in custody
- f) an integrated approach to case management
- g) increased attention to communication and interpersonal skills, dynamic security and de-escalation practices as part of ongoing safety, security and tactical operations training
- h) specialised training to support key cohorts, with additional and continuing training for those working in specialised units, including disability awareness, mental health, trauma-informed practice and Aboriginal cultural safety.

Training should be followed by a period of structured mentoring and support at each location, with rigorous selection criteria to ensure that mentors demonstrate high standards of behaviour and reflect the Victorian Public Sector Values.

To ensure the pre-service training meets standards of best practice and meets the needs of the community, the workforce and people in custody, the Department of Justice and Community Safety should consult broadly with experts, community organisations and the relevant unions, and include the voices of corrections staff and people in custody in the development and delivery of the revised pre-service training.

## Development of a coordinated and centralised approach to training and skills

To ensure more consistent practice across the adult custodial corrections system, we recommend a more centralised approach to the delivery of pre-service and ongoing training to the custodial workforce. Critically, a centralised approach to training will help strengthen the link between the overall purpose of the system and custodial officers' roles in fulfilling it.

Under the current model, each prison or correctional centre – including private prisons – is responsible for delivering training to its own new recruits. However, throughout our engagement, we heard that the quality and consistency of training delivered through the current model varies widely – from location to location, but also depending on which staff member is delivering the training.

To enable more consistent, high-quality training for staff in the adult custodial corrections system, we recommend the establishment of a central facility for correctional training – a Centre for Correctional Practice, resourced by qualified educators with the support of appropriately qualified operational staff.<sup>85</sup> Similar models have existed previously in Victoria, and a number of stakeholders we spoke to highlighted the benefits of a centralised training college or academy.<sup>86</sup>

The establishment of a centrally administered Centre for Correctional Practice will help the adult custodial corrections system to attract professional candidates with a diversity of skills, by demonstrating Corrections Victoria's commitment to helping staff build custodial careers.

### Recommendation 3.8

#### A Centre for Correctional Practice to improve the quality and consistency of workforce training and development

The Department of Justice and Community Safety should create a Centre for Correctional Practice to support increased coordination, quality and consistency in training content and practice across the adult custodial corrections system. This centre should facilitate:

- a) delivery of pre-service training
- b) coordination and delivery of ongoing professional development and specialisation training all correctional staff
- c) debriefing and reflective practice.

The Centre for Correctional Practice should be staffed by experts in adult education, case management and trainers with expertise in delivering specialist care to priority and complex cohorts within the adult custodial corrections system.

<sup>85</sup> The Expert Panel notes that there are a number of currently unused facilities within the custodial system, including within the newly built Western Plains facility, where a dedicated training facility could be housed.

<sup>86</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021) 10-12.

## Ensuring appropriate training for non-custodial staff working within prisons

While most of our engagement focused on the specific training needs and experiences of custodial staff, we also heard that people in non-custodial and Victorian Public Service (VPS) roles within prisons would benefit from a more collaborative and coordinated approach to training:

'[The direction for VPS staff] is very inconsistent in a lot of things. There was a little bit of training ... but it wasn't enough, really, to be able to sufficiently do your job ... I was fortunate that there was staff willing to help and had the patience to teach you.'

**Staff member**

There are a number of staff working in public and private prisons in non-custodial roles across a range of positions that support programs, education, vocational services, administrative and human resource functions. There are also other non-custodial staff roles that have direct contact with people in custody on a daily basis, such as those working in prisoner records, prisoner property, stores and the prison shop or canteen. Staff working in these roles have regular face-to-face contact with people in custody to manage matters that impact on a person's time in custody, such as access to personal property and other necessities. These staff rely on custodial staff in the event of an incident requiring response.

While non-custodial roles may not have formal responsibility for case management or supporting the rehabilitation and reintegration of people in custody, we heard many examples of how they can make an informal contribution through their engagement with people in custody.

To recognise this and ensure cohesion across the workforce, efforts to expand the custodial workforce's skills and capability should include options for prison-based VPS and other corrections roles as well. They could undertake an abbreviated version of the standard custodial officer training – focusing on core elements of systems and processes relating to case management and supporting rehabilitation.

In Part 5, we also make recommendations to give Aboriginal wellbeing officers access to elements of the pre-service training program.

## Increasing access to ongoing professional development to renew skills and capability

Ongoing professional development is essential for any workforce, to ensure staff can refresh and develop their skills throughout their employment. In the adult custodial correction system, where many staff have lengthy periods of service and where local site-based cultural norms influence operations and decision-making, it is critical that custodial staff can access ongoing professional development.

Our engagement with corrections staff and leadership revealed that there is not a culture of continuous learning across the adult custodial corrections system.

### Mandatory refresher training to help staff renew their skills

The Mandela Rules require 'prison administration to ensure the continuous provision of in service training courses with a view to maintaining and improving the knowledge and professional capacity of its personnel, after entering on duty and during their career.'<sup>87</sup> Access to ongoing training is also an expectation of the Guiding Principles for Corrections in Australia.<sup>88</sup>

Despite this, once trainees commence work as custodial officers, there are only three areas in which they are required to complete mandatory refresher or continuing training:

- ▶ tactical operations – refreshed annually
- ▶ fire awareness – refreshed annually
- ▶ formations – refreshed bi-annually.<sup>89</sup>

However, we have also heard that this refresher training is not always available or completed according to requirements.

'My tac-ops, my fire awareness, my first aid have all expired and [are] out of date. If a prisoner requires me to perform CPR on him, as my first aid and CPR are out of date, it's not in my interest legally to do anything. If I do and he dies, I could be held responsible as I'm not qualified to help. I'm not qualified to use the breathing apparatus if there is a fire.'

**Staff member**

<sup>87</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 75(3).

<sup>88</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018), Principle 1.2.4.

<sup>89</sup> See further Corrections Victoria, *Deputy Commissioner's Instruction*, 1.13 Use of Force (Tactical Options) Compliance, Capability, Training and Assessment (May 2020); Corrections Victoria, *Deputy Commissioner's Instruction* 1.25 – Fire Safety, Prevention, Preparedness, Response and Recovery (June 2020); Department of Justice and Community Safety (Corrections Victoria), 'Mandatory Training - Prisons', Data provided to the Cultural Review. Formations is part of the tactical options response for custodial staff in response to the behaviour or management of people in custody and allows for the use of approved equipment such as helmets, shields, masks, vests, pads, batons, firearms, grenades, chemical agents and canines.

To ensure custodial staff can continue to maintain existing skills and continue building their capability, we recommend DJCS renew its focus on professional development. As well as expanding the range topics covered by refresher training, we recommend formalising supervision and mentoring, and pathways toward specialisation.

**Recommendation 3.9**  
**Improved professional development for the custodial workforce**

The Department of Justice and Community Safety should review and develop ongoing professional development training, ensuring continuity with the new pre-service training, to support the development and renewal of essential skills within the corrections workforce and drive a culture of continuous learning.

This training should:

- a) include mandatory refreshers and ongoing training on key topics, including understanding the needs of vulnerable cohorts, de-escalation tactics, case management, and ongoing and specific training delivered by funded community organisations who work with diverse groups in the custodial environment
- b) include monitoring of completion of mandatory refresher training, tied to professional development planning and progression requirements
- c) include pathways for supported specialisation and higher qualifications which are reflected in classification structures
- d) embed formal professional supervision and mentoring.

The Department of Justice and Community Safety should ensure that adequate time for regular professional development and ongoing training is adequately factored into workforce budget and rostering requirements across all locations.

## Supporting staff to complete the Certificate III in Correctional Practice

When commencing their careers within Corrections Victoria, all trainee custodial officers in Victoria are enrolled in the Certificate III in Correctional Practice. This qualification is recognised under the Australian Qualifications Framework and is delivered by Corrections Victoria as a registered training organisation (RTO).<sup>90</sup> The Certificate III in Correctional Practice includes core units of competency focused on:

- ▶ communicating effectively
- ▶ using safe work practices
- ▶ maintaining security
- ▶ preparing reports
- ▶ contributing to achieving the goals of the organisation.

Trainees can also choose a range of elective units of competency.<sup>91</sup>

Custodial corrections systems in most other Australian states and territories<sup>92</sup> require custodial officers to successfully complete the Certificate III in Correctional Practice as a condition of their employment; however, while all Victorian trainees enrol in the qualification, CV staff do not have to complete it and there are no consequences for non-completion.<sup>93</sup> Staff who do complete the qualification are eligible for a salary increase.<sup>94</sup>

DJCS data shows that fewer than half of all new recruits employed in public prisons complete the Certificate III qualification.<sup>95</sup> Completion rates for staff employed in private prisons were higher.<sup>96</sup> The low rate of completion was a concern for some staff we spoke to, who suggested DJCS and local management should better support new recruits to complete this minimum qualification as part of a more comprehensive training package, including by providing adequate roster flexibility to allow enrolment and completion.

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<sup>90</sup> Department of Justice and Community Safety, 'Training and Assessment Strategy: CSC30120 Certificate III in Correctional Practice (Adult Custodial)', Data provided to the Cultural Review (October, 2021).

<sup>91</sup> For a full list of core and elective units see, Training.gov.au, 'Qualification details', (Web Page, 2018) [training.gov.au - CSC30120 - Certificate III in Correctional Practice](https://training.gov.au/CSC30120-Certificate-III-in-Correctional-Practice).

<sup>92</sup> ACT, Northern Territory, Western Australia, Queensland and South Australia.

<sup>93</sup> The Certificate IV in Correctional Practice is not mandatory for progression to senior roles.

<sup>94</sup> Upon successful completion of the qualification, employees at the base salary grade may qualify for a salary increment, as stipulated in the *Victorian Public Service Enterprise Agreement 2020*, Appendix 1, clause 7.2(a). A similar salary increase arrangement is available to custodial officers at the COG2B level who obtain the Cert IV.

<sup>95</sup> Department of Justice and Community Safety (Corrections Victoria), 'Accredited Training RTO Completion Data 2016-2021', Data provided to the Cultural Review. Note: this figure is the average completion rate from 2016-2021 but does not include those who are still actively completing qualifications.

<sup>96</sup> 88.1 per cent of custodial staff had completed Certificate III at Fulham, 62 per cent at Port Phillip Prison and 74 per cent at Ravenhall.

Currently, the responsibility for tracking and supporting completion of the Certificate III is one of the responsibilities of the general manager of a prison location. They receive information about the completion rates for their staff and prompts to encourage staff to complete the qualification when their enrolment is close to expiry. However, we heard that not all general managers consistently encourage staff to complete this qualification. To build more consistent skills across the workforce, DJCS should centralise tracking of Certificate III completion rates and monitor and follow up sites with low completion rates to identify barriers to completion. DJCS and local management should also consider how they can better encourage and acknowledge the individual completion of the Certificate III through appropriate messaging and communication as well as sites who have made progress toward greater completion rates.

A Certificate IV in Correctional Practice is also made available for full-time public prison employees currently in a senior custodial role, who have some supervisory experience. See Chapter 10 for further discussion of this qualification as a tool to increase leadership skills and capability across the system.

To increase the capability of staff, we recommend a review of Certificate III to ensure that training aligns closely with the more clearly articulated system purpose and provides staff with the skills and capabilities they need to support a modern approach to rehabilitation and community safety.

**Recommendation 3.10**  
**Review and completion**  
**of the Certificate III in**  
**Correctional Practice**

The Department of Justice and Community Safety should review the Certificate III in Correctional Practice, to ensure the competencies it covers align with the purpose of the adult custodial corrections system and the capabilities required to work as part of a safe and humane system focused on rehabilitation.

The department should promote and centrally track Certificate III completion rates to increase the current capability of the workforce.

## Ensuring staff have time and opportunity to access ongoing training

Through our conversations with corrections staff and DJCS leaders, we heard that the current rostering system and approaches to flexible work conflict with facilitating the professional development needs of the custodial workforce. We heard repeatedly that training is not made available across the workforce due to resourcing limitations and that there are insufficient staff numbers to backfill or cover shifts while staff complete training.

At some locations, people in custody are 'locked down' for periods of time to enable the custodial workforce to complete training:

'Training does help – but there are frustrations with the recruit course, and then further training in tactical operations, fire, first aid, suicide, and self-harm training, and a few things annually is mandatory but there is no structure to it. This is intense and extremely hard especially during lockdown training which is when the prison is locked down for a number of hours while training takes place – but if you are not working that day then you miss it.'

**Staff member**

For discretionary training, staff told us their location may not support or encourage them to access training programs because there would be nobody to cover their shift. We heard that these barriers to training and professional development had been acute during COVID-19.

These barriers to training can have a significant impact on custodial staff who have been working in the system for some time, as they may not have the opportunity to catch up on training components that have been added to the pre-service training program since they completed it. This can contribute to a stagnation of skills and further entrench cultural norms that do not align with system purpose and the public sector values.

We heard from leaders within the adult custodial corrections system that the resourcing required to take all staff offline to complete training modules, such as foundational family violence training, had not been made available. This was echoed by other people within DJCS, who noted that a significant impediment to ongoing training is the lack of resources to backfill rostered duties to ensure there are enough staff to safely operate the prison.

Training must be built into the roster in the same way as any other shift. This is the only way in which ongoing training can be effectively and consistently delivered. Rosters should facilitate all the duties and tasks that the workforce is expected to complete as part of their employment – including training, supervision, professional development, case management duties and debriefing processes.

We recommend that DCJS assess the current rostering system to ensure that it can accommodate the professional development and training needs of staff.



**Recommendation 3.11**  
**Custodial workplaces**  
**are resourced to**  
**accommodate training**

The Department of Justice and Community Safety should assess current rostering practices, to ensure that individual prison locations can accommodate the professional development and training needs of staff. This assessment should be informed by current employment conditions and commitments in the Victorian Public Service Enterprise Agreement.

Following this assessment process, locations should adjust current rostering and workplace planning to ensure they support staff training and professional development, and address the impact of current resourcing deficiencies on the wellbeing and workload of staff.

## Active supervision supports a safer and more capable workplace

Completion of training is not enough to ensure that a person is ready to commence work within the custodial environment. Regular, structured supervision and support meetings between corrections staff and their supervisor or manager enables ongoing assessment of their competency and skill development. It can also help build professional confidence and support integrity, wellbeing and continuous learning. This kind of structured supervision is also an essential element of a safe workplace.

Despite this, many corrections staff told us that they did not meet regularly with their supervisor, did not have regular conversations about their capability or development and did not have regular opportunities to raise workplace issues.

Through our research and engagement, we found that:

- ▶ processes for supervision and support for corrections staff are limited and inconsistent across the system
- ▶ some supervisors and managers do not value, understand or adopt active people management as part of their role
- ▶ the quality and utility of supervision conversations varies widely, depending on the value the supervisor or manager places on the process
- ▶ limited supervision may reduce opportunities for corrections staff to access psychological and wellbeing support at work
- ▶ at some locations, staff reported not receiving support and supervision following critical incidents and other negative workplace experiences.

While supervision has a role in any workplace, the unique character of the custodial environment makes it critically important that supervision is embedded in workplace systems and processes and clearly connected to the safety of staff and the safety of people in custody.

Research indicates that formal support from supervisors and access to wellbeing supports can improve staff wellbeing and lower levels of stress.<sup>97</sup> Paired with reflective practice, we also heard that supervision and wellbeing supports can be just as important as structured training:

'Correctional environments can significantly impact not only prisoners, but also the many people that work within them. The hypervigilance required to keep people safe can cause stress, distress and burnout. Providing all custodial officers with the opportunity for regular and consistent supervision that aligns with a reflective practice model, may support staff to build resilience, develop new skills, and broaden their thinking and responses in ways training cannot. Reflective practice allows for targeted and individualised knowledge, skill and competency building for staff in a supported and safe environment.'<sup>98</sup>

**Forensicare**

## Better embedding regular 1:1 processes for supervision and support

One of the challenges for all workplaces is to ensure that supervision and support processes are contributing to a person's wellbeing and development, rather than an administrative requirement that must be satisfied. As some corrections staff told us, this is a persistent issue for the adult custodial corrections system:

'Our PDPs and our one-on-one catch-ups – I know they've introduced it state-wide, but they're just tick and flicks ... They look good on paper and the priority is "have you done your mid-cycle, your end cycle? Have you done your monthly one-on-one?" There's no quality control over it.'

**Staff member**

While there are clear expectations that supervisors and managers will have one-on-one discussions with their direct reports, some people reported that they rarely, if ever, had a one-on-one with their supervisor or manager:

'My manager couldn't give a stuff. My manager never has one-on-ones with me.'

**Staff member**

The experiences we heard are also reflected in workplace survey data. According to the responses from the custodial workforce to the 2021 VPSC People Matter survey, only 47 per cent of respondents said that their manager has regular conversations with them about their learning and development. Just over half of respondents (53 per cent) said that their manager provides them with enough support when they need it. This was lower than the rates of support reported by DJCS staff in non-custodial roles.<sup>99</sup>

<sup>97</sup> See for example, Benjamin Steiner and John Wooldredge. 'Individual and environmental sources of work stress among prison officers' (2015) 42(8) *Criminal Justice and Behavior* 800-818.

<sup>98</sup> Forensicare, Submission to the Cultural Review (December 2021) 4.

<sup>99</sup> Victorian Public Sector Commission, People Matter survey data provided to the Cultural Review (2021).

When we asked about workplace support in our own workforce survey, less than half of the respondents (47 per cent) told us that they felt respected and valued by their supervisor or manager. For people in custodial roles, only 39 per cent of respondents agreed with the statement 'I feel respected and valued by my supervisor/manager at my ordinary work site.'<sup>100</sup>

While one-on-one catch ups may not be embedded across the adult custodial corrections system, there is clear support for continuing to improve supervision and support as an important part of the cultural change process:

'Staff support has improved substantially ... Initiatives are being explored regarding better training packages and receiving regular feedback about how staff are feeling, one-on-one catch-ups are regular and important.'

**Staff member**

There are also suggestions that people may not recognise the value or have the skills to deliver this support to staff.

'One of the [senior managers] had nine managers reporting to them. Information was never communicated, one-on-one meetings were social informal catch ups with no outcomes and no formality. It was more of a semi-formal process with a structure.'

**Staff member**

We also heard from people that current roster and operational arrangements may be undermining efforts to improve supervision and support. A number of factors – such as limited time within a shift, limited overlap on rostered days and the challenges of embedding new workplace arrangements within the custodial environment – have contributed to patchy completion of one-on-one catch ups with staff.

A particular concern we heard was the need for new recruits to receive additional mentoring support, to build their capability and provide support for people in the early stages of their custodial careers:

'There's no real supports for these young recruits coming in. If that's who we're going to recruit, that's fine; we need to be able to bring them in and support them through, and I find that these guys come into the mix and either disappear out of the system very quickly or hang around in an environment that's not really conducive to their development ... They're not getting support, they're getting knocked down because they're new, they're young. They get seen as whingers or complainers, and then when they do have a complaint they're not really taken seriously. It's brushed aside as "They've got no work ethic, no resilience".'

**Staff member**

Supervision and wellbeing support for corrections staff must include regular one-on-one conversations between the staff member and their supervisor or manager. Time allocated for staff supervision should be built into rostering arrangements, to ensure it forms an ordinary and ongoing part of an employee's professional development.

<sup>100</sup> Cultural Review, Corrections workforce survey (2021).

At a minimum, regular supervision and wellbeing support provided to staff in one-on-ones should:

- ▶ include discussion on professional development opportunities and opportunities for additional training
- ▶ address employee wellbeing, recent exposures to traumatic incidents and provide ongoing wellbeing support
- ▶ address any issues with the way the staff member performs their duties.

To ensure the quality and value of these processes, supervisors and managers should have access to regular training to build this capability and ensure that supervision processes achieve their intended outcomes.

## Ensuring staff complete formal professional development conversations

There are existing processes for overseeing the performance of corrections staff throughout the year and supporting their development. DJCS uses annual professional development plans (PDP) as the key professional development process, including in corrections.<sup>101</sup> The PDP process aims to connect the individual duties and performance of staff within the adult custodial corrections system to the broader organisational objectives.

To complete their PDPs, corrections staff use the performance management system, Nexus, with input from their supervisor at each stage of the annual process. Despite this expectation, we heard that these processes are not always completed in a meaningful way and that, in many cases, staff felt that the process was perfunctory or a 'tick and flick' exercise.

There were a range of factors identified as barriers to an effective PDP process, including lack of management capability, lack of time and lack of relevance to the custodial environment.

'The personal development system isn't utilised by managers as it could or should be ... if you were someone that wants to train up and go from a prison officer to a senior prison officer, discover opportunities and progress, if you had a line manager that wasn't helpful towards that it could be very frustrating, and there's a lot of line managers that wouldn't be productive or helpful or intuitive to that. They have no training [in that area themselves].'

**Staff member**

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<sup>101</sup> Department of Justice and Community Safety (Corrections Victoria), '2021-2022 PDP Goals - Nexus', Data provided to the Cultural Review.

Where corrections staff had had positive experiences with the PDP process, they saw benefit in the process and felt proud of the feedback they had received during their performance assessment:

'Nobody ever refers to PDPs, whatsoever. And then people are saying, "Why am I doing this? What's the point?" Because I used to be so proud when I started here. I did my PDP and somebody marked me [as exceeding] because I'm really hard worker. I do consider that I'm very passionate about this job. When somebody marked me – I wasn't achieving, I was exceeding – I was proud as punch. I actually printed that bloody document and everything.'

**Staff member**

Where staff do not have access to consistent and structured management support it is not surprising that they feel frustrated and undervalued by their workplace:

'My manager never has one-on-ones with me. My PDP, he doesn't actually meet with me to discuss it, he doesn't give a toss ... at the moment, I don't even know who my manager [is because] ... they keep filling the position with all different ones and none of them ever come down and see me or care about the team.'

**Staff member**

Consistent professional development is a critical measure to ensure that staff understand how they are performing, can identify and build personal goals that meet the objectives of their team and the adult custodial corrections system, and regularly receive feedback on their performance. DJCS must ensure that ongoing professional development processes for the corrections workforce:

- ▶ meet the requirements of DJCS's broader PDP processes, including completion of formal processes on Nexus
- ▶ are delivered regularly and consistently to staff, with ongoing support from managers and supervisors on how staff can identify and meet their goals
- ▶ provide ongoing feedback to staff on their performance against the key capabilities of their role
- ▶ identify opportunities for increasing and improving the skills of the workforce, including additional training, secondments and mentoring.



## 10 Fostering strong leadership

Within the adult custodial corrections systems, having leaders who are visible, fair, consistent and positive is key for creating a more respectful, safe and inclusive workplace, strengthening workplace culture, ensuring staff are accountable for their actions, and supporting people in custody to rehabilitate.

In other locations, we observed leaders who did not meet the core capabilities of a public sector leader. This lack of capability reflects a shortfall in training and support, poor recruitment choices in some instances, and an insufficient focus on accountability. Beyond capability, however, we also encountered some leaders with harmful and negative views and practices that are undermining the safety of staff and people in custody. This is discussed further in Part 4 where we examine the conduct of corrections staff and the drivers of workplace harm.

Corrections leaders will play a crucial role in transforming the culture of the adult custodial corrections system. They are the key enabling factor for many of our recommendations, including enhancing people management and ensuring that the capability of staff reflects the complexity and purpose of the system.

Leaders must set the tone, act with courage and conviction and consistently role model the behaviours required to create safer and more respectful workplaces. Leaders must actively disrupt outdated attitudes and legacy cultures embedded in some parts of the adult custodial corrections system and lead the workforce through a period of sustained change.

### Key findings – Leadership

- ▶ There is a need to improve strategic leadership and alignment across the adult custodial corrections system and improve the capability of local leadership.
- ▶ Recruitment processes for leadership roles prioritise length of service and operational experience rather than consistently assessing the leadership skills, people management skills and behavioural standards modelled by applicants.
- ▶ There are insufficient professional development opportunities for leaders, including limited development of supervision and management skills for people moving into leadership roles.
- ▶ Corrections staff perceive that recruitment and promotion opportunities for leadership roles are not merit based, and that there are limited consequences for improper conduct for people in leadership roles.

## Developing skilled and effective local leaders

Traditionally, the leadership trajectory within the corrections system, as with many operational workforces, has followed a ‘time served’ model, in that most promotions and leadership opportunities have been awarded based on operational experience and length of service. It does not follow, however, that the most technically adept custodial officer will necessarily be the most accomplished leader – particularly if they do not have the opportunity or propensity to develop the necessary leadership skills including people management, strategic thinking and innovative problem-solving.

Over the course of the Cultural Review, we heard of recent attempts to diversify the profile of leadership within the adult custodial corrections system and saw some positive evidence of this approach including senior appointments of leaders with more varied expertise in psychology, health and other critical disciplines. However, more needs to be done to consistently reframe leadership within and across the system.



## Supporting the workforce through enhanced operational leadership

Across this report, we recommend significant changes to the culture and practice of the custodial workforce. These reforms will require dedicated, expert executive leadership accountable for key reform areas relating to the workforce, including:

- ▶ ensuring custodial workplaces are safe and respectful
- ▶ putting measures in place to increase the capability of site-based leadership, so they can better respond to conduct and integrity issues and support reforms to complaint handling (see *Part 4. Conduct*)
- ▶ undertaking oversight, monitoring and analysis of workforce data
- ▶ overseeing reforms to training and professional development to improve the skills and capability of the workforce
- ▶ being accountable for regular reporting on key workforce data and the progress of reforms to senior executives in Corrections Victoria and DJCS.

While we acknowledge there have been changes to executive CV roles during the Cultural Review period, we consider there to be benefit in creating a new dedicated role of Assistant Commissioner, Workforce and Integrity, to oversee and drive cultural reform across the adult custodial corrections system.

### Recommendation 3.12 Enhanced operational leadership role for supporting workforce, integrity and cultural reform

The Department of Justice and Community Safety should create a new dedicated role of Assistant Commissioner, Workforce and Integrity. The core functions of this role should be to:

- a) provide leadership and accountability for workplace culture and reform, including implementation of departmental and public sector reforms within the custodial context
- b) provide advice and leadership to location-based staff on:
  - supporting workplace culture, integrity, conduct and reform issues
  - adopting best practice approaches to prevention, complaint handling, restorative practice and disciplinary processes
- c) oversee and analyse local data and trends relating to workforce and integrity issues
- d) report regularly to the Commissioner, Corrections Victoria, and the DJCS executive on key issues relating to workforce and integrity within the adult custodial corrections system.

## Increasing the capability and skills of corrections leaders

There are clear examples of strong management and leadership skills within the adult custodial corrections system. Some staff identified feeling valued by their manager and supported to improve their skills and the performance of their role:

'We have a very competent and supportive manager who is a good leader, respectful and has your back, will challenge you if you are not doing your role but will teach you and train you on a better way to manage a situation as it arises.'

**Staff member**

However, we also heard and observed that there are significant opportunities to enhance managers' and supervisors' skills in supporting staff wellbeing.

Over the course of our engagement, we heard that staff being promoted into supervisor and manager roles were not expected to have specific skills in people management and supervision.

This likely reflects the perception within the system that leadership roles are the next step on the operational pathway – a more senior operational role – rather than being a different type of role requiring specific leadership capabilities:

'We promote good correctional operators who might not necessarily have any leadership skills and we haven't done a brilliant job ... of leadership development and succession planning. We've done it in a piecemeal kind of way, not in a structured way.'

**Expert interview**

CPSU echoed this concern about the prioritising of operational experience over leadership skills when making leadership appointments:

'Some [general managers] will say the pool of operations managers that we have to work with, we're stuck in constantly digging them out of holes because they don't have the leadership skills that they need ... Just because you are a good prison officer doesn't mean that you're going to make a good leader. And I think that comes back to a lot of the issues of culture that exists within corrections.'

**Community and Public Sector Union**

DJCS should provide greater support for custodial staff making this transition from operational service delivery to leadership. DJCS could draw upon existing Victorian public sector resources to identify and build the capability and skill of managers and leaders within the custodial system. One example of existing resources is the Victorian Public Sector Capability Framework, which identifies some of the core skills and expectations for leaders within the public sector:

- ▶ **Managing people** – Builds an organisational culture in line with public sector values; respects the dignity and rights of others; inspires a commitment of others towards goals and vision of the organisation; promotes and maintains the wellbeing and motivation of others
- ▶ **Develop capability** – Improves knowledge, skills, and ability of others to deliver against performance expectations and outcomes for the community

- ▶ **Team management** – Defines work activities, team structure and individual roles to optimise business outcomes
- ▶ **Lead and navigate change** – Articulates changes required, supports individuals to successfully adopt change and achieve organisational goal
- ▶ **Knowledge management and business continuity** – Establishes mechanisms to record and share knowledge and experience for business continuity and knowledge management
- ▶ **Resource mobilisation** – Understands the availability of all resources and optimises their use to deliver the best possible outcomes for stakeholders.<sup>102</sup>

## Increased professional development for people in supervision, management and leadership roles

Critically, we heard that there is limited professional development and training for managers and supervisors in the adult custodial corrections system to improve their leadership capability. This can impact the effectiveness of people management throughout the system, as well as limiting DJCS's capacity to attract strong candidates for corrections leadership roles:

'What we do in Corrections is get awesome operators, people that know how every process works, they're really good in the unit, they're fantastic at dealing with prisoners and we give them a [manager] job, but we don't give them anything on how to be a leader, and we don't give them anything about how to deal with difficult circumstances, but we promote them on the basis of how good operational they are and it's a real fail in the system.'

**Expert Interview**

DJCS provides four main leadership development programs for the corrections workforce:<sup>103</sup>

<b>Officer Development Program<sup>104</sup></b>	A program for prison officers identified as emerging leaders to encourage them to adopt a more proactive approach to leadership, building on strengths and addressing areas for improvement. This program also includes sessions covering the offender management framework, successful interviewing skills and occupational health and safety.
<b>Senior Leadership Program<sup>105</sup></b>	A program designed for senior prison officers to consolidate and build leadership skills acquired through the 'Officer Development Program'. Sessions aim to improve skills in performance management, presentation and advanced offender management.

<sup>102</sup> Victorian Public Sector Commission, Victorian Public Service Capability Framework (2021) <https://vpssc.vic.gov.au/wp-content/uploads/2020/09/VPS-Capability-Framework.pdf>.

<sup>103</sup> Department of Justice and Community Safety (Corrections Victoria), 'Summary document of Corrections Victoria Learning and Development Leadership catalogue', Data provided to the Cultural Review.

<sup>104</sup> Four days for prison officers who have been in the role for a minimum of 12 months.

<sup>105</sup> Six days for senior prison officers or those in a SPO acting position of greater than six months.

<p><b>Management Program for Prison Supervisors<sup>106</sup></b></p>	<p>A six-day program for staff in supervisor roles that aims to assist participants to utilise professionalism and perseverance in the face of challenges and setbacks. Sessions explore building and maintaining resilience, best practice recruitment, advanced risk analysis and reporting, and responding effectively to complex offending behaviour. As part of the program, participants complete a plan for a strategic intervention that contributes to continuous improvement in their workplace.</p>
<p><b>Leadership Development Program<sup>107</sup></b></p>	<p>A four-day program and two coaching sessions for operations managers, industries managers, business service managers and offender services managers. Sessions explore strategies to convey complex information, manage expectations, guide employees through change; emotional intelligence; coaching and debriefing.</p>

We understand that there are low completion rates for all leadership training programs across the custodial workforce. Approximately one in 10 supervisors and one in five operations managers have completed formal leadership training.<sup>108</sup> In addition, not all people in supervisor and manager roles complete the Certificate III or Certificate IV in Correctional Practice. We note that:

- ▶ there are no mandatory training requirements for leadership roles
- ▶ the training available at each stage of progression is short and operationally focused
- ▶ leaders require more specific training to equip them with strong people management and communication skills
- ▶ leaders should be trained to support the wellbeing of staff and address psychosocial hazards in the custodial workplace
- ▶ training should ensure that leaders understand and can model the highest standards of behaviour.

Given the complexity of the custodial workplace and the critical need to support staff wellbeing, we consider that leadership programs should be more targeted, mandatory, and refocused to address the specific wellbeing, service delivery and integrity challenges within the adult custodial corrections system. These leadership programs should reflect changes to policy and practice arising from our recommendations, particularly in relation to the wellbeing, capability and conduct.

In Recommendation 4.19, we recommend additional training for supervisors and managers on creating safe and respectful workplaces and addressing integrity issues and workplace harm.

<sup>106</sup> Six days for prisoner supervisors or those in an acting position of greater than six months.

<sup>107</sup> Four days (+ 1:1 coaching x 2) for managers in COG or VPS roles, including operations manager.

<sup>108</sup> Information provided by DJCS shows that 11.5 per cent of prison supervisors and 20.8 per cent of operations managers have completed one of the four leadership courses.

**Recommendation 3.13**  
**Ongoing professional development for supervisors and managers within the system**

The Department of Justice and Community Safety should develop a training program for corrections leadership, to support the development and retention of effective leaders within the adult custodial corrections system.

The program should be based on the skills identified in the Victorian Public Service Capability Framework, with a focus on extending skills and competencies in key areas of people leadership.

This should build on existing training available within the Department of Justice and Community Safety and be specifically adapted to the custodial context. The training program should include:

- a) understanding the role and influence of leadership
- b) expectations for the highest standards of workplace behaviour, integrity, respect and compliance with human rights
- c) strategies and approaches for effective people management, including supporting regular staff development conversations, managing workplace and interpersonal conflict, taking effective action in response to unlawful workplace behaviour including appropriate early detection and resolution
- d) mental health first aid, including workplace wellbeing support.

The Department of Justice and Community Safety should also require all people with leadership responsibilities within the adult custodial corrections system to complete the Certificate IV in Correctional Practice.

The Department of Justice and Community Safety should ensure arrangements are in place to accommodate training within rostering requirements and provide leaders with access to paid study leave to support the completion of this qualification.

## Sharing knowledge and broadening skills through shadowing, secondments and coaching opportunities

Beyond tailored training for custodial leaders, there are also opportunities to build their knowledge through short-term secondments within different parts of the adult custodial corrections system, the broader justice system and the health system. People working in supervisor and manager roles will benefit from exposure to a broad range of management and leadership styles and exposure to how leaders in other sectors respond to a diverse range of workplace issues.

However, throughout our engagement, we heard that secondments are rarely offered because locations don't have the capacity to backfill positions and any absence would place additional pressure on the roster.

We also heard that secondments – which are common in other parts of the VPS and recognised as a way to build different skills – are not always supported.<sup>109</sup> Limiting access to secondments risks supervisors and managers stagnating in their careers and being unable to gain other experiences or build their leadership skills:

'The barriers that exist at the moment [regarding lateral movement] that [staff] can't be employed as department [employees] and work in a private [prison] and vice versa and they need to get over that because I think a secondment would be ideal, either secondment or shadowing.'

Expert interview

We see better access to secondments for corrections leaders as an important tool for expanding leadership capability within the custodial workforce and bringing in different skills and knowledge.

### Creating talent pipelines for emerging leaders

We encountered many driven, capable staff during our site visits who represent the next generation of corrections leaders. At present, there is no formal pipeline to identify and uplift these emerging leaders. We recommend the creation of a leadership pipeline to ensure future leaders are identified, supported and given opportunities to develop the skills they need before they step into higher roles.

By recognising employees who are modelling high standards of behaviours and investing in their development, DJCS will also increase the retention of staff who show the most potential. Developing future leaders who conduct themselves with integrity will reinforce expected standards of behaviour and create incentives for other aspiring leaders within the workforce to perform their best.

**Recommendation 3.14**  
**A development pathway for emerging leaders in the corrections workforce**

The Department of Justice and Community Safety should create a development pathway for emerging leaders in the adult custodial corrections system. This program should include:

- a) processes to identify future leaders who demonstrate potential and model high standards of behaviour that support a safe, respectful and integrity-oriented workplace
- b) development programs, including mentoring and secondment opportunities
- c) clear routes for progression through the corrections workforce focussed upon a skill based classification structure.

<sup>109</sup> Community and Public Sector Union, Submission to the Cultural Review (December 2021) 16.

## Attracting diverse skills to corrections leadership positions

Corrections leaders identified bringing people from outside the adult custodial corrections system into leadership roles as a tool to support cultural renewal:

'We've done a lot of work and still are doing work around leadership development for our supervisor group and our managers. [Some of the new staff] ... are still quite inexperienced, so we're still working with them. We have brought in some people from other jurisdictions that we're hoping will help influence [and change] thinking as well as people that have got a lot of experience in other sites.'

**Expert interview**

'Corrections have a bit of inbreeding with all the skills and knowledge with not enough outside influences and hasn't developed and grown like it could have with those external influences, different people coming in and different ideas and that kind of thing. Some staff have been there for 30 years it's ingrained and they've come up learning from those people and done it that way since it opened, they are stuck in the past.'

**Staff member**

During our engagement, corrections staff repeatedly shared concerns about the fairness of processes for promotion and leadership appointments. Staff perceive that individuals are tapped on the shoulder if they have the right connections, rather than processes being open, transparent and based on merit:

'There is still that tap on the shoulder, [people are] encouraged [to apply for roles], "We will move you around", and then for other people, they've got to fight tooth and nail. There is no fair, equal process in there.'

**Staff member**

Some corrections staff also perceive that long-standing staff may be promoted even when there are questions about their suitability for leadership or examples of conduct that does not comply with public sector values. We heard numerous examples of senior leaders who have been promoted or have remained in their roles, notwithstanding they have been alleged perpetrators of workplace harm or have failed to take the appropriate action where they have been made aware on misconduct or workplace harm within their workforce:

'We can't change within when all these people are just being promoted. They're old school, been in corrections 20 years, 30 years, they're not going to bring any new contemporary thought. They're unable to do that. They're kind of stuck in the old ways ... It's all internal applicants and each internal applicant has been successful. Very rarely is an external applicant successful – they'll promote people that they know have a very poor HR record and it's just convenience or its lack of choice ... it's like a natural progression – once you've been a prison officer for a while, well then you become a senior and you just take your bad attitude with you and then set that bad role modelling for the next and then it's just this generational – it's this cycle of despair where we see people getting

promoted and we're like "no, no, not him!" Then, bang, it's like "here we go again".'

**Staff member**

We also heard that current internal recruitment and promotion processes that prioritise length of service may also perpetuate legacy cultural norms, such as attitudes that centre on security, control above all else and entrench an unhelpful power dynamic over both people in custody and more junior staff. This risk was reflected in the custodial responses to the 2021 VPSC People Matter survey, where only 21 percent of respondents agreed that the organisation 'makes fair recruitment and promotion decisions, based on merit.'<sup>110</sup> As one respondent to our workforce survey noted:

'For certain people, it comes down to nepotism and favouritism. They recently appointed two people into roles – they were tapped on shoulder – there was no EOI [expression of interest] or anything put out for it. There were staff who were far better qualified, working in the area for a lot longer than the people that were tapped.'

Staff told us that the culture of promoting long-serving staff also made it more challenging for staff who had not come from within the adult custodial corrections system to progress. We heard some examples of new supervisors and managers from outside Corrections Victoria being targeted or demeaned because they did not have years and years of prison experience.

'The culture is everyone gets a job because of who you know and not really ever outside of Corrections. I already had a label. From the outset, I was the new person ... People's perception was that unless you grew up in Corrections Victoria you actually didn't know how to run prisons and all the rest of it ... It was verbalised to me personally; it wasn't just a feeling. I think two years in I was still the new one and called the new person. Having worked in prisons for longer than they had, but because I wasn't in Corrections Victoria, I was the new person ... "You're an outsider".'

**Staff member**

As in many operational environments, women progressing into corrections leadership roles face particular challenges. We heard from female staff that they were continually questioned on their suitability for leadership roles, their ability was undermined, and their authority questioned in ways that ultimately made the workplace unsafe. We heard that, despite more women working with the corrections system, this harassment, discrimination and undermining endures:

'On my first day [after being promoted into a senior role] I'd come in and my first comment when I got to the gatehouse was, "How's your knees?" ... So, obviously as a woman, [oral sex] is what we do to get promotions in other people's eyes. So I had that happen and then I had another comment made probably within the first two weeks where someone said to me "Oh, the only way

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<sup>110</sup> Victorian Public Sector Commission, People Matter survey data provided to the Cultural Review (2021).



anyone gets promoted within the first 12 months is if you've got great breathing skills". And I said, "What's that meant to mean?" and he's like "Well you've either got a cock in your mouth or your head up someone's arse".'

**Staff member**

The perpetuation of a 'boys' club' mentality is a key structural and cultural issue that contributes to the lack of gender diversity in leadership roles and the retention of experienced women in the workplace. This is discussed further in *Part 4. Conduct*.

**'I left that meeting feeling disempowered, undervalued and personally attacked.'**

'I had been interested in pursuing management opportunities for some time. I spent almost a year in the pool and completed all the prerequisites, but it felt like my progress had stalled. When I sat down with my mentor to discuss next steps, I was surprised when they shifted the conversation towards how I'm perceived by my peers.

They said, "Your career has been on fast forward until now – but other staff make a lot of negative comments about you because you've progressed too quickly in your career." I didn't know what to say. They added: "You come across as arrogant. You have been given a lot of opportunities over the years and we need to be conscious of that."

I left that meeting feeling disempowered, undervalued and personally attacked. It suddenly felt like any prospect of progressing was unlikely – and that I'd be undermined even if I did. It felt like I had little to no support from my own mentor, let alone others in the leadership team.

I'm sure I'm not the only female staff member to have had this experience at my location. There's a continuing culture of discrimination – it's like there is a different set of conditions for women in this job, a higher standard of performance, behaviour and aptitude required for women to succeed. It's particularly evident in the low proportion of women in senior leaderships roles at this location.'

*A corrections staff member*

Corrections staff we spoke to identified better feedback during selection processes as a tool that would help them build their skills and be better prepared for future opportunities. Improving feedback to candidates could also assist with perceptions of fairness and transparency about the process – people are more likely to accept an unfavourable outcome if they consider that the process was fair and transparent.<sup>111</sup>

<sup>111</sup> See generally, John R Hibbing and John R Alford, 'Accepting Authoritative Decisions: Humans as Wary Cooperators' (2004) 48(1) *American Journal of Political Science* 62-76.

'I have no faith in the recruitment process. You've got to have an HR rep on there, but we were having two supervisors who would go out ... to the people they really want, their mates, give them the answers, so that when those people come in, they give a perfect answer. It's what happens and we accept that, and we know that, but we're not going to do anything about it.'

**Staff member**

We encourage DJCS to look closely at how internal promotion processes operate. Steps should be taken to ensure that people are only promoted to leadership roles if they meet the requirements of the role and can demonstrate the capability and skill expected of people in leadership roles.

## Recognising the skill and expertise required for the role of general manager

Being responsible for a prison or correctional centre is an extremely complex role. The role of general manager has extensive responsibilities for the workforce, people in custody and delivery of custodial services. A general manager role was traditionally referred to as the 'governor' of a prison, which is still the language used in the *Corrections Act 1986*.

Under the Act, the governor of a prison is responsible for the management, security and good order of the prison and the safe custody and welfare of people in custody.<sup>112</sup> The governor is also required to take reasonable steps to ensure that officers assigned to the prison understand their powers and duties under the legislation.<sup>113</sup>

A general manager is appointed under the VPS Enterprise Agreement. The position description for a general manager states that one of the core purposes of the role is to 'foster a safe and supportive culture and develop a structured day in which prisoners are constructively engaged and challenged through the Offender Management Framework to address their individual risks and needs in order to promote the best prospects of rehabilitation.'<sup>114</sup>

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<sup>112</sup> *Corrections Act 1986* s 21.

<sup>113</sup> *Ibid.*

<sup>114</sup> Department of Justice and Community Safety (Corrections Victoria), 'General Manager, Marngoneet Correctional Centre Position Description', Data provided to the Cultural Review.

Most general managers have progressed into leadership from custodial officer roles. While there are several general managers who have entered laterally, bringing significant and diverse experience, the system continues to ascribe high value to operational knowledge and time spent working in prisons.

While we recognise the importance of having developed operational or service delivery insight, the weight given to operational expertise and 'time in a uniform' obscures the broader leadership skills that are required to:

- ▶ provide a safe, accountable and supportive work environment
- ▶ ensure culture and practice that is humane, consistent and geared towards rehabilitation
- ▶ collaborate in a strategic and productive way with the broader corrections leadership and service providers.

Notwithstanding the broad dimensions and importance of the role, general managers are mostly employed at the COG6 grade and are not classified as executive employees.<sup>115</sup> Yet, the level of responsibility, risk and accountability that general managers have closely parallels the responsibility and accountability of executive leaders across DJCS and across the Victorian public service more generally. We also note that general managers in the youth justice system are employed on executive contracts.

A recent position description for a general manager states that the role is responsible for leading 'all disciplines within the prison staffing complement to achieve business objectives and performance benchmarks within the pillars of people, safety, performance and budget outcomes'.<sup>116</sup> The role description conveys the breadth of function and significant responsibilities which may be more aligned with executive functions. Key selection criteria for the position include:

- ▶ extensive experience directing, overseeing and managing daily business activities, and developing and implementing effective business strategies and programs
- ▶ an acute understanding of the organisational environment to build collaborative partnerships across the organisation, anticipate and effectively address emerging departmental issues, develop innovative programs and initiatives, and advise and negotiate with senior management in order to achieve long-term strategic organisational goals.

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<sup>115</sup> The Cultural Review notes that senior general managers are equivalent to STS7, which overlaps with Executive remuneration with the public service.

<sup>116</sup> Department of Justice and Community Safety (Corrections Victoria), 'General Manager, Marngoneet Correctional Centre Position Description', Data provided to the Cultural Review.

There are some significant differences in how the performance of general manager is measured compared with executive roles:

- ▶ General managers roles are ongoing, and their performance is assessed through an annual performance review process, which considers key performance measures and development goals.
- ▶ In contrast, executive-level roles are fixed-term contracts, and their performance is generally assessed against specific requirements and performance indicators connected to their contract. This structure is intended to make executives accountable for their performance against key indicators. It also means they can be removed from their role if they do not continue to meet key accountabilities and performance indicators.

In our view, given the critical role general managers play within the adult custodial corrections system, it is essential that high-performing individuals fill these roles and are accountable for the performance of their location.

We recommend a review the role of general manager to:

- ▶ consider whether the classification of general managers as a COG6 and senior general managers as a COG7 aligns with the responsibilities of equivalent roles across the public sector
- ▶ consider whether creation of executive-level roles will better reflect the status and seniority of these influential leadership roles
- ▶ identify best practice for identifying, recruiting and selecting people for the role of general manager, including actively managing bias toward operational skills in selection processes
- ▶ consider whether existing accountability processes are effective to support general managers to meet the expectations and requirements of their role
- ▶ consider whether fixed-term employment and closer connection to accountability and performance indicators will support a stronger culture of workforce development, integrity and capability within the prison environment.

**Recommendation 3.15**  
**Review of the**  
**general manager role**

The Department of Justice and Community Safety should undertake a detailed review of the role requirements for general managers and their current employment conditions, to recognise the necessary skills required to support a safe workplace and a safe custodial environment.

This review should consider the capability and experience that is required for the role, including risk management, continuous improvement, people leadership, business acumen and responsibility for ensuring a safe, humane and respectful custodial environment for all staff and people in custody.

This review should consider:

- a) the key capabilities set out in the Victorian Public Service Capability Framework and Executive Classification Framework
- b) whether the current employment classification and conditions align with the skills and experiences required for general managers
- c) whether fixed-term executive employment may be a more appropriate classification to reflect the value of the work and attract candidates for general managers roles who have capability and experience in providing strategic leadership and accountability within the custodial setting
- d) clarifying the role's accountability for key responsibilities and actions within the custodial environment, including the development of performance measures for:
  - providing a safe work environment, consistent with obligations under the *Occupational Health and Safety Act 2004*
  - acting compatibly with the Victorian public sector Code of Conduct
  - meeting required performance standards, including service delivery outcomes
- e) implications for other senior roles and classifications that may arise as a result of the review of the general manager role.



# Part 4

## Conduct

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Victoria's prisons are challenging workplaces where staff have the dual responsibility of maintaining the security and good order of prisons as well as supporting rehabilitation. A safe and respectful culture free of integrity breaches and other harmful workplace behaviour is critical to ensuring that corrections staff can perform their complex roles effectively and help deliver positive individual and community outcomes.

While we heard about many positive and supportive interactions between corrections staff, legacy cultural norms from an earlier security-focused, more punitive model of custodial practice continue to influence the attitudes and behaviour of some staff across the system.

Many of these behaviours continue to go unchecked and become normalised, impacting both the workplace culture experienced by staff and the broader custodial culture experienced by people in custody.

In a similar way, poor conduct has a widespread impact on those who witness it – many are hesitant to speak up about the conduct they have witnessed for fear of exclusion, bullying or victimisation. These barriers are a result of a deeply ingrained culture of mateship that silences those who would call out bad behaviour and protects perpetrators.<sup>1</sup>

Related to this, the poor and unlawful treatment of people in custody is often downplayed because of long-held beliefs about people in custody – the persistent idea that any bad treatment they receive is part of the punishment they deserve.

Eliminating these outdated ideas will be critical for cultural change within the adult custodial corrections system. This will be led by the purposeful reorientation of the system to create a culture that embraces rehabilitation and rejects outdated beliefs or the reflexive urge for prison to be a harsh and vengeful place.<sup>2</sup>

Unlawful and harmful conduct by corrections staff – whether directed at their colleagues or people in custody – has a negative impact on custodial culture and undermines the overarching purpose of the system. It creates an unsafe and unstable workplace and custodial environment.

While a broad range of conduct may be unlawful and harmful, in line with the Terms of Reference for the Cultural Review of the Adult Custodial Corrections System (Cultural Review), we have focused on two related sets of behaviours:

- ▶ For conduct directed toward staff, we have focused on sexual harassment, discrimination, bullying and victimisation.
- ▶ For conduct directed to people in custody, we have focused on integrity issues such as unlawful use of force, inappropriate relationships, masking behaviour and improper use of restrictive practices and strip-searching.

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<sup>1</sup> Victorian Alcohol and Drug Association, *Submission to the Cultural Review* (December 2021) 2.

<sup>2</sup> Montross, Christine M.D 'Waiting for an Echo: The Madness of American Incarceration', Penguin Book, 2001.



## Cultural norms in the custodial workplace that enable unlawful and harmful workplace conduct

Within the adult custodial corrections system, a number of cultural norms enable unlawful and harmful workplace conduct to persist:

- ▶ **Codes of silence and low support for bystanders** – Workplace cultures that prioritise ‘mateship’ through implicit codes of silence among staff can result in staff protecting each other from scrutiny. In such workplace cultures, bystanders often do not speak up because they have seen their work location protect perpetrators in the past and they doubt that speaking up would bring about any change or action. They may also fear retribution or unfair treatment for speaking up, particularly from direct managers or supervisors.
- ▶ **Victorian Public Sector Values do not underpin the culture of the custodial workplace** – Despite being a significant part of the DJCS workforce, some staff working in prisons perceive their workplace as an exceptional environment that operates distinctly from the rest of the department. Some staff feel undervalued and disconnected from the broader public sector and justice system, and there is some evidence that the core values of the public sector do not resonate with the custodial workforce.<sup>3</sup> Staff told us that the behaviour and attitudes they saw in the workplace were not always consistent with the Victorian Public Sector Values.
- ▶ **Legacy cultural norms in the corrections workforce** – Strong command-and-control structures, typical in uniformed workforces, help the adult custodial corrections system effectively manage emergencies and incidents. However, these structures can also support legacy cultures and exacerbate risks of workplace harm and corruption. Findings from recent workplace reviews of other hierarchical workforces, including police and ambulance workers, identify structural power imbalances as a key driver of harmful workplace conduct.<sup>4</sup> Hierarchical, command and control environments that reinforce traditionally masculine characteristics are especially vulnerable to workplace harm, particularly gendered violence and sexual harassment.<sup>5</sup>

<sup>3</sup> As reflected in the Department of Justice and Community Safety ‘Integrity Strategy 2021-2023’, (12 May 2021), Data provided to the Cultural Review.

<sup>4</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 292; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase 1* (Report, 2019).

<sup>5</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 241–244; Safe Work Australia, *Guide for Preventing and Responding to Workplace Bullying* (May 2016) 11; CM Hunt et al, ‘Reviewing sexual harassment in the workplace – an intervention model’ 39(5) *Personnel Review* 655, 659; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Report, 2021) 241–244.

- ▶ **Poor staff wellbeing increases the risk of harm occurring** – Workplaces with high levels of psychosocial hazards have a strong correlation with workplace harm.<sup>6</sup> Corrections work takes place in a complex environment where traumatic incidents and challenging behaviours are common, creating high levels of stress and hypervigilance in staff.<sup>7</sup> In this environment, research has shown that some staff adapt dehumanising behaviours that shape their conduct.<sup>8</sup> These adaptive behaviours include desensitisation, a propensity toward dark humour, violent thoughts and a heightened tolerance for interpersonal violence.<sup>9</sup> These adaptive behaviours do not only impact relationships between custodial officers and people in custody – they also increase the likelihood of poor interpersonal relationships and unwelcome behaviours occurring between staff and heighten their tolerance for the inappropriate behaviours they may experience or witness.
- ▶ **Insular and site-based workforces impede the creation of safe and respectful cultures** – While some members of prison leadership teams are recruited and supervised by DJCS,<sup>10</sup> each Victorian prison location employs its own workforce and operates under its own leadership structure in a closed environment. This insularity is reflected in staff perceptions that few people, including DJCS colleagues in office-based roles, understand or appreciate the complex nature of their roles.

### Identity and hyper-masculine cultures

The traditional identity of a custodial officer is framed by ideas of survival, security and control.<sup>11</sup> This traditional identity is characterised by emotional hardness, hyper-masculinity, suspicion, a perception of social isolation, dominance, authoritarian, resilience and aggression.<sup>12</sup> In the workplace, this traditional identity preferences stoicism over help-seeking behaviours, self-sufficiency over building positive interpersonal relationships, and dominance and control over respectful relationships. Over time, as in many other hyper-masculine contexts, these behaviours reinforce a high tolerance for workplace harm and integrity breaches.

<sup>6</sup> Centre for Evidence-based Management, *Antecedents of workplace incivility: a summary of scientific literature* (2020) 6-7 <https://www.health.act.gov.au/sites/default/files/2020-12/ES-REA%20Workplace%20Incivility.pdf>.

<sup>7</sup> Michael D Denhof, Caterina G Spinaris and Gregory R Morton, U.S. Department of Justice National Institute of Corrections, *Occupational Stressors in Corrections Organizations: Types, Effects and Solutions* <https://info.nicic.gov/nicrp/system/files/028299.pdf>.

<sup>8</sup> See generally Ethan Higgins, Justin Smith and Kristin Swartz, 'We keep the nightmares in their cages: Correctional culture, identity and the warper badge of honour' (2022) 60(3) *Criminology* 429.

<sup>9</sup> Ethan Higgins, Justin Smith and Kristin Swartz, 'We keep the nightmares in their cages: Correctional culture, identity and the warper badge of honour' (2022) 60(3) *Criminology* 429, 440-444.

<sup>10</sup> For example, Workforce Development, Human Resources and Finance Management. General Managers appointments also require departmental oversight.

<sup>11</sup> Liebling, A (2008), 'Why prison staff culture matters' in J. M. Byrne, D. Hummer, and F. S. Taxman (eds) *The Culture of Prison Violence*, Boston, MA: Allyn and Bacon Publishing

<sup>12</sup> Sarah J Tracy, 'The Construction of Correctional Officers: Layers of Emotionality Behind Bars', (2004) 10(4) *Qualitative Inquiry* 509, 511, 529; Crawley, E and Crawley, P. (2013), 'Understanding prison officers: culture, cohesion and conflicts' in Bennett, J, Crewe, B, Wahidin (eds) *Understanding Prison Staff*, Routledge.

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 11. Understanding workplace harm** addresses the current nature and impact of bullying, sexual harassment and discrimination in the custodial workplace and identifies the cultural norms driving high rates of harm.
- ▶ **Chapter 12. Understanding integrity risks** examines integrity issues in the custodial workforce including the effectiveness of reporting systems and internal oversight.
- ▶ **Chapter 13. Responding to and preventing unlawful and harmful conduct** considers the current reporting and complaints systems for workplace harm and integrity issues and recommends changes to ensure that they are safer, more accessible and encourage increased reporting.

## Acronyms and abbreviations

BWC	body-worn camera
CALD	culturally and linguistically diverse
CMRC	Case Management Review Committee
COG	custodial officer grade
Charter	<i>Charter of Human Rights and Responsibilities Act 2006</i>
CPSU	Community and Public Sector Union
Cultural Review	Cultural Review of the Adult Custodial Corrections System
CVIU	Corrections Victoria Intelligence Unit
DJCS	Department of Justice and Community Safety
DPFC	Dame Phyllis Frost Centre
EAP	employee assistance program
Equal Opportunity Act	<i>Equal Opportunity Act 2010</i>
ERG	Emergency Response Group
HR	human resources
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011</i>
ICCPR	International Covenant on Civil and Political Rights

JIMS	Justice Information Management System
MAP	Melbourne Assessment Prison
MRC	Metropolitan Remand Centre
PIMS	Prisoner Information Management System
QCCC	Queensland Crime and Corruption Commission
SDO	service delivery outcome
SESG	Security and Emergency Services Group
SMP	Sentence Management Panel
Special Report on Corrections	<i>Special Report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molara</i>
TOG	Tactical Operations Group
Use of Force Report	<i>Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison</i>
VEOHRC	<i>Victorian Equal Opportunity and Human Rights Commission</i>
VPSC	<i>Victorian Public Sector Commission</i>
VPS	Victorian Public Service

# 11 Understanding workplace harm

Everyone has a right to be and feel safe and respected at work. However, many corrections staff experience bullying, sexual harassment, discrimination and racism in their workplace. These unwelcome and unlawful behaviours are having a significant impact on the wellbeing, psychological safety, cultural safety and capability of the corrections workforce.

Through our engagement with staff across the adult custodial corrections system, we found that workplace harm is widespread in the custodial workplace with nearly two-thirds of respondents to our survey experiencing workplace harm in the last five years and three-quarters witnessing it. Unwelcome and unlawful behaviours toward colleagues was a constant theme of our engagement with staff.

For many staff who spoke with us, the impact of the unwelcome conduct of their colleagues has been more damaging than the challenging environment they work in.

We heard from many staff who have or will leave the workforce due to their experiences of sexual harassment, discrimination and workplace bullying. We also heard how these behaviours are having a significant impact on the safety and capability of custodial staff to perform their roles effectively.

Despite positive, recent initiatives and action to embed clear behavioural expectations and encourage staff to speak out against unwelcome behaviours, the majority of staff we engaged with do not feel the custodial workplace is safe or that perpetrators will be held to account for their conduct. Much more must be done to comprehensively support leaders and the workforce to understand the nature and impact of workplace harm, to increase safe reporting and accountability.

## Key findings – Understanding workplace harm

- ▶ Workplace harm within the corrections workforce is currently widespread across all locations, with rates of sexual harassment, bullying and discrimination higher than in most other public sector workforces.
- ▶ Some staff – including women, lower-ranking staff, Victorian Public Service (VPS) and administrative staff, LGBTQTI+ staff, staff from culturally and linguistically diverse backgrounds and Aboriginal staff – are more likely to experience workplace harm in the adult custodial corrections system.
- ▶ Male staff are more likely to be the perpetrators, and this conduct is more likely to occur at high-security, front-end prisons where there are higher proportions of male staff.
- ▶ Workplace harm is having a significant negative impact on the psychological safety, wellbeing and capability of custodial staff who experience it, but also those who witness it.
- ▶ The support staff receive after experiencing workplace harm is limited and does not effectively mitigate psychosocial hazards in the custodial workplace.
- ▶ There are specific cultural norms in the custodial workplace that increase the risk that workplace harm will occur and will be tolerated, including low bystander safety, hierarchical command-and-control environments, and insular, site-based workforces. Many of these cultural norms are legacies of a more punitive custodial environment.
- ▶ Current training to help staff understand, identify and appropriately respond to workplace harm are insufficient. The corrections workforce requires tailored training to increase their knowledge and understanding of workplace harm and set unequivocal standards for behaviour.

# What corrections staff told us about **WORKPLACE HARM**

**Workplace harm is occurring across the custodial workforce.**

It was a really toxic culture that was enabled by the leaders in that area. There was, for example, that group that they used to exclude people. If they weren't in this WhatsApp group and subsequently they're sending pictures and inappropriate comments ... Outside work they'd still carry on the bullying and just being horrible to women, horrible to people of different races, sexuality. Pretty much you name it, these people picked on it.'

Corrections can be a good place to work, but the way I've been treated ... is a most disgusting putrid way of treating staff especially when they bring out all these things about respect in the workplace and it's part their core values and behaviours. It's all on paper because if you try to call it out, your name is mud, you're banished and they all stick together.'

There's just so much bullying that goes on ... Some of it is blatant, some it's just straight out there and some of it's indirect.'

**Women, new recruits and lower ranking staff are at a higher risk of workplace harm.**

I had a male officer who was always making advances toward me ... He kept going, kept going and would openly make advancements in front of other people ... Should I have reported it back then? Yes ... but I was new to the location, you know, you're trying to fit in, there's not a lot we know about reporting that type of behaviour.'

There's a lot of bullying that goes on here. A lot of intimidation (of staff). Management work on a basis here of ambush management ... It's about intimidation. It's about don't speak up.'

**Staff in non-custodial roles are at a higher risk of workplace harm.**

I can guarantee that most females here would have the exact same story [of sexual harassment] as I do. I would be very shocked if they didn't have at least one or two sexual harassment incidences ... The ones that you report it to sometimes have that cultural "men's club" and if you - this is how I feel with it, so I'm not saying it is that way, but they're the ones that promote you. I feel like if I were to go and talk to someone about it, that that would impact me getting a job in the future, because then I'm a sooky woman that can't handle it in the boys' club.'

I wouldn't say my time here has been pleasant - I've had a horrible time, if I'm honest. In my first year, I had to report sexual harassment, and I am currently having to report sexual harassment again.'

[The disrespect towards VPS staff, comes from] all the way up, [from] the general managers. It's a complete and utter disdain for anyone who's not in uniform.'

**LGBTIQ+ staff, staff from culturally diverse backgrounds and Aboriginal staff experience harm at higher rates.**

👤 People tend to describe [the prison working environment] as a “boy’s club”. And it’s true, and not only for female officers; it’s also for people from different backgrounds. If you are not part of that sort of group, it’s very hard to crack that.’

👤 I have had to deal with a racist, he’s been written up as a racist. He called an Indian [staff member] a “monkey” and was stood down for it.’

👤 [I’ve heard a lot of] comments about different people who identify as LGBTIQ+ and putting random letters into the alphabet. I had someone that came up to me and he was like, “You know they added another letter” ... He said, “P.” And I was like, “Well what’s the P stand for?” And he said “Paedophile”.

**Workplace harm is impacting the psychological wellbeing of staff.**

👤 [I experienced] depression, anxiety, withdrawn, isolated, suicidal thoughts.’

👤 I made a report of assault and bullying ... I am proud of the stand I have taken, but I am not sure if it was worth the toll it took on me, only time will tell.’

👤 We’re having discussions about what we can do to improve the cultural safety of Aboriginal employees ... We talk about suicide and self harm amongst people in custody – so we talk about that. What about our staff? I’ve had a really close friend, a colleague ... commit suicide. Because of the way that this person was treated.’

**Workplace harm affects the ability of staff to do their job.**

👤 I struggled in my professional and personal life. It impacted my work with the service users and my relationships towards my colleagues, due to increased anxiety and hypervigilance.’

👤 You have to find your support with group of trusted colleagues. It would be very hard without such a group. People switch off. Take sick days as mental health breaks to cope and manage.’

👤 So there’s a direct link between how you manage your bullies in uniform, with how you conduct your job and how you manage your job, and that’s something that a lot of people can’t quite get their head around, and that’s a reality of the prison.’



## Workplace harm is unlawful

In Victorian workplaces, discrimination, sexual harassment and victimisation is against the law.

### It is unlawful to discriminate against someone at work

The *Equal Opportunity Act 2010* (Equal Opportunity Act) defines discrimination as treating, or proposing to treat, someone unfavourably because of a protected attribute – a personal characteristic protected by the law.<sup>13</sup> Protected attributes include age, gender identity, disability, parental or carer status, sex, pregnancy and race.<sup>14</sup>

Treating someone unfavourably can include singling someone out or treating them differently because of a protected attribute.<sup>15</sup> It can also include unfairly allocating tasks, unfair rostering, excluding someone from information and communications, or humiliating them.<sup>16</sup>

### It is unlawful to sexually harass someone at work

The Equal Opportunity Act also prohibits workplace sexual harassment – unwelcome sexual advances, requests for sexual favours or any unwelcome conduct of a sexual nature that could reasonably offend, humiliate or intimidate another person.<sup>17</sup>

The perpetrator's intent, motivation or understanding is not relevant to whether their conduct is considered sexual harassment.<sup>18</sup> This means that attempting to justify conduct as a joke or not intended to offend does not stop it from being sexual harassment.

Sexual harassment can include:

- ▶ unwelcome comments, including sexually suggestive remarks or jokes, intrusive questions, comments about someone's appearance, or repeated requests to go on dates
- ▶ intimidating and threatening behaviours, including leering, sexual gestures, indecent exposures, or following and watching someone

<sup>13</sup> *Equal Opportunity Act 2010* (Vic) s 7.

<sup>14</sup> *Equal Opportunity Act 2010* (Vic) s 6.

<sup>15</sup> Victorian Equal Opportunity and Human Rights Commission, 'Explaining the types of discrimination', Victorian Discrimination Law (Online resource, 20 December 2021) <https://austlii.community/foswiki/VicDiscrimLRes/Explainingthetypesofdiscrimination>.

<sup>16</sup> Victorian Equal Opportunity and Human Rights Commission, 'Explaining the types of discrimination', Victorian Discrimination Law (Online resource, 20 December 2021) <https://austlii.community/foswiki/VicDiscrimLRes/Explainingthetypesofdiscrimination>.

<sup>17</sup> *Equal Opportunity Act 2010* (Vic) s 92.

<sup>18</sup> *Frith v The Exchange Hotel and Anor* [2005] FMCA 402.

- ▶ unwelcome and inappropriate physical contact, including groping, inappropriate touching, unwanted hugs and kissing – sexual harassment can also include criminal behaviours including sexual assault, rape and unwanted touching, which are offences under the *Crimes Act 1958*
- ▶ online behaviour, including inappropriate messages, images sent online and inappropriate conduct on online meeting platforms.<sup>19</sup>

Sexual harassment constitutes ‘workplace sexual harassment’ when it occurs at work (on work premises as well as in common areas outside of the work premises such as carparks), at work-related events, meetings or where people are carrying out work-related functions or activities (for example, at a work Christmas party or commuting to work) and in online spaces and through technology during and outside of work hours.<sup>20</sup>

Employers can be held vicariously liable under the Equal Opportunity Act even where sexual harassment occurs outside the ordinary physical workplace and outside office hours.

### It is unlawful to victimise someone at work

Under the Equal Opportunity Act, it is also against the law to victimise someone at work.<sup>21</sup> Victimisation occurs when a person treats someone else unfairly, or threatens to do so, because that person has made a complaint, might make a complaint, or has helped someone else make a complaint about unlawful behaviour, such as sexual harassment or discrimination.<sup>22</sup>

Victimisation can include bullying or intimidating someone that has made a complaint, unreasonably requiring them to do additional tasks or training, or preventing them from engaging in professional development.<sup>23</sup>

### Bullying is a health and safety risk

Under the *Fair Work Act 2009* (Cth), bullying is repeated, unreasonable behaviour – by an individual or group – that creates a risk to health and safety.<sup>24</sup>

In Victoria, bullying is not explicitly prohibited by the Equal Opportunity Act, but bullying can constitute discrimination if it is perpetrated because of someone’s protected attribute.<sup>25</sup>

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<sup>19</sup> Victorian Equal Opportunity and Human Rights Commission, ‘*Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010*’ (Guideline, August 2020) [3.1].

<sup>20</sup> Victorian Equal Opportunity and Human Rights Commission, ‘*Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010*’ (Guideline, August 2020) [2.1.2].

<sup>21</sup> *Equal Opportunity Act 2010* (Vic) s 103.

<sup>22</sup> *Equal Opportunity Act 2010* (Vic) s 104.

<sup>23</sup> *Gray v State of Victoria* (1999) EOC 92–996.

<sup>24</sup> Under *Fair Work Act 2009* (Cth) s 789FD(1) an employee can make a complaint to the Fair Work Commission for an order that their employer take measures to stop bullying from occurring if the employee is currently in an employment relationship with the employer.

<sup>25</sup> *Jemal v ISS Facility Services Pty Ltd (Human Rights)* [2015] VCAT 103, 90.

Bullying can include:

- ▶ verbal abuse, including yelling, swearing, name-calling, insults and threats, practical jokes, belittling and humiliation, gossip and rumours
- ▶ hostile behaviour, including isolating or excluding people from activities or conversations
- ▶ abusive or threatening emails or body language
- ▶ unreasonable demands, unfair pressure, impossible deadlines, and unfair allocation of tasks
- ▶ deliberately changing work hours or rosters
- ▶ unreasonable exclusion from training and professional development opportunities.<sup>26</sup>

The *Public Administration Act 2004* (Vic) creates a statutory duty for public sector employees to demonstrate the value of respect in the workplace, which includes showing respect for colleagues by treating them fairly and objectively, and ensuring they can work free from discrimination, harassment and bullying.<sup>27</sup>

## The drivers of workplace harm

The underlying social and systemic root causes of workplace harm<sup>28</sup> are fundamentally connected to power, control, and inequality,<sup>29</sup> and embedded in many cultural norms, systems and institutions specific to the workplace. This means that the workplace must do more than respond to individual wrongdoers to stop harm from occurring – it must also address the systemic drivers of harm in the culture of the workplace.<sup>30</sup>

<sup>26</sup> WorkSafe Victoria, *A guide for employers: workplace bullying* (March 2020) 3. Available at: .

<sup>27</sup> *Public Administration Act 2004* (Vic) ss 7, 61.

<sup>28</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 138.

<sup>29</sup> See, for example, Jordi Escartin, 'Insights into workplace bullying: psychosocial drivers and effective interventions' (2016) 9(1) *Psychology Research and Behavior Management*, 157; Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 138; Paula McDonald and Sara Charlesworth, 'Academic Evidence on the Causes, Manifestations and Responses to Workplace Sexual Harassment', Submission 170 to Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (January 2019).

<sup>30</sup> See Vicki Schultz, 'Open Statement on Sexual Harassment from Employment Discrimination Law Scholars' [2017-18] 71 *Stanford Law Review Online*, 17.

## Understanding the drivers of sexual harassment and gender-based discrimination

The 2018 Australian Human Rights Commission *Respect@Work* report found that sexual harassment was a common experience in Australian workplaces. A third of all people surveyed by the commission said that they had experienced sexual harassment at work between 2015 and 2020.<sup>31</sup>

In the workplace, sexual harassment, sexual assault and other forms of gender-based violence are systemic, institutional and cultural issues underpinned by gender inequality, power and control. Rigid gender stereotypes and other cultural and structural barriers to gender equality can perpetuate sexual harassment and other unlawful conduct experienced by women in the workplace.<sup>32</sup>

As a workplace, the adult custodial corrections system has many of the characteristics and cultural markers that increase the risk of high rates of experiences of sexual harassment. These include:

- ▶ a higher proportion of men, particularly in leadership roles<sup>33</sup>
- ▶ high levels of front-facing service delivery, including with external providers and clients<sup>34</sup>
- ▶ a hierarchical organisational structure<sup>35</sup>
- ▶ inflexible work arrangements that may penalise people who seek flexibility.<sup>36</sup>

## Understanding the drivers of bullying

As with sexual harassment, the drivers of bullying include the power structures and hierarchies embedded in the culture and systems of a workplace. Workplace bullying is a significant issue in Australian workplaces, with research indicating that health services and government administration are among the sectors where bullying is the most prevalent.<sup>37</sup>

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<sup>31</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 96.

<sup>32</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 18.

<sup>33</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 255-262.

<sup>34</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 235-7.

<sup>35</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 21.

<sup>36</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase One* (Report, 2015) 18.

<sup>37</sup> Safe Work Australia, *Bullying and harassment in Australian workplaces: Results from the Australian Workplace Barometer Project 2014/2015* (Report, 2016) 6.

The drivers of workplace bullying include unsupportive leadership, poor workplace education on behavioural standards, poor workplace conflict management processes,<sup>38</sup> and cultures that have low rates of psychosocial safety.<sup>39</sup>

Characteristics of the custodial workplace go some way to explaining why bullying persists. These include:

- ▶ a lack of workplace cohesion across some sites and teams, with low levels of cross-team communication and collaboration<sup>40</sup>
- ▶ ineffective responses to bullying, including a lack of strong and well-understood organisational policies and poor disciplinary responses to bullying when it occurs<sup>41</sup>
- ▶ significant power imbalances and strong hierarchy, particularly in environments where managers and leaders are permitted to abuse power.<sup>42</sup>

The workforce divide between custodial and broader corrections workforce and well entrenched hierarchical, command and control structures can further embed and normalise harmful power dynamics.

## Understanding the drivers of racism and race-based discrimination

Racism and discrimination have been persistent threads in Australian history, not least the dispossession and violence experienced by Aboriginal people since colonisation.

In the 20th century, successive government anti-immigration initiatives created social segregation and embedded racial inequality in Australian communities. Racist attitudes persist in Australia – in recent research by Western Sydney University, 11 per cent of Australians identified as ‘prejudiced’ against people from other cultures, while just over a quarter (26 per cent) neither agreed nor disagreed.<sup>43</sup>

<sup>38</sup> Jordi Escartin, ‘Insights into workplace bullying: psychosocial drivers and effective interventions’ (2016) 9(1) *Psychology Research and Behavior Management* 157, 169.

<sup>39</sup> See generally Rebecca Law, Maureen F. Dollard, Michelle R. Tuckey and Christian Dormann, ‘Psychosocial safety climate as a lead indicator of workplace bullying and harassment, job resources, psychological health and employee engagement’ [2011] 43 *Accident Analysis and Prevention* 1782.

<sup>40</sup> See generally Manuela Priesemuth, Anke Arnaud and Marshall Schminke, ‘Bad Behavior in Groups: The Impact of Overall Justice Climate and Functional Dependence on Counterproductive Work Behavior in Work Units’ (2013) 38(2) *Group & Organization Management* 230.

<sup>41</sup> See Jose M. León-Pérez, Alicia Arenas and Thelma Butts Griggs, ‘Effectiveness of conflict management training to prevent workplace bullying’ in Noreen Tehrani (ed), *Workplace Bullying: Symptoms and Solutions* (London & New York: Routledge, 2012) 230–243, discussed in Jordi Escartin, ‘Insights into workplace bullying: psychosocial drivers and effective interventions’ (2016) 9(1) *Psychology Research and Behavior Management* 157.

<sup>42</sup> Sandra Wright, ‘Hierarchies and bullying: an examination into the drivers for workplace harassment within organisation’ (2020) 12(2) *Transnational Corporations Review*, 162-172.

<sup>43</sup> Kathleen Blair, Kevin Dunn, Alanna Kamp, and Oishee Alam, *Challenging Racism Project: 2015-16 National Survey Report* (Report, 2017) 8.

Racist attitudes toward people from culturally and linguistically diverse backgrounds and Aboriginal people continue to impact Australian workplaces. In March 2022, a Diversity Council of Australia report *Racism at Work* found that 43 per cent of non-white Australian employees commonly experience racism at work while only 18 per cent of white respondents identified racism as a problem.<sup>44</sup>

In organisations, there are factors that indicate racism and race-based discrimination is more likely to occur. These include:

- ▶ workplace cultures that do not value or support diversity, and fail to sanction discriminatory practices
- ▶ unfair and inequitable recruitment, training and promotional processes
- ▶ leadership that fails to support or recognise the value of diverse workforces.<sup>45</sup>

## Experiences of workplace harm in the custodial system

Many corrections staff have experienced and witnessed harmful and unwelcome behaviour where they work.

In our workforce survey, three-quarters of respondents (76 per cent) indicated that they had witnessed harmful workplace behaviour by one of their colleagues in the past five years. The most commonly witnessed behaviour was bullying, followed by discrimination, verbal abuse and sexual harassment.<sup>46</sup>

The Victorian Public Sector Commission's 2021 People Matter survey<sup>47</sup> indicates that corrections staff both experience and witness sexual harassment, bullying and discrimination at higher rates than the broader public sector workforce.<sup>48</sup>

In the 2021 People Matter survey, 26 per cent of prison-based survey respondents reported that 'incivility, bullying, harassment or discrimination' was their most prominent workplace stressor – much higher than the 7 per cent of respondents from the broader public sector workforce who cited these stressors.<sup>49</sup>

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<sup>44</sup> Diversity Council Australia, 'Racism at Work: How Organisations Can Stand Up to and End Workplace Racism' (2020).

<sup>45</sup> VicHealth, *Building on our strengths: A framework to reduce race-based discrimination and support diversity in Victoria – Summary Report* (Summary report, 2009) 31.

<sup>46</sup> Cultural Review, Corrections workforce survey (2021).

<sup>47</sup> The People Matter Survey is the Victorian public sector's annual independent employee opinion survey, administered by the Victorian Public Sector Commission (VPSC).

<sup>48</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

<sup>49</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Also see Victorian Public Sector Commission, 'Employee wellbeing', *People matter survey data, facts and visuals (state of the public sector)* (Web page, 22 November 2021)

<https://vpvc.vic.gov.au/data-and-research/people-matter-survey-data-2021/employee-wellbeing/> Note: private prison staff do not participate in the People matter Survey.

'In my time in this job, I have seen people who have performed poorly, disrespectfully, and have racially and sexually harassed others and have got away with it for 25 or 30 years because we haven't taken them on ... We haven't challenged them. We haven't had the systems, we haven't had the training, we haven't had the processes, and they've got away with really poor behaviour, and that has set the standard.'

**Expert interview**

## Workplace harm is under-reported

Where a workplace has a culture of secrecy and victimisation, actual rates of workplace harm are often under-reported. Reflecting on the 2021 People Matter survey, the VPSC described a low 'safe to speak up' culture across the adult custodial corrections system.<sup>50</sup>

Staff we spoke to shared the frustration and disappointment they felt when no action was taken in response to workplace harm. We heard that some staff who experienced workplace harm struggled to trust or work with colleagues who had witnessed it but failed to act:

'As a woman you can experience sexualised comments from both staff and prisoners. As a woman you need to ensure you are witnessed in calling out that behaviour to a prisoner as you can have the perception of inappropriate relationships. But nobody wants you to call the behaviour out if it's a staff member they turn a blind eye.'

**Staff member**

When harm was reported, the staff member who experienced the behaviour and any bystanders were frequently ostracised and bullied, sending a clear message to others that reporting workplace harm carries consequences. One staff member we spoke to described being excluded after they intervened in an inappropriate sexual conversation between colleagues:

'And then when I said that it was inappropriate, for the next two weeks, whenever I walked into any room everybody just stopped talking or they'd just leave the room. And that made my job really hard because I was asking them for things like, "What do I need to know about today?" "Nothing. You're right." But then I'd find out that one of my caseloads had gone to hospital or there was a prisoner in the unit that was talking about self-harm. But I'd find these things out from prisoners, I wasn't finding them out from the staff because they were excluding me because I made that one comment that it was inappropriate.'

**Staff member**

Workplace exclusion may be difficult for leaders to identify and in the custodial context can create additional safety and security risks.

<sup>50</sup> Victorian Public Sector Commission, Expert interview with the Cultural Review.

Almost a quarter (24 per cent) of respondents to our workforce survey who witnessed behaviours of concern toward staff and people in custody<sup>51</sup> said they did not take any action and 23 per cent indicated that they would ‘possibly not’ or ‘definitely not’ make a complaint or report about an integrity risk or issue in the future. Of those respondents who witnessed concerning behaviours, just 11 per cent made a formal complaint.<sup>52</sup>

## Sexual harassment in the custodial workplace

### Our survey respondents told us that in the last five years:

17% of all staff experienced sexual harassment from their colleagues	24% of women experienced sexual harassment from their colleagues	32% of all staff witnessed sexual harassment where the perpetrator was a colleague
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Responses to our workforce survey show that women were three times more likely to experience sexual harassment in the custodial workplace than men,<sup>53</sup> and that men were significantly more likely to be perpetrators of unwelcome behaviours.<sup>54</sup> A quarter of women who responded (24 per cent) had experienced workplace sexual harassment in the last five years. We heard across our engagement and in submissions that some women had experienced serious sexual violence in the custodial workplace, including sexual assault, rape and attempted rape.

The results of the 2021 People Matter survey describe the most commonly reported forms of sexual harassment custodial staff experienced, including:

- ▶ sexually suggestive comments and offensive jokes (69 per cent)
- ▶ intrusive and unwelcome questions (52 per cent)
- ▶ inappropriate staring and leering (23 per cent)
- ▶ inappropriate physical contact (21 per cent)
- ▶ unwelcome touching, hugging, cornering and kissing (12 per cent).<sup>55</sup>

Through our engagement, we heard that women experienced frequent commentary on their physical appearance and were the subject of sexist jokes and derogatory comments. We heard at many custodial locations that this type of behaviour was not

<sup>51</sup> Behaviours witnessed include discrimination toward people in custody, excessive use of force, inappropriate relationships, and masking behaviours, as well as workplace misconduct issues such as bullying and sexual harassment of colleagues.

<sup>52</sup> 27 per cent had an informal conversation with their manager/supervisor, 11 per cent made a formal complaint.

<sup>53</sup> 8 per cent of male respondents indicated they had directly experienced sexual harassment, compared with 24 per cent of female respondents.

<sup>54</sup> 61 per cent of respondents indicated the perpetrator was a male compared to 31 per cent of reported behaviours being attributed to the conduct of women. Data relates to all behaviours including bullying, discrimination, verbal abuse and sexual harassment.

<sup>55</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021).



called out by colleagues, and for many women was a troubling part of their ordinary workday:

'Male officers ... tell every female on Squad or brand new Prison Officer that "she's attractive". The same males do it every Squad, and hang around them desperately for attention ... The first time I met an Acting Operations Manager, he told me that there was an attractiveness scale for CV that was different to an attractiveness scale in real life. He gave me an example, and directly pointed out a young female ... worker in a prison, and said "she's probably an 8 (out of 10) on the CV scale, but in the real world she's maybe only a 6".'

**Staff member**

Responses to our workforce survey showed that younger people, recruits and lower-ranking and non-custodial staff were far more likely to experience sexual harassment than other staff:

- ▶ 39 per cent of younger staff aged 18–29 had experienced sexual harassment in the previous five years, compared with 17 per cent of the overall workforce. In this age group, 52 per cent of people had witnessed sexual harassment occurring in their workplace.
- ▶ 30 per cent of staff in prison support roles, including administrative and human resources roles, had experienced sexual harassment in the previous five years.
- ▶ Sexual harassment was more common in front-end, high-security locations.

### **'You cop the sexual stuff from the moment you step out into the prison'**

'You receive sexual comments constantly from staff. If I spoke to a male officer, if a male officer walked with me, someone would immediately start saying "He wants her, she wants him".'

When I was acting up, a particular staff member turned around and said, "You're only acting up because he wants a piece". I was totally gutted. I wanted that opportunity and I worked hard to get it. It's hurtful that people think it couldn't be about the fact that I worked my guts out. I wanted it not to be true, but I felt so undermined.'

*A corrections staff member*

We also heard that 'everyday sexism' is commonly experienced by women working in custodial environments. This typically involves frequent, ongoing behaviours that emphasise gender stereotypes through both formal interactions (for example, who is encouraged to speak at meetings or tasked with jobs such as making tea or tidying the work kitchen) and casual interactions (for example, workplace banter and jokes).<sup>56</sup>

'There is a lot of sexist joking ... I have female colleagues who are not given tasks because of their gender.'

**Staff member**

<sup>56</sup> Champions of Change Coalition, 'We set the tone: Eliminating everyday sexism' (Report, 2019) 6-10.

We heard that the culture of the custodial workplace embeds stereotypes about general roles, devaluing and excluding women through everyday sexism. Women we spoke to described inappropriate comments and harmful attitudes around women’s roles and their suitability for the challenges associated with custodial work:

'There was [sic] a lot of sexually inappropriate conversations that happened, many about women and how women should be spending more time at home taking care of the kids.'

Staff member

## Bullying in the custodial workplace

### Our survey respondents told us that in the last five years:

52% of staff experienced bullying from their colleagues	30% of staff experienced verbal abuse and threats from their colleagues	64% of staff witnessed bullying where the perpetrator was a colleague
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Rates of bullying in Australian workplaces are some of the highest in the world.<sup>57</sup> This experience was reflected in responses to our workforce survey, which indicated that bullying is the most commonly experienced harmful workplace behaviour in the corrections workforce. Just over half of survey respondents (52 per cent) told us that they had experienced bullying at work in the past five years.

Further, almost two-thirds of survey respondents (64 per cent) had witnessed bullying in their workplace in the last five years. A further 30 per cent of survey respondents reported experiencing verbal abuse and threats from their colleagues. Slightly more women reported experiencing bullying than men, with similar rates occurring across all custodial locations.

**Figure 1. Experiences of workplace bullying in the adult custodial corrections system**

Behaviour	Overall	Location security rating			Gender	
		Min	Med	Max	Female	Male
Bullying	52%	49%	51%	53%	54%	48%
Verbal abuse and/or threats	30%	33%	29%	33%	35%	27%
Physical assault	3%	2%	1%	5%	2%	3%
Exclusion and ostracism	2%	4%	3%	2%	4%	1%
Gossiping, rumours and/or false accusations	2%	4%	2%	3%	2%	2%

<sup>57</sup> Tessa Bailey and Maureen Dollard, Asia Pacific Centre for Work Health and Safety, Submission No 289 to Australian Government Productivity Commission, *Mental Health* (Inquiry Report, 4 April 2019) 2-7.

As noted above, the People Matter survey also reflects disproportionately high rates of bullying in the custodial workplace compared to other public sector organisations. In 2021, 36 per cent of the custodial workforce reported that they had experienced bullying in the past year, compared to 16 per cent for the broader public sector.<sup>58</sup> Data provided by the Victorian Public Sector Commission (VPSC) identified that the issue of bullying was increasing, with the highest rates ever reported recorded in 2021.<sup>59</sup>



In our workforce survey, 58 per cent of respondents who provided open-text commentary spoke about experiencing and witnessing workplace bullying, with a particular emphasis on bullying by direct supervisors and senior management:

'It is assumed that you are thick skinned and bullying and harassment are a part of the culture in Corrections. It is going to take some time for things to change.'

**Staff member**

Employees reported being criticised repeatedly in front of their colleagues, being ostracised and isolated, and experiencing hostile behaviours such as name-calling and verbal abuse. We heard from some people that bullying was such an ordinary occurrence in the custodial culture that staff would rather demonstrate bullying behaviours (as a survival technique) rather than become targeted themselves:

'So, you've really got a choice: bully or be bullied.'

**Staff member**

Some corrections staff were more likely to report experiencing bullying, including women, part-time staff, young people, people with disability, and LGBTIQ+ people. Bullying frequently occurred alongside other forms of discrimination including sexual harassment and sex discrimination.

<sup>58</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Also see Victorian Public Sector Commission, 'Negative behaviour', *People matter survey data, facts and visuals (state of the public sector)* (Web page, 22 November 2021) <https://vpvc.vic.gov.au/data-and-research/people-matter-survey-data-2021/negative-behaviour/>. Note: private prison staff do not participate in the People matter Survey.

<sup>59</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2022). Note: private prison staff do not participate in the People matter Survey. DJCS did not participate in the People Matter Survey in 2020 or 2022, so no data is available for these years.

**'There are no consequences for poor behaviour. Promotion of staff who have boundary breaches; poor tolerance of staff who want change, they're viewed as troublemakers. General harassment is accepted as normal.'**

Courtney\* and Nisha\* work together at a prison location. They told us that bullying took many forms in the custodial workplace:

'They (the male staff) do things like using avoidance, so they won't reply to emails, they have us on permanent delete, so they'll just delete emails, they're rude across the radios ... Gaslighting – we'll ask staff to fill out a behaviour report, they'll be like, "No, never got it". It's like, are they trying to send us a bit mental. It's that petty, juvenile behaviour which most of them are party to.'

'They try to humiliate us when they can. Any opportunity to humiliate us, they'll take it ... There's only a handful of female custodial staff. A few are off on stress leave, a few have left, we've had a staff member have significant mental ill-health as a direct result of bullying. This is the culture where there's no one willing to stand up and be brave and say, "This is not okay".'

'They do things like masquerading insults as a joke – all your typical misogynistic traits are unfortunately rife – the gossip, the innuendo ... it's schoolyard stuff. If you remember back to year nine at high school – it's that, on steroids.'

When we asked Courtney and Nisha about how bullying is responded to in the custodial workplace, they said that they 'look to management to set the good examples and to demonstrate there are consequences for poor behaviour', but 'there are no consequences for poor behaviour, promotion of staff who have boundary breaches, poor tolerance of staff who want change, they're viewed as troublemakers. General harassment is accepted as normal.'

*Corrections staff members*

Respondents in non-custodial roles supporting prison operations – including human resources and maintenance staff – reported significantly higher rates of bullying in the form of verbal abuse, with 60 per cent of this cohort experiencing this type of behaviour compared to 30 per cent of the broader corrections workforce:

'I am told that I'm basically nothing more than a contractor, therefore my opinion doesn't matter ... Custodial staff think that it's okay ... we're treated quite differently, custodial staff versus non-custodial staff ... And it's generally led by senior ops managers and GMs ... But I don't want others to have to put up with that. And I don't want to either because there's been occasions where it's happened to me and it's brought me to tears and shaking and stuff afterwards, as well ... And actually, it does have a lot of an impact. It's just horrible.'

**Staff member**

This is consistent with what we have heard about levels of disrespect, exclusion and poor treatment of VPS or non-custodial staff shown by some staff in 'uniform' across the adult custodial corrections system. This type of bullying can arise from a perception or sense of power, authority and importance derived from the custodial uniform, rank and command structures – and appears to manifest in behaviour toward non-uniformed staff who are performing equally important but different roles.

'It is the majority of the staffing cohort who are in uniform (that treat the VPS staff with disrespect) ... I know the people that run the stores and the canteens absolutely do. What concerns me the most is, it's not the lower ranks. It goes all the way through to [a senior management] level and it's tough. It's really tough. We should feel supported and included.'

**Staff member**

'It's silly that VPS [staff] get ostracised, you are trying to help people.'

**Staff member**

'(Between COG and VPS staff) there's an absolute divide. You pretty much have to go out of your way to please officers otherwise they'll just shut you off, ignore you, won't let you access the unit because they know they hold the power in that. Because it comes down to security and they're the ones that do the security really, so you need to keep them on side.'

The way in which these power dynamics are implicated in workplace bullying impacts individuals as well as the broader safety and performance of the workforce.

As with sexual harassment, the highest rates of bullying occurred at front-end and maximum-security locations. We found that these workplaces have higher risks of psychosocial hazards, including exposure to occupational violence and stress. We address the correlation between workplaces with high rates of psychosocial hazards and workplace harm later in this chapter.

'There's bullying, I see it so much, there's just so much bullying goes on ... Some of it is blatant, some it's just straight out there and some of its indirect and gaslighting ... It's not every day – [but] sometimes it's every day.'

**Staff member**

Research indicates that the relationship between psychosocial hazards and perpetrating harm is particularly marked in the behaviour of managers and supervisors, who are more likely to mistreat the staff they supervise following workplace demands and stress.<sup>60</sup>

<sup>60</sup> See generally Gabi Eissa and Scott W Lester, 'Supervisor role overload and frustration as antecedents of abusive supervision: The moderating role of supervisor personality' (2017) 38(3) *Journal of Organisational Behaviour* 307.

## Discrimination in the custodial workplace

### Our survey respondents told us that in the last five years:

36% of all staff have experienced discrimination	43% of women have experienced discrimination	45% of LGBTQI+ people have experienced discrimination	69% of people with disability have experienced discrimination
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Discrimination was the second most commonly experienced harmful workplace behaviour reported by survey respondents. In our workforce survey, more than a third of respondents (36 per cent) reported experiencing discrimination or less favourable treatment because of their gender, race, disability or another protected attribute over the past five years.

A similar number of respondents (37 per cent) told us that they had witnessed discrimination taking place in custodial workplaces. More women reported witnessing discrimination (47 per cent) than men (34 per cent). Those who had witnessed discrimination said verbal taunts and abuse were the most common behaviours, along with adverse decisions concerning promotion and progression.

In total, 43 per cent of women responding to the workforce survey told us that they had experienced discrimination in the past five years. Multiple women told us that discrimination had impacted their progression through the custodial workforce – we heard that pregnancy, family and caring responsibilities were openly cited by colleagues as the reason for their unfavourable treatment:

'I'd just put in to do the senior leadership program. And I went to the [senior manager] at the time, and I said, "I need a few days off. This is what's happening [with my family]". And they said, "Okay, that's fine". And then when I didn't get on the senior leadership program, I went for feedback, and I asked why I wasn't accepted. And they said, "Because you've got too much going on in your personal life".'

**Staff member**

Six in 10 staff with disability (62 per cent) told us that they had experienced discrimination in the workplace – almost double the rate of the broader corrections workforce. These respondents reported significantly higher rates of exclusion and ostracism, with 15 per cent of respondents with disability reporting these experiences of harm – well above the 2 per cent of the broader workforce who reported these experiences:

'Having a disability and learning to communicate with others is hard, they perceive that I am a "dobber" when I am only trying to learn about processes. People I talk to have passed it on as me dobbing.'

**Staff member**

Discrimination was also a common experience for LGBTIQ+ corrections staff – 45 per cent of respondents in this group reported experiencing discrimination based on their sexual orientation or gender identity, compared to 36 per cent of the broader workforce. LGBTIQ+ staff were also more likely to say they did not feel respected or safe at work – only 18 per cent of LGBTIQ+ respondents told us they felt safe and supported at work, compared to 31 per cent of the broader corrections workforce:

'Discrimination, homophobia is rife, regretfully in the prison ... comments like "You're a poof, you're a sissy, you're a girl".'

**Staff member**

'[The officers I worked with] made a lot of derogative comments about members of the LQBTIQ+ community ... There were just comments about that and kind of shaming them and saying "It's weird" ... saying they don't agree with it, they don't want it in their face, they don't like it.'

**Staff member**

During our site visits, we were disappointed to witness open racist and discriminatory behaviour by corrections staff across at many locations, with no action taken by bystanders or leaders when it occurred. Corrections staff made casual comments about racial stereotypes, made gendered jokes, and talked about the characteristics of staff and people in custody in a way that was openly derogatory:

'People tend to describe [the prison working environment] as a boy's club. And it's true. And not only for female officers; it's also for people from different [cultural] backgrounds. If you are not part of that sort of group, it's very hard to crack that.'

**Staff member**

Some staff openly told us that they disagreed with measures to promote equality for disadvantaged cohorts and address workplace inequality. Similar attitudes were reflected in the workforce survey, where some corrections staff conveyed concerning opinions about measures to increase the proportion of women, staff from culturally and linguistically diverse backgrounds and Aboriginal staff in the workforce.

Currently, limitations in DJCS's systems prevent ready analysis of discrimination complaints. The inability to disaggregate complaints data or the basis on which discrimination occurred risks rendering racism or racially discriminatory conduct invisible. Collecting more comprehensive data on the types of discrimination being reported in complaints will allow DJCS to better understand incidents of discrimination and racism occurring in the custodial workplace and their frequency, and target specific behaviours.

### **'You're not part of the culture because you don't have an Aussie accent.'**

'It was an interesting journey coming into the job and gaining acceptance from the staff that worked at the facility, because I am from a different background, having an accent, and English not being my first language.

The community, they believe that the main challenge of working in a prison is dealing with prisoners, but for me to be honest with you, it was more of a challenge just to fit in the culture of corrections, at this site and in this [location]. It was a bit hard at the beginning. I have more problems with staff than prisoners.

I got comments initially that made me feel like I'm not part of the culture, like I'm someone else that comes from overseas. And its constant comments of like, "Learn to speak English, I can't understand you" or "You're not part of the culture of the area because you don't have an Aussie accent".

People are not interested in talking to you [if you have an accent]. I think my English level is pretty good, and I can articulate and express myself in a decent way. But sometimes it's just that blatant refusal to accept that someone coming from a different culture could perform as good of a job as someone else that's from the area ... It's just not good enough, certain attitudes, regardless of the location that a prison is in. It should be the same, people should be made to feel comfortable regardless of where they work, whether it is in Melbourne, or somewhere in regional Victoria. I think Corrections Victoria should uphold the same standards, regardless of the location.'

*A corrections staff member from a cultural and linguistically diverse background*

## **Racism and discrimination has a significant impact on Aboriginal employees in the custodial workplace**

For Aboriginal people in Australia, institutions and systems have perpetuated racism, oppression and discrimination, including within the justice system, since colonisation.<sup>61</sup> In the custodial workplace, Aboriginal staff reported high rates of verbal abuse, bullying and discrimination.

Research has also shown that Aboriginal people are less likely to report experiences of harm because of a lack of trust in the fairness of reporting structures, fear of not being believed, a lack of representation in decision-making processes, and negative perceptions and experiences of justice processes and government agencies.<sup>62</sup>

While only a small number of respondents to our workforce survey identified as Aboriginal (n=12), nearly half of these respondents said that they experienced discrimination and racism at work. These responses reflected the 2021 People Matter Survey results, where only 27 per cent of respondents who identified as Aboriginal reported they felt culturally safe at work; and more than half disagreed

<sup>61</sup> See, for example, Niyi Awofeso, 'Racism: a major impediment to optimal Indigenous health and health care in Australia' (2011) 11(3) *Australian Indigenous Health Bulletin*.

<sup>62</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020), 172–174; Matthew Willis, 'Non-Disclosure of Violence in Australian Indigenous Communities' (2011) 405 *Trends & Issues in Crime and Criminal Justice*.



with the statement that 'there is a positive culture in DJCS with respect to employees who are Aboriginal'.

In *Part 5 Aboriginal Cultural Safety*, examine the experience of Aboriginal staff in the adult custodial corrections system and make recommendations to ensure that the cultural safety of Aboriginal staff is a system-wide priority.

## The characteristics of alleged perpetrators

In our workforce survey, participants who had experienced workplace harm provided information about the person responsible – 61 per cent of respondents reported that their perpetrator was male, while 31 per cent reported that the perpetrator was female. The remaining 8 per cent of respondents did not identify the gender of their perpetrator.

When we asked about the role of the perpetrator within the custodial location, 45 per cent of respondents reported that the alleged perpetrator was a manager or supervisor at their worksite, 32 per cent said it was their direct supervisor, and 16 per cent reported that it was the most senior staff member at their location:

'There are multiple perpetrators of sexual harassment in the staffing group. You can come forward, but you risk your career. These same perpetrators continue the same behaviour – they seek out relationships, they seek out new staff to target. Female staff are often warned about them when they arrive [here]. All female staff here have a story – most women have the same issues with the same group of male staff perpetrators. And it happens daily. These men feel the right to come to work and pick out their prey. These perpetrators continue to work in senior positions and can make your life hell for reporting. You are punished with changes to your roster or being refused access to progression or secondment for "operational needs".'

**Staff member**

We were particularly concerned to hear that it is common for more senior staff members to perpetrate unwelcome behaviours toward their subordinates. The poor behaviour of senior leaders and other 'high value' staff represents a serious abuse of power and authority. It may also encourage others to engage in behaviours such as sexual harassment,<sup>63</sup> sending a signal that unwelcome and unlawful conduct may be sanctioned and allegations minimised. It is also likely to reinforce victim's feelings of powerlessness, increase their levels of stress and may discourage reporting.<sup>64</sup>

Cultural change cannot be achieved without accountable leadership who model respectful workplace conduct.

<sup>63</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 201.

<sup>64</sup> Regina Day Langhout, Mindy E Berman, Lilia M Cortina et al, 'Sexual Harassment Severity: Assessing Situational and Personal Determinants and Outcomes' (2005) 35(5) *Journal of Applied Social Psychology* 975, 1000–1; Colleen E O'Connell and Karen Korabik, 'Sexual Harassment: The Relationship of Personal Vulnerability, Work Context, Perpetrator Status, and Type of Harassment to Outcomes' (2000) 56(3) *Journal of Vocational Behavior* 299, 322

## Impact of workplace harm on the psychological safety and wellbeing of staff

Respondents to our workforce survey detailed the impact of their experiences of workplace harm. Of those who had experienced workplace harm, 85 per cent told us that this experience had a detrimental impact on their psychological wellbeing, including negative impacts on mental health and stress (67 per cent) and self-esteem and confidence (62 per cent). Survey participants also reported experiencing negative impacts on their health and wellbeing (47 per cent), their employment and career (27 per cent), and their relationships with their families and children (27 per cent) as consequence of their experience of workplace harm.

The experiences of custodial staff are consistent with recent research into police and emergency services in Australia which found that poor workplace practices and cultures are as harmful to a workforce as the occupational trauma associated with their roles.<sup>65</sup>

We heard from staff that workplace harm was driving attrition in the corrections workforce – almost four out of 10 respondents who had experienced workplace harm (37 per cent) told us that they were considering leaving their role with Corrections Victoria because of their experience of harm:

'There's quite a toxic underlying culture. That culture is so disruptive to people – it's why people leave the job. I believe it's that toxicity. It's a bit of a beast.'<sup>66</sup>

**Staff member**

We heard similar reflections during our site visits, where a number of staff told us that they were planning to quit their jobs because of the impact of harm. Many staff described the significant impact of their experiences of workplace harm, including multiple accounts of subsequent post-traumatic stress disorder, depression and suicidal ideation:

'I thought of ending my life.'

**Staff member**

'I have resorted to substance abuse, so I started drinking. I've taken a lot of days off work.'

**Staff member**

'I couldn't sleep. PTSD escalated. Lack of concentration.'

**Staff member**

'[I experienced] depression, anxiety, withdrawn, isolated, suicidal thoughts.'

**Staff member**

<sup>65</sup> Beyond Blue, *Answering the call national survey: Beyond Blue's National Mental Health and Wellbeing Study of Police and Emergency Services* (Final Report, 2018) 17.

<sup>66</sup> Note: DJCS data demonstrates that from October 2021 to October 2022, 79.5 per cent of trainees who commenced in their squad graduated.

'I now suffer from depression.'

Staff member

## Impact of workplace harm on capability

Workplace harm damages the culture and morale within workplaces.<sup>67</sup> Recent studies have found that bullying and poor workplace culture can interfere with working memory, increase anxiety and weaken team collaboration – including by obstructing communication, information-sharing and help-seeking.<sup>68</sup> These skills and practices are essential in a demanding custodial environment, where staff must care for vulnerable cohorts and work to meet their rehabilitative needs.

We have heard that workplace harm is compromising the ability of staff to meet the complex demands of their roles. Staff across the adult custodial corrections system told us that workplace harm impacted their sense of value, their connection to their workplace, and their performance of their roles. We also heard that workplace harm decreased the capability of staff, by adding to their stress, dampening their coping mechanisms, and impeding their ability to make decisions in a complex environment:

'So there's a direct link between how you manage your bullies within uniform within how you conduct your job and how you manage your job, and that's something that a lot of people can't quite get their head around, and that's a reality of the prison.'

Staff member

Staff who had experienced harm told us that it had impacted their ability to exercise empathy and build positive relationships with people in custody:

'I struggled in my professional and personal life. It impacted my work with the service users and my relationships towards my colleagues, due to increased anxiety and hypervigilance.'

Staff member

<sup>67</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 284; Safe Work Australia, *Guide for Preventing and Responding to Workplace Bullying* (May 2016) 8; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 8, 218.

<sup>68</sup> For a list of relevant scholarship see Civility Saves Lives, Academic (Web page) <https://www.civilitysaveslives.com/academic-papers>.

See also Constantine Manolchev and Duncan Lewis, 'A tale of two trusts: case study analysis of bullying and negative behaviours in the UK ambulance service' (2021) *Public Money and Management*

In our workforce survey, staff who had experienced workplace harm reported feeling safe, motivated and supported at far lower rates than those who had not experienced workplace harm, and felt they had poorer relationships with their colleagues:

- ▶ 62 per cent of staff who had experienced workplace harm said they felt safe at work, compared to 76 per cent of staff who had not
- ▶ 56 per cent of staff who had experienced workplace harm said they felt respected by their colleagues, compared to 85 per cent of staff who had not
- ▶ 52 per cent of staff who had experienced workplace harm said that they are motivated to do their jobs, compared to 67 per cent of staff who had not
- ▶ 37 per cent of staff who had experienced workplace harm said that they feel respected and valued by their manager or supervisor, compared to 67 per cent of staff who had not.

This data is consistent with research on the impacts of sexual harassment, bullying, discrimination and victimisation on workplace culture. These behaviours and poor organisational responses, breed low morale and motivation, low levels of trust and poor engagement between staff and high levels of absenteeism and turn over.<sup>69</sup>

## Workplace harm in private prisons

DJCS's understanding of the nature and extent of workplace harm in private prisons is limited by poor record-keeping and a lack of oversight required under contractual arrangements. Existing workforce surveys like the annual People Matter Survey are only open to public sector employees, and our workforce survey received a low response rate from private prisons staff (N=62). However, the responses we did receive indicate that private prison staff are experiencing workplace harm at similar rates to staff in public prisons – consistent with our direct engagement with private prison staff.

At the three private prison locations:

- ▶ 53 per cent of respondents said they had experienced bullying (n=32.9)
- ▶ 35 per cent of respondents said they had experienced discrimination (n=21.82).
- ▶ 16 per cent of respondents said they had experienced sexual harassment (n=9.95)
- ▶ 31 per cent of respondents said they had experienced verbal threats or abuse (n=18.91).

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<sup>69</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 686; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 275-278.

While these locations are operated privately, their staff have the same right to be safe and respected at work as public sector staff, and they are entitled to the same protections under the Equal Opportunity Act and workplace safety laws.

## Corrections staff need tailored, mandatory ongoing training on respectful workplace behaviour

Accessible, mandatory, practical and evidence-based training on workplace harm should be regularly provided to staff, routinely evaluated for effectiveness, and reiterated through regular refresher training.<sup>70</sup>

We identified a range of issues with how current training embeds behavioural standards:

- ▶ While there are a range of DJCS and Corrections Victoria policies and requirements that set out the behavioural standards required for custodial staff, these are not being consistently applied in practice by the workforce.

Pre-service training has insufficient content related to setting clear expectations for respectful workplace behaviour, identifying where behaviour is unacceptable, and helping trainees to understand what to do if they experience or witness harm – for further discussion on building capability, see Part 3.

- ▶ DJCS's mandatory online e-learning module 'Respect in the Workplace' has a specific component for custodial staff; however, we heard there a 'tick-and-flick' attitude to this online training. The e-learning module does not sufficiently detail the nature and impact of harmful behaviour. We also found that the e-learning module is not always accessible or reliable, which makes completion challenging when staff may only have limited computer access during their work hours and there are limited staff assigned to each work area.<sup>71</sup>
- ▶ In 2021, the Integrity and Reviews business unit delivered training on behavioural requirements and understanding the nature of workplace harm, but only a very small number of corrections staff (14) were able to participate.<sup>72</sup> This training included some promising content related to workplace harm, but it was not delivered to enough corrections staff to have a meaningful impact on workplace behaviour.

<sup>70</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 667-677.

<sup>71</sup> The Review team attempted multiple views of the online training module for custodial staff on the Nexus platform from a Department of Justice and Community Safety laptop both remotely and in the office. The module crashed multiple times, and would frequently not load. Completing the short E-Learn took many attempts and 'reloads' over a number of hours. In a resource-depleted, operational environment, any online training must be reliable if it is to be effectively delivered.

<sup>72</sup> The operational response to the COVID-19 pandemic significantly impacted the availability of custodial staff for training during 2021.

## A new education model for addressing workplace harm and racism

To better address harmful attitudes, DJCS should develop and roll out a new Safe Workplace Education Model, tailored to the custodial workplace, to increase staff knowledge about the nature and impact of workplace harm<sup>73</sup> and racism. This educational model should assist staff who are impacted by harm, or witness it happening, to understand the reporting options available to them and emphasise that they will be protected if they decide to make a report:

'[We need a] complete overhaul of the pre-service training, the performance management system is ineffective, leadership training. We need brave and courageous leaders, we need to be able to challenge our poor behaviour and challenge it in a significant way.'

Expert interview

The proposed Safe Workplace Education Model is an opportunity to address recurrent racism in the custodial workplace. During our engagement, we witnessed multiple instances of corrections staff demonstrating racist behaviours, including inappropriate jokes and comments reflecting offensive stereotypes.

The proposed Safe Workplace Education Model should include a specific focus on preventing and addressing racism, to help corrections staff understand the nature and detrimental impact of racism, reflecting structural power inequalities and dominant social groups.<sup>74</sup>

The Safe Workplace Education Model should draw upon best practice approaches to workplace learning, including face-to-face learning in small groups, composed in a way that addresses any potential power imbalances; seminar-style teaching facilitated by experts in behavioural change; and role playing and reflective practice to increase engagement and empathy and directly address myths and commonly held beliefs.

It is also important that the education model reflect DJCS's most up-to-date policies and procedures and be regularly reviewed for consistency. It must also reinforce the behavioural expectations of the workplace throughout their employment, so that pervasive cultural norms do not counteract the standards set in pre-service training:

'I think that once [new recruits] get off that 41 days [of training] where they're told integrity, respect, all of these things, teamwork, working together and these are our values and there's no bullying and all of this stuff and then their first week in their job, they're getting screamed at by someone and, "You're useless to me. You don't know anything. Go away".'

Staff member

<sup>73</sup> European Institute for Gender Equality, *Effective gender equality training: Analysing the preconditions and success factors – Synthesis report* (Report, 2016) 39.

<sup>74</sup> Jessica Walton, Naomi Priest and Yin Paradies, 'It depends how you're saying it: The complexities of everyday racism' (2013) 7(1) *International Journal of Conflict and Violence* 75, 88.

**Recommendation 4.1**  
**A 'safe workplaces'**  
**education model for the**  
**corrections workforce**

The Department of Justice and Community Safety should create a 'safe workplaces' education model that identifies and addresses drivers of workplace harm and integrity issues in the adult custodial corrections system.

The 'safe workplaces' education model should be compulsory and delivered face-to-face where possible. It should be delivered to all staff on a regular basis, including new recruits, Victorian Public Service staff working within prisons, supervisors and prison managers. The education model should:

- a) set out the values and behaviours expected of the Victorian public sector
- b) enable staff to identify harmful workplace values and conduct, understand the impact of harm and see their role in setting expectations – this should include harmful 'everyday behaviours' with a specific focus on racism
- c) increase staff knowledge of reporting and complaints pathways
- d) build active bystander skills, with clear information on the supports that will make it safe to speak up in the custodial workplace
- e) be regularly monitored and evaluated for effectiveness and impact.





## 12 Understanding integrity risks

Most people working within the adult custodial corrections system do the right thing and act with integrity in their work, supporting positive change in the lives of people in custody. However, the closed nature of the custodial environment can heighten the risk of corruption and integrity issues. Abuses of the power in a custodial setting are against the law, harmful for the culture, and detrimental for the long-term outcomes of people in custody.

Building an integrity-oriented culture is important to protect the rights and safety of people in custody and support the overall security of the prison and safety of staff. It is also critical to ensure that the human rights and dignity of people in custody are respected and that they are not traumatised by their experience in prison, reducing their risk of reoffending when they return to the community.

Preventing integrity risks was a key line of enquiry in the Cultural Review's Terms of Reference, prompting us to examine how to help build a prison system free from breaches of integrity. Throughout the Cultural Review, we considered a range of integrity risks in the adult custodial corrections system from the perspectives of both staff and people in custody, as well as examining data, policies and processes. These include the unlawful use of force, inappropriate relationships, misuse of body worn cameras, restraints, seclusion and other restrictive practices.

As discussed in Part 2, a custodial culture that is harsh or punitive is incompatible with the overarching objectives of helping people in custody rehabilitate and supporting community safety. Embedding a more therapeutic approach requires a shift in the organisational mindset and focus on individual attitudes and beliefs that may undermine integrity in workplace conduct.

While integrity breaches represent poor decision-making among a small minority of corrections staff, we heard integrity-related concerns across the adult custodial corrections system, suggesting high levels of under-reporting. Even a single integrity breach can have a very serious impact on the custodial culture, damaging morale and the sense of safety for those living and working in Victorian prisons.

In this chapter, we examine the nature of integrity risks and how to build systems and individual capability to better detect, prevent and respond to issues of integrity. We also consider previous recommendations made by the Victorian Ombudsman and the Independent Broad-based Anti-corruption Commission (IBAC) related to integrity issues in Victorian prisons.

### Key findings – Understanding integrity risks

- ▶ While DJCS has a renewed focus on transparency and addressing integrity issues, significant integrity concerns remain – 39 per cent of respondents to our workforce survey had witnessed integrity issues or inappropriate behaviour by staff toward people in custody over the past five years.
- ▶ Staff are more likely to report integrity risks than they were in the past,<sup>75</sup> but many are still reluctant to do so due to fear of reprisal and a belief that the issue may be covered up. Limitations in current data, monitoring and reporting systems further obscure the prevalence of integrity issues.
- ▶ A range of cultural factors enable integrity risks to persist, including the closed nature of the custodial environment, an over-reliance on command-and-control hierarchies, fear of retaliation for reporting integrity concerns and the power imbalance between corrections staff and people in custody.
- ▶ There is little visibility of unlawful use of force despite a recent increase in internal reviews and audits. We identified many of the same cultural issues described in the Victorian Ombudsman's recent investigation into use of force,<sup>76</sup> including under-reporting and limited oversight and accountability.
- ▶ Body-worn cameras (BWCs) have helped reduce some integrity risks and provide an objective record of incidents. However, they are being under-utilised across the system and, where they are used, there are insufficient safeguards to prevent noncompliance and masking behaviours.

<sup>75</sup> In 2020/21 there were 64 referrals to the Integrity and Reviews business unit relating to integrity-related misconduct behaviours, the highest rate of reporting in the past five years: Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

<sup>76</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022).

- ▶ Strip-searching continues to be performed routinely, despite the availability of body scanner technology which is effective in identifying contraband.<sup>77</sup> There is a lack of central oversight of strip-searching data, presenting unnecessary integrity risks across system.
- ▶ People in custody are concerned about the misuse of separation and management units, which are used by some staff as a form of reprisal or preventive detention. While DJCS is currently focusing on these practices, several relevant recommendations from Victoria's independent integrity bodies have not been progressed for a significant period of time.
- ▶ The use of restraints, including spitter hoods, handcuffs and other restrictive practices present integrity risks related to abuse of power, threats or punishment. These practices, while sometimes necessary, require enhanced oversight, supported by consistent, central data collection.
- ▶ Inadequate data and information management systems are limiting opportunities for analysis and oversight of the extent and patterns of particular integrity concerns across the system.<sup>78</sup>

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<sup>77</sup> It is understood that, following the Victorian Ombudsman's 2017 report *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, DPFC implemented new technology to look for contraband via scanners instead of invasive strip searches, however, body scanners are not utilised across all sites.

<sup>78</sup> While the Department can draw on information sources including notifications from IBAC, intelligence from other integrity bodies, internal reports from the Corrections Victoria Intelligence Unit (CVIU) and JARO to inform risk assessments, these sources do not replace the need for comprehensive data insights and monitoring.

# What participants told us about **INTEGRITY AND CONDUCT**

## The workplace culture enables integrity risks.

Staff are very much like, "What's the point; it's not going to change". So staff have given up unfortunately in bringing things forward because for whatever reason [some] particular staff members just keeps getting away with [consistent bad behaviours].'

Previous [senior managers] have always shielded their close associates from scrutiny to the point of corruption. They have both lied to staff and not followed through with investigations to ensure members of their teams are not held accountable for their actions. I have personally witnessed these managers knowingly turn a blind eye to corrupt behaviours such as staff standing over and/or bullying prisoners or making threats of loss of visits, placement restrictions or serving time on a restrictive regime with little or no evidence to support such penalties being applied.'

## Staff experience barriers to reporting integrity issues.

There's still this "You don't write other officers up" [mentality]. That still happens and if you do, quite often you're the one that ends up suffering for it. There's been quite a few instances over the last couple of years where people have followed the process because they've just come off squad where the general manager is saying, "Integrity, report these people, do all this stuff", and then they end up being ostracised, people treat them badly and then you have a supervisor or an ops manager that says, "Well, it's not really that bad".

People don't report people here because there is no confidentiality in this place. There's just not. Someone knows someone in somewhere so no one is recording this stuff, myself included. I can tell you – you asked me why I'm not a gazetted senior, if I raise this formally, I can 100 per cent tell you I will not get a position there.'

## People in custody experience barriers to reporting integrity issues.

I'll be honest, I haven't [reported any inappropriate behaviour of officers] ... I probably should have, but there's always that fear of repercussion if you report things like that because they always back their officers.'

Unfortunately, in a prison like this there's no [staff wearing] body cameras which really frustrated us because every time we made a complaint to the Ombudsman, there's no proof, just word against word, and that's another thing that I think that need to change, you've got to have body cameras.'

In prison I felt helpless, worthless, like I can't do nothing about it. Whether officers were abusing or trying to bully. I felt like shit because I know I can't do nothing about it. If I did do something, then that's going to impact on me bad, no matter what happened. Even if they're in the wrong, they're still right.'

**People in custody are impacted by integrity breaches.**

I've had staff strip-search me and tell me if I didn't comply with instructions, they would stick the attack dog onto me ... I have seen them actually do this to another inmate ... Male officers asked me once to pull back my foreskin on my penis during a strip search, I complied and then the two male staff laughed and clapped each other and said to me "I can't believe you did that idiot!"

I saw another prisoner being escorted one evening and he had a seizure. The [escorting staff] beat the shit out of him telling him not to resist. I had to clean his blood off the wall.'

I have been physically assaulted through inappropriate use of force such as "pop the knee/fold leg" technique. Inappropriate use of restraints - handcuffs on so tight they draw blood, being lifted up by cuffs to cause hand/wrist nerve damage.'

**Women in custody are particularly vulnerable.**

There was an incident where I was stripped in my cell with my door open and two male officers standing outside my cell watching which is obviously violating. It's not okay. I also asked the two female officers to shut my door, they both said no. They both refused to. I had an officer who had his back towards me but turned around looking and I was half naked. Then another officer standing outside my door looking in my mirror, locking eye contact with me ... It's invasive; it's not okay. It's a breach of my privacy. I'm a female, obviously, they don't know what I've been through and what's gone on in my life or what's happened to me, let alone being allowed to do that.

**Some staff use separation, or threaten to, to punish people in custody.**

I was set up by an officer an [officer]. They colluded and lied to get me sent to a management unit. When I heard it was a set up by an officer who didn't want to be involved, I complained ... It all got swept under the rug. Six months later I got set up against as retribution ... for making a formal complaint ... I always reported the behaviour but it always seemed to get me into more trouble by vengeful officers at a later date.'

I was bullied by my case officer. I was threatened to be placed in the slot unless I stopped attending the prisoner representative meetings. They said that the [senior manager] was dissatisfied that we were raising issues that were embarrassing [them].'

I was surprised to be honest that you guys have come, because every time someone like you guys come, they usually slot me, so that I can't talk to these people.'

## An integrity-orientated workplace culture

Workplace culture – or ‘the way we do things’ – expresses the values, ethics and integrity of the workforce and the organisation. An integrity-orientated culture welcomes diverse ways of thinking, shared accountability and multiple layers of oversight.<sup>79</sup> It is a culture that is resilient to corruption with a low tolerance for interpret risks.

In an integrity-orientated corrections environment, leaders must recognise and act on harmful attitudes toward people in custody which may undermine the system’s rehabilitative purpose. A workplace culture that prioritises integrity helps keep staff safe and empowers them to do their best work, to speak up, openly reflect and constructively criticise and take on feedback.

As discussed in Part 3, a workforce with a clear purpose – where staff feel valued, receive professional training and development, and know that their wellbeing is a priority – will be higher performing and less vulnerable to integrity breaches.

Conversely, occupational stress, trauma and safety concerns significantly impact the integrity-resilience of the workforce – they impede an individual’s ability to form respectful relationships with people in custody, to show empathy and perform their roles professionally under pressure.

### Defining integrity issues

For our purposes, *integrity issues* refers to an abuse of power or impacting the safety of people in custody and/or the security of the prison.<sup>80</sup>

It includes any conduct inconsistent with the Victorian Public Sector Values.

This definition is also intended to capture behaviour described as ‘corrupt conduct’ in the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) and inconsistent with Victoria’s Charter of Human Rights and Responsibilities. Workplace harm – a distinct but related set of integrity issues impacting staff – is examined in *Chapter 11*.

<sup>79</sup> Australian Institute of Health and Safety, Submission to the Cultural Review (December 2021) 5.

<sup>80</sup> Victorian Public Sector Commission, *Code of Conduct for Victorian Public Sector Employees* (2015).

### **'It is no surprise to find officers with power-complexes working on the ground.'**

'Working in an environment where we assume the role of authoritative figures over others from a more-than-likely lower socioeconomic bracket, there is already a decent part of our culture that almost seems to celebrate this authority, and it is no surprise to find officers with power-complexes working on the ground.

The inability to self-reflect and fend off the influences of disgruntled, jaded, and bitter staff swiftly muddles the morals of new recruits who subsequently lean into the culture of punishing prisoners, as opposed to acting with the professionalism that our role demands. One of my most admired [senior officers] I worked under, who unfortunately left corrections, once told me that the biggest difference between officers and prisoners is that we are professionals, which has really helped me keep my moral compass over the years.

Ultimately, however, I did feel myself changing in my role. While I used to be able to find my neutral headspace again, I recognised that I was consistently getting angry and bitter while working here, and more frequently too, which was a rather confronting reality to arrive at. I am lucky that I was able to recognise that, though, and even more so that I was able to find a healthy relationship with the location, again.

For those who can't remove themselves from the negativity they are absorbing, or worse still don't have the tools to recognise that they need that mental space, they are instead absorbed into the downward spiral of bad work practices and toxic culture, and thus become part of the problem, too.'

*Written submission from a corrections staff member*

## **A nuanced approach is required to tackle integrity risks in custodial settings**

The particular complexities of the adult custodial corrections system call for a nuanced approach to addressing integrity risks. Compared other business units within DJCS, the corrections workforce faces some specific barriers to reporting and responding to integrity risks. Further, when integrity risks materialise in prison locations, the impacts are arguably greater than other areas within DJCS, as they may create serious risks to the physical safety of staff and people in custody or threaten the security of the prison environment.

DJCS's Integrity Strategy acknowledges these differences: 'the integrity risks facing custodial environments are inherently different to those in areas focused on policy and reform'.<sup>81</sup> However, the Integrity Strategy does not outline how the relevant actions will be adapted or implemented within the custodial context. One our key recommendations in *Chapter 3* below is for DJCS to translate and adapt the Integrity Strategy for the custodial workforce, alongside streamlined processes and policies.

<sup>81</sup> Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review 3.

## Existing integrity recommendations from IBAC and Victorian Ombudsman

Integrity risks within the adult custodial corrections system have been the focus of many recent reviews and investigations, including IBAC's 2021 *Special Report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molara* (Special Report on Corrections) and the Victorian Ombudsman's 2022 *Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison* (Use of Force Report). Many other recent reports and investigations into integrity risks are discussed in this chapter.<sup>82</sup>

### Victoria's independent integrity bodies

IBAC and the Victorian Ombudsman are key integrity bodies with legislative functions to protect the integrity of the Victorian public sector, including within the adult custodial corrections system.

IBAC is responsible for identifying, exposing and preventing corrupt conduct across the public sector. It receives and investigates complaints about serious and systemic corrupt conduct in prisons.

The Victorian Ombudsman investigates the actions, decisions and conduct of public sector organisations and their staff. The Victorian Ombudsman can also receive complaints directly from people in custody and considers whether public sector organisations have acted in accordance with Victoria's Charter of Human Rights and Responsibilities.

The relevant IBAC and Victorian Ombudsman reports make numerous recommendations directed at addressing integrity issues in the adult custodial corrections system. Many of these recommendations have been accepted by government and have prompted important changes in culture and process, and further investment in the system. However, many other recommendations remain outstanding, despite being accepted by government.

We did not seek to replicate the detailed analysis in the reports by IBAC and the Victorian Ombudsman, but we carefully considered their findings and noted where we have observed similar integrity concerns through our engagement. While we paid particular attention to these recent reports, we have formed our own findings and recommendations, endorsing and building on this significant body of work.

Many of the recommendations from IBAC highlight the need for increased capability within the custodial workforce and more active supervision of people working in Victoria's prisons to reduce integrity and corruption risks. This is closely aligned with our findings and recommendations in Part 3. Workforce.

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<sup>82</sup> See, for example, 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).



We support the urgent implementation of recommendations made in IBAC's Special Report on Corrections, particularly in relation to training and introducing a statutory mandatory reporting obligation for corrections staff, alongside stronger protections against victimisation for whistleblowers.

## Integrity concerns and human rights

Understanding how human rights operate in a custodial environment is critical to preventing many integrity concerns, particularly around the misuse of force, strip-searching, restraint and restrictive practices, seclusion and tactical options.

International law recognises the vulnerability of people in custody and stipulates minimum standards and requirements for their imprisonment. In Victoria, the Charter of Human Rights and Responsibilities (the Charter) brings many of the rights set out in the International Covenant on Civil and Political Rights (ICCPR) into Victorian law. Of particular importance to the custodial context is the right to protection against cruel, inhuman and degrading treatment, and the right to be treated with humanity and respect for human dignity.<sup>83</sup> The Charter creates human rights obligations for all public authorities in Victoria, including the adult custodial corrections system.

In the 2021 People Matter survey, most corrections staff felt confident about how the Charter applies to their work.<sup>84</sup> Despite this and effort to embed an understanding of the Charter within prisons, during our site visits we observed a low level of operational understanding of the Charter.

Staff repeatedly told us that people in custody had 'more human rights than them':

'As soon as the human rights charter came into it, everything went to shit. The Charter was designed for people who have been persecuted, in third-world countries. Prisoners here are treated more than fairly. There's no officer who will go out to try and make their life harder.'

**Staff member**

'Corrections needs to keep in mind the Human Rights of their employees and maintaining a safe workplace.'

**Staff member**

This perception that the human rights of staff are not prioritised is also evident in responses to the 2021 People Matter Survey, in which only half of prison-based custodial staff<sup>85</sup> (51 per cent) felt that their organisation respects their human rights.<sup>86</sup>

<sup>83</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, ss 10, 22.

<sup>84</sup> 84 per cent of prison staff who responded to the 2021 VPSC People Matter Survey agreed or strongly agreed with the statement 'I understand how the Charter of Human Rights and Responsibilities applies to my work': Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

<sup>85</sup> This includes both custodial (COG) and non-custodial (VPS) staff working in public prisons.

<sup>86</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

These views indicate that significant ongoing work is required to educate corrections staff on the intention, context and requirements of the Charter, as well as the ongoing need for staff to have opportunities to contribute to the design of their working environment, including in the strategies and policies that govern their everyday duties. We also note that these viewpoints reflect the poor psychological and physical safety experienced by corrections staff – see Chapter 8: Wellbeing and Chapter 11: Workplace harm for further discussion.

### Using the Charter to promote integrity-focused decisions

The Charter provides corrections staff with a framework for making integrity-resilient decisions – before taking any action that limits the rights of people in custody, staff must first consider whether:

- ▶ the action is for a legitimate, necessary purpose
- ▶ there is a less restrictive means available to achieve the same purpose.

Having the skills to make an on-the-ground Charter assessment reduces the risk of staff breaching integrity standards and encourages them to consider, for example, first employing de-escalation and communication techniques in their negotiations with a person in custody.

Effective use of the Charter can also reduce the improper use of restrictive practices or seclusion, such as using seclusion to punish someone or manage behaviours related to a health need or disability.

The Charter also encourages staff to question operating norms and use their lawful discretion to take less restrictive approaches in many circumstances, to promote integrity and ensure their operational decisions are irrefutable.

## Nature of integrity concerns in the custodial corrections system

The Commissioner's Requirements on Conduct and Ethics describe the standard of integrity expected of corrections staff:

'Correctional employees are required to conduct themselves professionally in the manner in which they communicate and behave with prisoners, offenders, and visitors to and families of prisoners. This is critical in a correctional environment, where the power imbalance that exists between correctional officers and prisoners and offenders, and the 'closed' and residential nature of prisons places an enhanced obligation on employees to act with the highest level of integrity and respect.'<sup>87</sup>

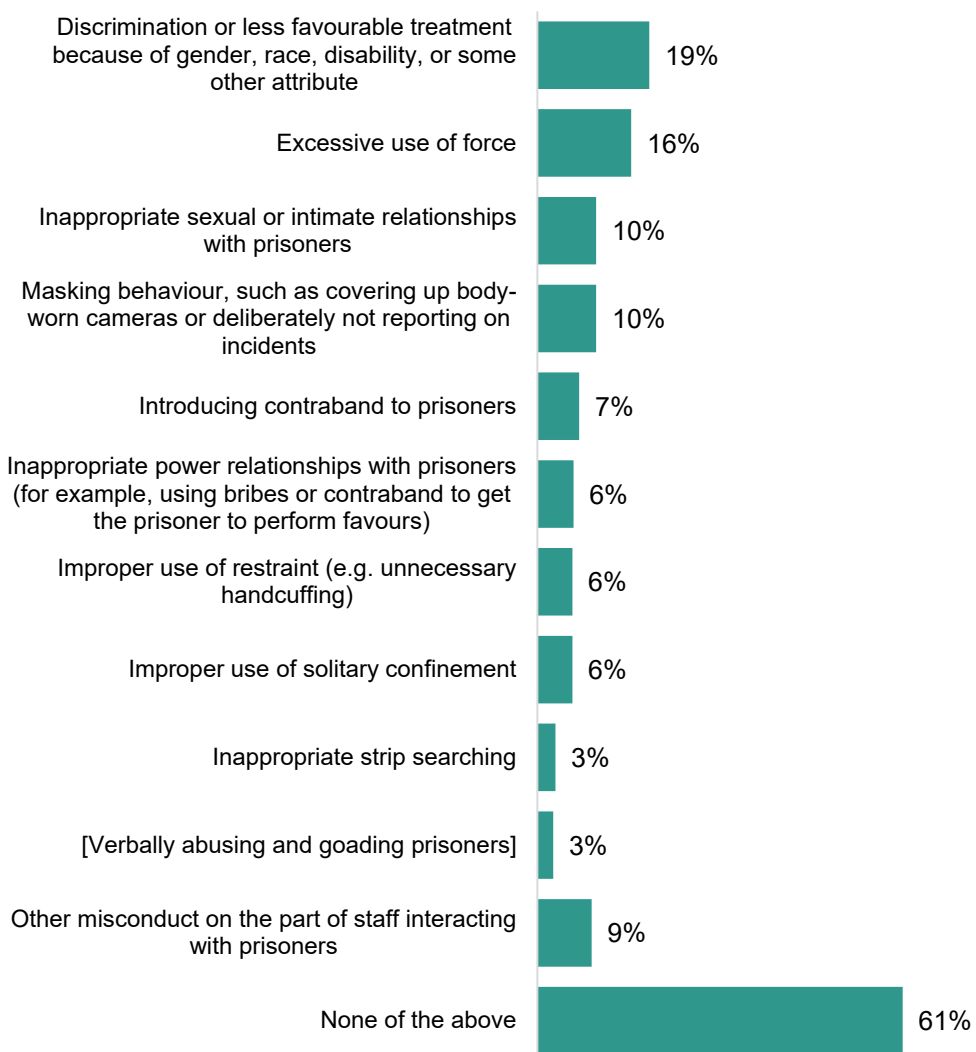
### Commissioner's Requirement 1.4.8 – Conduct and Ethics

While the majority of staff we encountered displayed a high level of professionalism, integrity and commitment to public sector values, we also observed and heard about conduct at odds with these values.

<sup>87</sup> Corrections Victoria, *Commissioner's Requirement 1.4.8 – Conduct and Ethics* (November 2022) [5.2.4].

In our workforce survey, 39 per cent of respondents said they had witnessed integrity issues directed at people in custody in the past five years, including discrimination, excessive use of force, inappropriate relationships, masking behaviours such as covering of body-worn cameras or deliberately not reporting incidents, and the introduction of contraband.<sup>88</sup> One DJCS executive described the adult custodial corrections system as the ‘highest integrity risk area’ across government.<sup>89</sup>

**Figure 1 - In the past five years, have you witnessed any of the following behaviours in your workplace towards prisoners? (Multiple Response)**



<sup>88</sup> Cultural Review, Corrections workforce survey (2021).

<sup>89</sup> Expert interview with the Cultural Review (2022).

From 1 July 2016 to 30 June 2021, 220 matters related to integrity-related misconduct by staff were referred to DJCS's Integrity and Reviews business unit.<sup>90,91</sup> The most common allegations related to:

- ▶ failing to maintain professional boundaries/declare relationships (37 referrals)
- ▶ excessive force (28 referrals)
- ▶ failing to follow direction/procedure/legislation (26 referrals)
- ▶ accessing or disclosing official information (23 referrals)
- ▶ disrespecting people in custody/others (19 referrals).

Referrals to Integrity and Reviews in 2020–21 were the highest they have been in the past five years.<sup>92</sup> This may indicate that there is a growing 'speak up' culture in the system, resulting from measures to increase reporting and reforms to the reports and complaints process. However, as discussed below, it is likely that a culture of silence and high levels of under-reporting persist in the corrections setting, obscuring the extent of these issues.

## Integrity issues are under-reported

As with workplace harm, there is limited visibility of integrity risks within the adult custodial corrections system, due to under-reporting by both staff and people in custody and inadequate central data and information management systems.

Our research and engagement also indicated there is evidence of masking behaviours associated with a culture of 'silence'.<sup>93</sup> Some of the reasons for under-reporting include the fear of victimisation or reprisal – a concern shared by both custodial staff and people in custody.

### Staff under-report integrity concerns and fear victimisation

We heard that there was reluctance among staff to report integrity issues due to a fear of reprisal and exclusion by colleagues. For example, in our workforce survey, 39 per cent of respondents who witnessed unwelcome behaviours toward staff or people in custody but did not take any action said their inaction was a result of

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<sup>90</sup> This includes referrals that did not proceed to investigation or have not yet proceeded to investigation.

<sup>91</sup> This only accounts for integrity-related behaviours relevant to the terms of reference for this review including 'did not maintain professional boundaries/declare relationship', 'excessive force', 'did not follow direction/procedure/legislation', 'accessed or disclose official information', 'disrespected prisoners/others' (including using abusive language, physical aggression, bullying, discrimination, racism and harassment), 'criminal offences', 'created inaccurate records', 'misused drugs or alcohol', 'inattentive/asleep on duty', 'did not supervise/secure prisoners', 'sexual harassment of prisoner', 'misused resources or systems', 'introduced contraband'.

<sup>92</sup> In 2020/21 there were 64 referrals to Integrity and Reviews relating to integrity-related misconduct behaviours, the highest yearly rate of reporting since 2016/17: Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

<sup>93</sup> 10 per cent of respondents to our workforce survey reported witnessing masking behaviours in the past five years; See also Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021); Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022).

feeling worried about negative consequences, such as for their careers or their safety.<sup>94</sup>

'Working at this prison for a long time has given me the feeling of being in danger on several occasions. There are staff who do not operate with integrity, but there is a reluctance to report them; instead, the decision is made to work cautiously in order to prevent controversy.'

**Staff member**

'What I saw when I came here, and it disgusted me was, it was like a closed shop, and blue doesn't write up blue, and no-one would talk.'

**Staff member**

'There's a lot of collusion as well, within the prison officer group.'

**Staff member**

### **People in custody under-report integrity concerns**

People in custody also described a fear of victimisation or reprisal from staff, as well as other people in custody, if they were to make a report or complaint about misconduct:

'If you report any issue, you have a big spotlight on your head by staff.'

**Person in custody**

'Staff threaten [people in custody] "if you speak up, we will make your life difficult in prison".'

**Person in custody**

'I have been threatened by officers constantly for making the report to IBAC ... there are officers too who are afraid of certain officers.'

**Person in custody**

Other people in custody shared their belief that they simply would not be believed if they did report their concerns:

'Prison officers look after their own. I personally reported inappropriate behaviour to a senior member of staff and was told "Let it go, no matter what you say I will always believe a prison officer".'

**Person in custody**


<sup>94</sup> Cultural Review, Corrections workforce survey (2021).


This was also a key concern raised in the Victorian Ombudsman's Use of Force Report:


'There are many reasons why prisoners may find it difficult to report allegations of unreasonable use of force. Some are concerned they will not be believed or their allegation will not be properly investigated. Others fear their remaining prison time will be harder if they alert authorities.


These concerns are exacerbated in a remand setting where officers have little time to establish relationships with prisoners, but the issue exists across the prison system. The power imbalance between officers and prisoners leaves some prisoners feeling they are better off not reporting incidents. The evidence contained in [the Victorian Ombudsman's] report suggests these concerns may be justified.<sup>95</sup>

Notably, we observed a difference between the levels of perceived confidence in reporting integrity concerns in low- and medium-security prisons compared to front-end prisons such as Port Phillip Prison, Metropolitan Remand Centre (MRC), Melbourne Assessment Prison (MAP) and the Dame Phyllis Frost Centre (DPFC). However, even in low- and medium-security settings, people close to the end of their sentence remarked that they would be unlikely to complain about their treatment in custody due to a fear it may impact their parole and because generally 'prisoners are never believed':

 **[I am concerned about] retribution.'**  
—Person in custody

 **I don't think it makes a difference [which location you are at].'**  
—Person in custody

 **If you were assaulted, I don't think you would say anything because it would make it worse.'**  
—Person in custody

 **I'd be scared they would send me back to [a maximum-security location].'**  
—Person in custody

<sup>95</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 57.

## Drivers or enablers of integrity risks

The unique drivers or enablers of integrity risks in the custodial environment are well documented by integrity bodies<sup>96</sup> and in academic literature, and they represent a challenge common across jurisdictions. The necessarily closed nature of prisons and inherent imbalance between those detaining and those detained creates the right conditions for integrity risks, which must be managed through vigilant monitoring, controls and oversight. Overcrowding, the complex needs of people in custody, the need for staff–prisoner relationships to deliver dynamic security and the existence of private prisons are also factors that contribute to integrity risks in custodial settings.<sup>97</sup>

## Lack of respect for people in custody and threatening and intimidating behaviour can drive integrity risks

During our site visits, we observed many positive interactions between corrections staff and people in custody, demonstrating mutual respect. However, we also observed some disrespectful interactions between staff and people in custody, which were more evident in the maximum-security locations we visited.

Some people in custody shared experiences of being threatened and intimidated by staff, including feeling worried about speaking with the Cultural Review team for fear of reprisal:

'Obviously, again, the way they talk to us, telling us they're going to let their dog maul us, telling us to shut our fucking mouths, stand against the wall and face the other way. It's just not okay.'

Person in custody

Recent investigations by the Victorian Ombudsman highlighted patterns of threatening behaviour at some locations including MRC<sup>98</sup> and DPFC,<sup>99</sup> and DJCS

<sup>96</sup> See, for example, Queensland Crime and Corruption Commission, *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* (Report, December 2018); Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021); Western Australian Corruption and Crime Commission, *Report into inadequate use of force reporting at Eastern Goldfields Regional Prison on 27 March 2017 and Bunbury Regional Prison on 14 November 2016* (Report, 2018); South Australian Independent Commissioner Against Corruption, *Evaluation of the Practices, Policies and Procedures of the Department for Correctional Services* (Report, June 2021).

<sup>97</sup> Queensland Crime and Corruption Commission, *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons* (Report, December 2018) 5.

<sup>98</sup> The Victorian Ombudsman found evidence of officers at the MRC using unprofessional and threatening language during an incident and identified patterns of complaints about particular officers relating to abusive language and threats: Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 62, 68.

<sup>99</sup> The 2017 Victorian Ombudsman inspection of the DPFC found 45 per cent of people in custody who responded to a survey developed by the inspection team said they had been threatened or intimidated by staff. Forty-seven per cent said staff had made insulting remarks about them, their family or their friends: Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017) 63.

data shows 43 incidents of disrespectful behaviour toward 'prisoner/other'<sup>100</sup> were referred to DJCS's Integrity and Reviews business unit between 1 July 2016 to 30 June 2021.

While disrespectful, threatening and retaliatory behaviour is clearly at odds with the Victorian Public Sector Code of Conduct and Commissioner's Requirements, this type of conduct, where normalised within the custodial culture, is less likely to be reported.

The persistence of this conduct may result from 'negative socialisation', a concept examined by University of Tasmania criminologist Dr Michael Guerzoni in his evidence about organisational culture at the Commission of Inquiry into Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings. Dr Guerzoni proposed that 'negative socialisation' may explain why successive generations working in youth detention might behave and continue to exhibit behaviour and attitudes of years past.<sup>101</sup> The same could be said about parts of the adult custodial corrections system, where harmful attitudes and behaviours continue despite staff turnover and a new generation of recruits and leaders:

'When behaviour [of people in custody] escalates to a point, staff become frustrated and fatigued, and when that happens, they mismanage themselves. So that's when two-way disrespectful interactions happen. That's when you start to get an attitude of, "Well, too bad, he's acted out. I'm not doing that. Too bad". Whether he was entitled to it or not ... as that escalates, and a culture breeds itself within a small team or on a larger scale, those occasions of violence occur.'

**Staff member**

Our workforce survey data indicates that, in general, staff perceptions of how respectfully people in custody are treated is out of step with the subjective experiences of people in custody themselves – 82 per cent of respondents told us they feel that people in custody are treated respectfully always or most of the time.<sup>102</sup> However, results from Corrections Victoria's 2021 Prisoner Survey<sup>103</sup> show that people in custody do not perceive the same level of respect:

- ▶ 52 per cent of respondents said prison staff respect and treat them as individuals

<sup>100</sup> This includes instances of sexual harassment, excessive use of force, abusive language, physically aggressive/intimidatory behaviour, bullying, racism, and harassment directed toward 'prisoners/others'. The Cultural Review understands that 'other' includes visitors: Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

<sup>101</sup> Loretta Lohberger, 'Work culture could be why detention centre staff have "unfavourable views about children"', commission hears' *ABC News* (online, 4 May 2022). <https://www.abc.net.au/news/2022-05-04/tas-commission-of-inquiry-ashley-detention-culture/101037850>.

<sup>102</sup> Non-custodial VPS staff working in prisons (e.g. those working in rehabilitation or reintegration and prison administration roles) were less likely to agree that people in custody are treated respectfully - only 67 per cent indicated that they are treated respectfully always or most of the time. This indicates that these staff may have a higher threshold for what respectful treatment means or that their visibility of the treatment of people in custody is limited.

<sup>103</sup> Department of Justice and Community Safety (Corrections Victoria), 'Prisoner Survey 2021', Data provided to the Cultural Review.



- ▶ 56 per cent of respondents said that staff treat them fairly
- ▶ less than half of respondents said prison staff treated them with dignity (47 per cent) or listen to them (44 per cent).

During our site visits, we observed that staff at some locations (generally low-medium security sites) were more likely to refer to people in custody by their names and engage with them in a generally positive and proactive way – for example, greeting them as they moved around the prison. At front-end locations, we observed that both staff and people in custody tended to avoid each other, with staff being largely inaccessible, seated behind consoles. People in custody at these locations more frequently described examples that indicated that disrespectful, aggressive and retaliatory conduct was normalised:

'How you treat them is the way they treat you. That's how. It's pretty obvious.'

**Person in custody**

'I think it's like anywhere, inside or outside of jail. If you give people respect, they give you respect in return. But if you treat someone like shit, they're going to treat you like shit ... if use your manners, respect, morals, everything as you would on the outside, everything's all right.'

**Person in custody**

'But yeah, it depends on I guess how you treat the officers. If you mouth off at them, you get basically nothing. If you treat [staff] like shit, you're going to get nothing from them. And I've always been brought up like that; if you treat people with respect, you're going to get it back.'

**Person in custody**

### **Addressing overcrowding and reduced out-of-cell time – Operational Flaxton**

A 2018 report the Queensland Crime and Corruption Commission (QCCC) identified overcrowding as a specific corruption risk in Queensland prisons.

QCCC found that overcrowding made it more difficult to monitor the conduct of staff and their interactions with people in custody, as well as making it more difficult for staff to successfully use dynamic security measures. In these circumstances, staff may use excessive force to defer or respond to poor behaviour. Further, overcrowding means people in custody have less meaningful out-of-cell time and more limited resources, which can contribute to frustration and a more volatile custodial environment.

QCCC also observed that as Queensland prisons became fuller, there was an increase in corruption allegations relating to staff. Reduced out-of-cell time was also associated with more corruption allegations and an increase in assaults and excessive use of force.

## Higher-risk contexts

Some environments within the custodial system pose a greater risk of integrity issues, such as excessive use of force. Front-end prisons, responses to emergencies and incidents, and minimum- and medium-security regional prisons are all contexts that may require a higher level of oversight and targeted action to prevent integrity risks.

### Front-end prisons

The more serious integrity concerns we heard about occurred at large, metropolitan, front-end prisons.<sup>104</sup> These prisons accommodate most people held on remand and experience a high turnover of people entering and leaving the prison each week. They represent the busiest and most complex workplaces in the adult custodial corrections system and the highest levels of staff occupational injuries and assaults by people in custody.<sup>105</sup> These locations house people with the highest security ratings and the majority of people with acute mental health issues, cognitive disability and those withdrawing from drugs and alcohol. For these reasons, front-end prisons can be much more challenging workplaces for staff.<sup>106</sup> In this 'high churn' environment, it is difficult for staff to get to know each person's specific needs, behavioural concerns and triggers. It is also a more difficult environment to identify, oversee and address integrity risks.

### Responding to prison emergencies and incidents

Integrity risks are more likely to arise during prison emergencies and in response to incidents such as attempted or threatened assaults on staff or noncompliance with orders.<sup>107</sup> In these situations, staff are frequently required to respond quickly and decisively to a dynamic security situation. There may be a need for them to use force or employ restrictive practices, seclusion and strip-searching to maintain the security and safety of the prison. We heard how challenging these situations are for

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<sup>104</sup> The Cultural Review considers front-end prisons to include MAP, MRC, PPP, Ravenhall and DPFC as the custodial sites that house the majority of people on remand. Ravenhall also houses a significant cohort with complex mental health needs and cognitive impairments.

<sup>105</sup> The majority of staff who told us in our workforce survey that they have been physically injured by a person in custody in the past five years were from maximum security or remand facilities. WorkCover claims data provided by DJCS also indicates that front end prisons (i.e. MRC, MAP and DPFC) had by far the highest number of claims over the reporting period, with these three prisons making up 47 per cent of WorkCover claims for this period. [Note: This data does not include private prisons]. Notifiable incident data provided by the Department also indicates that most assaults on staff during the reporting period took place at PPP, MRC and MAP: Department of Justice and Community Safety (Corrections Victoria), 'Notifiable Incidents, Data provided to the Cultural Review; Department of Justice and Community Safety (Corrections Victoria), 'WorkCover claims', Data provided to the Cultural Review.

<sup>106</sup> Staff who responded to our workforce survey also reported feeling most concerned for their safety at these prisons. 58 per cent of staff from front end remand facilities said they feel safe in their workplace, compared with 81 per cent from minimum security facilities. Staff from these facilities were also more likely to expect that they will experience assault, threats and abuse from people in custody.

<sup>107</sup> Use of force data provided by the Department indicates that the most common triggers for use of force incidents reported from 1 July 2016 – 30 June 2021 were attempted or threatened assaults on staff (approximately 18 per cent of incidents), and noncompliance (approximately 16 per cent of incidents): Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

staff who often worry management may question the decisions they have made in the heat of the moment.<sup>108</sup>

During a focus group with staff, they shared their concerns about being scrutinised following an incident:

'If something happens in this place, it's not about what happened, it's what were you doing? Why weren't you doing that? It's all about what they see on the video.'

**Staff member**

'I feel that officers are getting to the stage where they don't want to challenge people, it's not worth it, they feel like they're going to get into trouble.'

**Staff member**

'There's too much concern with dotting your I's and crossing your T's. We are scared of being reprimanded.'

**Staff member**

These situations frequently involve tactically trained officers from the Security and Emergency Services Group (SESG), the Emergency Response Group (ERG), the Tactical Operations Group (TOG) or operations support teams, who play a specific role in responding to incidents and emergencies and are frequently first responders to incidents.

Due to their important role in responding to incidents, it is reasonable to expect that specialist response groups such as SESG, ERG and TOG would be involved in a large portion of use of force incidents.

Limitations in DJCS's use of force and misconduct data mean it is not possible to disaggregate by staffing cohort or role, which makes it difficult to gain an accurate picture of whether particular staff groups are involved in use of force incidents and identify any trends in the data.<sup>109</sup>

We have heard consistently from people in custody and some custodial staff that there are cultural concerns within these specialist response groups including a normalisation of violence, abusive and disrespectful language, and inciting and masking behaviours.<sup>110</sup>

<sup>108</sup> Staff focus group with the Cultural Review (2021).

<sup>109</sup> For example, PIMS data provided to the Cultural Review in relation to 'use of force' incidents includes SESG as a 'location' option for the recording of incidents. However, the number of incidents attributed to SESG in the past five years (29 incidents in total) are not representative of their involvement in use of force incidents. The Cultural Review understands that incidents are generally only attributed to SESG in PIMS incident reports where an incident takes place off-site, for example where staff are escorting a person in custody between locations. There is no record of the involvement of ERG or TOG staff in the data provided to the Cultural Review. We understand that incidents involving SESG, ERG and TOG staff that take place at a prison location are subsumed within that prison's use of force incident numbers: Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

<sup>110</sup> 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 Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 9.

During confidential interviews with corrections staff, we heard significant concerns regarding the conduct of ERG and SESG officers:

'Emergency Response Group is a whole other culture that I wish we could change because the behaviour towards staff, prisoners, that's where you see really horrible, inappropriate behaviour, particularly physically, the way they speak about the prisoners, the way they speak about staff who are women is disgusting. It's a very, I don't like to say it, but it's a very misogynistic, patriarchal society that's been built on it despite women being in ERG ... It's like they put on the ERG uniform and for some reason the people change, the minute they put the uniform on they're just a complete\*\*\*\*\*.'

**Staff member**

'We have some people in the ERG that [like] hurting prisoners, they're in it for the wrong reasons. They don't believe that they need to communicate with anyone ... They see no issue with strip-searches ... There is such a strong level of homophobia and misogynistic behaviour within the ERG – that's across the whole site actually – but predominantly in the ERG which is just wrong, but you just put up with it because they're not leaving and unfortunately [we can't get them out].'

**Staff member**

People in custody also told us that the conduct of some tactically trained officers is different to other corrections staff:

'There was one SESG officer, this is when I got stripped by the SESG and the prison officer here and the two blokes were staring in, she told me I don't call the f\*\*\*ing shots and ask the questions, she f\*\*\*ing does. Told me shut my mouth... I got locked in my cell while the sniffer dogs and that went around. They had no reason to strip me, they had no reason to search me. They just decided to use their power against me, and it's just me they constantly pick on and target a lot.'

**Person in custody**

'I am made to feel like shit ... SESG or ERG are the people that use their power in the wrong way. They hit us, bash us, make us stick our finger up our bum and pull back the skin over our penis. Yet the other staff don't say or do anything.'

**Person in custody**

We are concerned that there may be distinct and harmful cultures operating within some specialist response groups. There may be less oversight and accountability for the conduct of some specialist staff due to their distinct reporting lines<sup>111</sup> and the lack of available disaggregated data in relation to these roles.

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<sup>111</sup> Currently, SESG are the only staff listed who have centralised reporting lines. TOG are private prison staff and ERG report to their relevant location.

### **Workforce survey responses from tactically trained officers suggest high risks to their wellbeing and integrity resilience**

In our workforce survey, responses from SESG, ERG and TOG staff<sup>112</sup> revealed concerning experiences and perceptions of the risk of occupational violence:

- ▶ 44 per cent of respondents said that they were physically injured by a person in custody at work in the last five years, compared to 20 per cent of other custodial staff
- ▶ 39 per cent of respondents said that they feel safe in their workplace, compared with 61 per cent of other custodial staff.

Tactically trained staff also reported much lower levels of feeling supported and respected by management and lower perceptions of the wellbeing support available to them, including accessing support from supervisors and managers after critical incidents.<sup>113</sup>

They were also more likely to feel a sense of anger or explosiveness at work and to have taken more stress-related leave.<sup>114</sup>

Further, no tactically trained staff who responded to the workforce survey felt that people in custody and staff 'get along', or that tactically trained staff have a positive influence on the lives of people in custody.

This data tells a concerning story of specialist tactical staff who experience real risk of violence in their everyday work, are less likely to feel safe at work, and receive inadequate levels of support from senior staff and managers. As a result, there may be a risk that staff working in these teams, whose primary task is to respond to volatile emergency situations, may be less able to uphold integrity standards expected of corrections staff.

## **Minimum- and medium-security regional prisons**

The results of our workforce survey indicate that staff working in less-restrictive minimum- and medium-security prisons were generally less likely to report having witnessed integrity concerns at their workplace in the past five years than those who work at maximum-security facilities.<sup>115</sup> In particular, staff from lower-security facilities were less likely to have witnessed discrimination toward people in custody, excessive force and masking behaviours.<sup>116</sup> Staff from these locations also reported

<sup>112</sup> Note: there were only 18 respondents who identified as being SESG, ERG or TOG.

<sup>113</sup> Only 28 per cent of tactically trained staff feel respected and valued by their manager, compared with 39 per cent of other custodial staff; 17 per cent of tactically trained staff feel that they get the right support from their manager after a critical incident, compared with 35 per cent of other custodial staff; 6 per cent of tactically trained staff feel that the wellbeing supported available meet their needs compared with 21 per cent of other custodial staff.

<sup>114</sup> 50 per cent of tactically trained staff have felt a sense of anger or explosiveness in the past 12 months compared with 41 per cent of other custodial staff; 50 per cent of tactically trained staff said they have taken stress leave in the past two years, compared with 40 per cent of other custodial staff.

<sup>115</sup> 53 per cent of respondents from maximum security facilities indicated they witnessed none of the integrity issues listed, compared with 66 per cent from medium security prisons and 69 per cent from minimum security prisons.

<sup>116</sup> This is consistent with public prison misconduct data provided to the Review, which indicates that most public prison misconduct referrals received by Integrity and Reviews from 2016/17 – 2020/21 involved staff from high security prisons with complex cohorts, including high numbers of people on remand (i.e. MRC, MAP and Barwon): Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

more positive relationships with people in custody.<sup>117</sup> However, our engagement also identified a number of regional, low security prisons where people in custody described having very poor relationships with staff and experienced mistreatment at these sites.

Staff working in minimum security locations were more likely than those from other facilities to report witnessing inappropriate power relationships between staff and people in custody (for example, using bribes or contraband to get the prisoner to perform favours).<sup>118</sup>

Our engagement observations align with the findings in IBAC's Special Report on Corrections, including that 'certain corruption risks such as conflicts of interest, inappropriate relationships, nepotism and procurement fraud, are heightened in regional and remote areas given their smaller populations'.<sup>119</sup>

During our engagement, we heard concerns about calling out or reporting misconduct or integrity risks given the close-knit communities within which staff live and work in minimum- and medium-security regional prisons. Staff raised with us how nepotism or social cliques including close personal and social relationships at the leadership level has contributed to the perception at some custodial sites that complaints and reporting processes may not be handled confidentially, fairly or in an unbiased manner. We also heard about the ramifications for reporting corrupt conduct being more serious in these regional locations given the intertwined personal relationships and more limited employment options regionally:

'You've got people who are related working there. You've got people who have boarded or shared a house together. They work there ... People clinging together, makes it uncomfortable. You say something to one person – you're then fighting the whole group ... They stick up for each other and bypass the rest.'

**Staff member**

One general manager spoke of their efforts to reform an entrenched culture of 'mateship' and 'silence' where successive and sometimes concurrent generations of family members are employed as custodial staff and the work/personal divide can become blurred.

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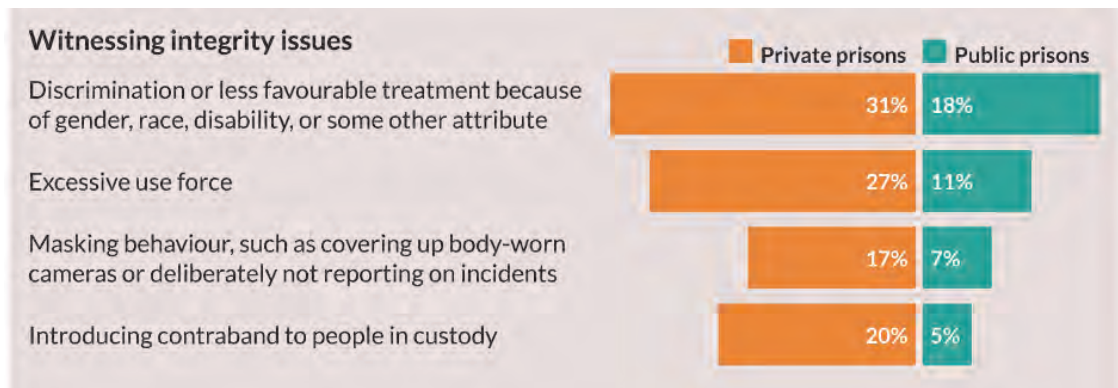
<sup>117</sup> 46 per cent of staff from minimum security prisons indicated they believe custodial staff and people in custody get along well, compared with 30 per cent from medium security facilities and 28 per cent from maximum security prisons.

<sup>118</sup> 10 per cent of staff from minimum security facilities reported witnessing inappropriate power relationships with people in custody, compared with 5 per cent from both medium and maximum security prisons.

<sup>119</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 85.

## Improving oversight of integrity risks in private prisons

In our workforce staff, private prison staff were more likely to report witnessing integrity issues than staff in public prisons.<sup>120</sup> The starkest differences related to witnessing discrimination, excessive use of force, masking behaviour and the introduction of contraband:



While DJCS manages the contracts of private prisons, it remains responsible for the safety and wellbeing of staff and people in custody, including as a result of corruption. Private prison staff are also required to comply with the Victorian Public Sector Values<sup>121</sup>, although there is far less central monitoring and oversight of the conduct of staff within private prisons by the Department. See Part 2 for further discussion of private prisons.

## Unlawful use of force

Force is sometimes a necessary response to an unsafe or volatile security situation such as threats to staff and others' safety in custody, including from self-harm. Section 23 of the *Corrections Act 1986* permits prison officers to use 'reasonable force' 'where necessary' to compel a person in custody to obey an order the officer believes to be necessary for the security or good order of the prison or the safety or welfare of the prisoner or other persons.<sup>122</sup>

Since May 2020, the relevant Commissioner's Requirement has clarified that, to justify use of force, a person in custody's refusal to follow an order must constitute 'an unreasonable risk to the safety of a person, or to the security and good order of a prison'.<sup>123</sup>

<sup>120</sup> More than half (53%) of private prison respondents indicated they have witnessed integrity issues or inappropriate behaviour by staff toward people in custody in the past five years, compared with 35% from public prisons.

<sup>121</sup> Commissioner's Requirement 1.4.8 – Conduct and Ethics provides that 'The conduct of all staff working in the correctional system – even those not working in the public sector – must be consistent with the Code of Conduct for Victorian Public Sector Employees (VPS Code of Conduct)': Corrections Victoria, *Commissioner's Requirement 1.4.8 – Conduct and Ethics* (November 2022) [2.1].

<sup>122</sup> *Corrections Act 1986* s 23.

<sup>123</sup> Corrections Victoria, *Commissioner's Requirement 1.1.1 - Use of Force (Tactical Options)* (May 2021) [5.1.2].

While the vast majority of force incidents are lawful and justified in the circumstances, any unreasonable or excessive use of force may constitute an assault. These incidents may also amount to corruption where they arise from an abuse of power.<sup>124</sup> Unlawful use of force exposes staff and people in custody to potential injury and may lead to legal and disciplinary processes. The normalisation of force can have a significant influence on local custodial culture, which is likely to be more punitive where force is routinely used.

Unlawful use of force has been recently examined by both IBAC and the Victorian Ombudsman<sup>125</sup> who have reported concerns with staff conduct, reporting of use of force, masking behaviours and investigations.

In our workforce survey, 16 per cent of respondents reported witnessing excessive use of force against people in custody in the past five years. Data provided by IBAC indicates that use of force against people in custody was the most common subject of cases assessed by IBAC from 2018–19 to 2020–21, making up 26 per cent of total cases assessed during this period.<sup>126</sup> This is consistent with what we heard through our expert interviews, including that use of force remains an ongoing integrity risk across the adult custodial corrections system.

### **Use of de-escalation techniques to avoid force**

During our site visits, we experienced multiple 'codes' where we were impressed by the staff's skilful de-escalation and containment of potentially dangerous situations at a number of locations. We acknowledge sensitivities around use of force as an integrity issue, given that force for most staff is an undesirable but regular feature of their work – often necessary where non-contact response options have not been effective.

At one location, we witnessed staff de-escalating a situation in which a person housed in an acute mental health unit was in a state of extreme distress. We were pleased to see how staff dealt with the situation by considering the individual's vulnerabilities and complexities and tailoring their approach. The matter was successfully resolved without further incident.

We have considered the Victorian Ombudsman's Use of Force Report,<sup>127</sup> which details the investigation of eight complaints of unlawful force and examines use of force data. The Ombudsman disagreed with DJCS's assessments and investigations in four of those cases, substantiating those allegations.

<sup>124</sup> Independent Broad-Based Anti-Corruption Commission, *What is corruption?* (Web page, 2022). <https://www.ibac.vic.gov.au/reporting-corruption/what-can-you-complain-about/what-is-corruption#:~:text=It%20can%20be%20any%20conduct,oppress%20or%20disadvantage%20a%20person.>

<sup>125</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021); Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022). In 2019, the Victorian Ombudsman also undertook an unpublished review of all allegations of unlawful use of force on people in custody from 2017/18 to 2018/29.

<sup>126</sup> Force was the subject of 102 out of 394 cases assessed from 2018/19 – 2020/21: Independent Broad-based Anti-corruption Commission, 'Complaints and notifications received by IBAC relating to the adult custodial corrections system', Data provided to the Cultural Review (2022).

<sup>127</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022).



While the Victorian Ombudsman's investigations focused on a small number of incidents that occurred at MRC and MAP, she found that these incidents 'point to broader cultural issues' and that 'the underlying causes for force being used unreasonably against prisoners are the same across the prison system'.<sup>128</sup>

We understand DJCS has introduced additional audits and local level violence reduction plans in recent years to reduce the use of force; however, we share the Victorian Ombudsman's concerns and found similar cultural issues across the adult custodial corrections system, including under-reporting of use of force, inconsistencies in incident reporting, misuse of BWCs and masking behaviours.

The most effective means to reduce unlawful use of force are:

- ▶ avoiding use of force wherever possible, including through increasing the use of de-escalation techniques
- ▶ supporting positive relationships and mutual respect between custodial staff and people in custody
- ▶ helping staff understand the link between reducing reliance on force and increasing their safety.

More significant is the need to reorient the adult custodial corrections system and further embed a rehabilitative approach (see Part 6 for further discussion). This includes ensuring a person-centred approach that supports individuals' wellbeing and behavioural change. While incremental, this shift in culture will reduce the normalisation of force, create a more settled environment and give more visibility to inappropriate incidents of force. These changes must be coupled with an enhanced environment for reporting and oversight, including a team culture that supports constructive feedback and reflective practice.

### Terminology and use of force

We note that terms including 'excessive use of force', 'inappropriate use of force', 'unreasonable use of force' and 'assault' are often used interchangeably across Victorian law, Corrections Victoria and DJCS policy, and in commentary from oversight bodies – and there is a lack of clarity within the workforce about these terms.

In this report we use the term 'unlawful use of force' to refer to any use of force that does not comply with law or policy. Some use of force incidents may also constitute a criminal assault and be in breach of the Charter.

For the purposes of this report, unlawful force includes a spectrum of conduct including:

- ▶ using force when it is not necessary or appropriate, such as to punish a person or before other options have been exhausted,
- ▶ using more force than is reasonable in the circumstances, such as where the force used was disproportionate or excessive, or
- ▶ criminally assaulting a person to different degrees.

<sup>128</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 81.

## Trends in use of force across the system

We reviewed a sample of use of force data provided by DJCS as well as integrity body data and our responses to our workforce survey. Some trends emerged across this dataset:

- ▶ Over the last five years (2016–2021), there were an average of 1,238 reported use of force incidents each year across Victoria's prisons.<sup>129</sup> Use of force incidents do not appear to be declining, despite recent efforts by DJCS to address use of force.<sup>130</sup>
- ▶ In the past five years there were on average 42 reported allegations of unlawful use of force each year during the Review period.<sup>131</sup>
- ▶ Most use of force incidents take place at front-end prisons and involve people in custody who are on remand.<sup>132</sup>
- ▶ Almost 40 per cent of the 212 allegations of unlawful force in the past five years occurred at MRC. The results of our workforce survey also echoed this trend, with the highest number of instances of staff witnessing unlawful use of force occurring at front-end facilities.<sup>133</sup>
- ▶ The vast majority of allegations of unlawful use of force are not substantiated by Corrections Victoria.<sup>134</sup> However, the majority of those that were substantiated over the past five years took place at front-end prisons.<sup>135</sup>

### **Unlawful use of force is likely under-reported by both people in custody and staff**

We identified a number of barriers that discourage staff and people in custody from reporting integrity concerns such as unlawful use of force, which suggests that it is likely that these incidents are under-reported.

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<sup>129</sup> Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

<sup>130</sup> Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

<sup>131</sup> Department of Justice and Community Safety (Corrections Victoria), 'Notifiable Incidents', Data provided to the Cultural Review.

<sup>132</sup> The Review's examination of use of force data reveals higher levels of force incidents at 'front end' prisons (i.e. MRC, MAP, PPP and DPFC). Demographic data provided by the Department indicates that 62 per cent of use of force incidents in the past five years involved people in custody who are unsentenced. The Victorian Ombudsman's analysis similarly found that MRC consistently accounts for more than a quarter of prison-related unlawful use of force complaints made to the Ombudsman and a third of all allegations of assaults by staff recorded by Corrections Victoria over the past three years (p 14). Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

<sup>133</sup> The facilities with the highest response rate to this question were Barwon, DPFC, MAP, PPP and Ravenhall. Note: Ravenhall had by far the highest rate, at 46%.

<sup>134</sup> Since 2016/17, of 212 allegations of assault of a person in custody by staff, only 12 have been proven by Corrections Victoria: Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

<sup>135</sup> The most common location of the proven assaults during this period were PPP and MAP. Note: Two assaults were also attributed to SESG staff: Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

The 'culture of silence' in the adult custodial corrections system acts as a deterrent for staff and people in custody making complaints or raising concerns about the behaviour of staff.<sup>136</sup>

In addition to the drivers of integrity concerns and under-reporting set out above, there is a concern among some custodial staff that investigators do not understand the complexity of the custodial environment which can lead to 'unfair' outcomes from investigations that and could 'ruin their career'. This issue highlights the need for DJCS to build staff confidence in its complaints and investigations processes.

These challenges around underreporting highlight the importance of robust internal assurance functions and oversight by an independent body, as well as accessible complaints pathways for people in custody to bodies such as the IBAC and the Victorian Ombudsman.

Increased oversight functions including the proposed independent Inspectorate of Custodial Services (see Part 2 - Systems), accompanied with access to existing external reporting pathways, will help to better identify unlawful use of force incidents that may otherwise not be reported through internal channels.

### **Unlawful use of force incidents frequently occur when staff have not made sufficient attempts to de-escalate a situation, or where staff have contributed to escalating the situation**

Throughout our engagement, we heard that custodial staff working in some locations are frequently spat on by people in custody, have urine and faeces thrown at them and are confronted with a range of other distressing behaviours.<sup>137</sup> These behaviours are never acceptable, and all staff have the right to be safe in their workplace. If these behaviours do occur, it is imperative that custodial staff are equipped with adequate training and support to ensure that they do not further escalate the situation or incite the person in custody to behave inappropriately.

While the Commissioner's Requirements state that officers must try to de-escalate situations before using force, the experiences of people in custody suggest this isn't always the case.<sup>138</sup>

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<sup>136</sup> This issue was highlighted in the Victorian Ombudsman's recent Use of Force Report, in which evidence was found of staff failing to report allegations of assault made by people in custody: Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 43. See also Victorian Ombudsman's 2017 report on *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre*, which found evidence of people in custody being reluctant to report unlawful use of force due to fears that reporting would put them at risk of reprisals and perceptions that they would not be believed or their allegations would not be taken seriously.

<sup>137</sup> Staff who participated in our workforce survey described experiencing violent assaults by people in custody, including being strangled, bitten, punched and headbutted. Other described being spat on by people in custody, having urine or faeces thrown at them, being verbally abused and threatened.

<sup>138</sup> Corrections Victoria, *Commissioner's Requirement 1.1.1 - Use of Force (Tactical Options)* (May 2021) [5.7.2].

**‘The officer said, “Okay, there’s no cameras here now. You can have first swing”.’**

‘[An incident occurred with my cellmate] where the officer escalated to the point where he actually stepped into the cell – he had another officer behind him and I’m down the back of the cell.

My cellmate is nose to nose with the other officer and the officer said, "Okay, there’s no cameras here now. You can have first swing" to which I’m thinking, *This is not going to be a good thing*. Eventually my cellmate decided to sit down, and I thought that was good.

It wasn’t the end of it though. The next day my cellmate then decided to put in a complaint to say that he felt intimidated by the officer, and they have to investigate that. My cellmate knew that they had to investigate that.

While that was happening, they decided to offer my cellmate a deal for him to withdraw his complaint. They offered him his own cell in one of the nicer yards and all that sort of stuff, which was about to happen and then he stuffed up on something else and they put him in management for a while.’

*A person formerly in custody*

This is consistent with the findings of the Victorian Ombudsman’s Use of Force Report where, in three cases, witnesses said custodial staff attempted to incite people in custody to engage in violence before any physical confrontation took place. In two cases, the evidence shows the officers instigated the violence, using force as a first rather than last resort.<sup>139</sup>

## Reporting use of force

Incidents involving the use of force are ‘notifiable’ and must be reported within 30 minutes of the incident occurring to the relevant Assistant Commissioner, Custodial Operations, or, if it occurs after hours, to the duty director.<sup>140</sup> Incidents involving the use of force must also be recorded through an incident report form and PIMS (Prisoner Information Management System) Incident Module, flagged as involving force, within 24 hours and authorised by an operations manager or general manager.<sup>141</sup> Custodial staff must submit incident reports and footage by the completion of their shift.<sup>142</sup> Use of force incidents must be reviewed by the prison general manager and recorded in a locally retained use of force register.<sup>143</sup>

<sup>139</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 19.

<sup>140</sup> Notifiable Incidents are serious incidents including use of force incidents as well as deaths, escapes or attempted escapes, major fires or riots, attempted suicide, use of chemical agents, serious misconduct by staff. See Corrections Victoria, *Deputy Commissioner’s Instruction 1.19 – Incident Reporting and Monitoring* (March 2021). For private prisons, use of force incidents only become notifiable if an injury is sustained as a result of the use of force.’

<sup>141</sup> Corrections Victoria, *Deputy Commissioner’s Instruction 1.19 – Incident Reporting and Monitoring* (March 2021) 5.

<sup>142</sup> Corrections Victoria, *Deputy Commissioner’s Instruction 1.19 – Incident Reporting and Monitoring* (March 2021) 12.

<sup>143</sup> Corrections Victoria, *Deputy Commissioner’s Instruction 1.13 - Use of Force (Tactical Options) Compliance, Capability, Training and Assessment* (May 2021) 6.

Allegations of assault also require police notification within two hours of the incident.<sup>144</sup> Corrections Victoria's Operations Directorate reviews all allegations of assault by custodial staff on people in custody and, as discussed below, investigates the incident. Where the use of force appears to be misconduct, the Operations Directorate may refer the incident to the Integrity and Reviews business unit.

In addition, there are obligations to report assaults on people in custody to Victoria Police, DJCS and IBAC.<sup>145</sup>

Despite a robust reporting framework, there are several limitations with the current use of force reporting systems:

- ▶ There is an over-reliance on self-reporting in an environment where there are significant cultural barriers to reporting the conduct of colleagues. Reporting systems rely on custodial staff and supervisors accurately reporting conduct and making an objective assessment of whether the force amounted to an assault.
- ▶ There are inconsistencies in incident reporting including the level of detail documented, particularly in relation to the specific type of force used and the circumstances justifying the force. This creates the potential for incident reports to downplay the force used, omit relevant circumstances or be opaque.
- ▶ PIMS has limited ability to provide a comprehensive view of the nature and type of force being used across the system. This information is only able to be recorded in the 'free text' component of the incident screen, and therefore does not show up in quantitative reporting.<sup>146</sup> Similarly, PIMS does not delineate between lawful force and unlawful force, except for cases of alleged or proven 'assault'.
- ▶ The service delivery outcomes (SDO) for staff assaults could create a disincentive for individual prison locations to identify and substantiate an assault – see below.
- ▶ The Operations Directorate within Corrections Victoria reviews all reported allegations of assault by staff, but it only has capacity to randomly audit 10 additional use of force incidents each month – meaning there is limited oversight of unlawful force that does not recorded as an 'alleged assault'.

Both public and private prisons have a target of zero for the service delivery outcome related to assaults on people in custody. This means that any assault by staff will result in the prison failing this performance measure and, for private prisons, receiving a financial penalty.<sup>147</sup> The Victorian Ombudsman and IBAC have

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<sup>144</sup> Corrections Victoria, *Deputy Commissioner's Instruction 1.19 – Incident Reporting and Monitoring* (March 2021). The DCI sets out that allegations of a physical sexual assault must be reported to police and other matters requiring police notification may include assault on staff, allegation of assault by staff on prisoners and serious assaults where the victim is hospitalized. A Register of Prison Incidents Referred to Victoria Police (Schedule 1.19(4)) must also be maintained, which includes all referrals to police and police investigation outcomes.

<sup>145</sup> See, for example, *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) s 57.

<sup>146</sup> Details on the nature and type of force are also recorded on manual use of force register forms, which accompany the incident packs submitted to the Operations Directorate.

observed that financial incentives linked to performance could create a perverse incentive, encouraging a culture of under-reporting and manipulating data to ensure they meet targets.<sup>148</sup> While we did hear some examples of private prison staff masking use of force, the managers within private prisons consistently conveyed their commitment to honest and proactive reporting regardless of financial incentives.

### **Service Delivery Outcome 7 – Assault as a performance indicator**

As noted in Part 2, the performance of Victorian prisons is assessed against a suite of SDOs. For the purposes of SDO 7 ‘Assault on Prisoners by Staff’, an assault (including sexual assault) on a prisoner by a member of staff is only established when the following two conditions are met:

- ▶ there is an intentional and aggressive physical act (regardless of its severity) by a staff member on a prisoner and at least one of the following circumstances apply:
  - the victim claims an assault has occurred and there is no obvious reason to doubt this claim
  - there is at least one reliable witness account of the assault
  - a visible injury has occurred and there is sufficient evidence based on the balance of probabilities that the assault caused the injury suffered
- ▶ the Commissioner, Corrections Victoria, determines that an assault by staff occurred.

Further, the SDO 7 definition also states: ‘The Commissioner, in determining whether an assault by a staff member has in fact taken place, must take into consideration whether, following investigations by either Victoria Police or prison management, a charge of assault has been established. It is irrelevant whether a charge of assault is made out in a Court of Law.’

The Victorian Ombudsman’s Use of Force Report found ‘cases where the way officers reported incidents did not meet acceptable standards’ and there was ‘inaccurate or deficient reporting’.<sup>149</sup> Even where staff follow reporting requirements, there is no visibility of other forms of inappropriate or undesirable conduct that does not meet the threshold of ‘assault’ but may still be considered ‘unlawful’ and in conflict with the *Corrections Act 1986*, policy material or human rights principles. This means that it is not possible to determine the true prevalence of unreasonable use of force from the available data. Further, DJCS does not centrally collect quantitative data on the staff or people in custody involved in use of force incidents.<sup>150</sup>

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<sup>149</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 41.

<sup>150</sup> While details of all staff involved in an incident are captured in the incident report ‘pack’, this information is not collected quantitatively in the PIMS data system or by CV.

Amending the definition of SDO 7 will enable a broader spectrum of force incidents to be considered and referred to the legal team as misconduct matters.

<p><b>Recommendation 4.2</b>  <b>Revised Service Delivery Outcome 7 (Assaults by staff)</b></p>	<p>The Department of Justice and Community Safety should revise Service Delivery Outcome 7 (Assaults on prisoner by staff) to ensure that use of force incidents that do not reach the threshold of assault are captured, reported and measured as part of the service delivery outcome reporting process. Noting the risk of under-reporting and masking of assaults on people in custody, this revision should include additional categories of 'excessive' and 'inappropriate' use of force in line with the proposed revision of the use of force policy framework and use of force register.</p>
<p><b>Recommendation 4.3</b>  <b>Revised use of force framework</b></p>	<p>The Department of Justice and Community Safety should revise its use of force policy framework for custodial staff, to include:</p> <ul style="list-style-type: none"> <li>a) guidance on recording use of force incidents, including: <ul style="list-style-type: none"> <li>– a requirement to record the descriptive detail and category of type of force (such as 'excessive' or 'inappropriate')</li> <li>– recording whether the incident raised any other integrity concerns (for example, failure to activate body-worn cameras or provide surveillance footage)</li> <li>– associated assessment thresholds</li> </ul> </li> <li>b) clarification and guidance on the meaning of 'excessive use of force', 'inappropriate use of force' and 'assault', including examples of conduct that may contravene the law and Commissioner's Requirements</li> <li>c) incorporation of reflective practice as part of informal and formal debriefing immediately after a use of force incident and following the outcome of an audit or investigation, to support learning and continuous improvement.</li> </ul>

## Investigations and audits of use of force

Corrections Victoria's Operations Directorate is responsible for reviewing all allegations of assault by staff on a person in custody. In addition to the routine review of all alleged assaults, the Operations Directorate also performs a 'quality control' function, conducting 10 random audits of use of force incidents each month. These audits involve a qualitative examination of data collected about use of force incidents<sup>151</sup> and assess adherence to policy, appropriateness of the level of force used, risk and learning opportunities for staff where training deficiencies are identified.<sup>152</sup> The Operations Directorate provides audit reports with recommendations to the Deputy Commissioner and Commissioner. The reports

<sup>151</sup> Including the 'incident pack' and available CCTV or BWC footage. Operations Directorate staff may also interview staff and/or people in custody, where considered 'necessary'.

<sup>152</sup> Department of Justice and Community Safety (Corrections Victoria), 'Memorandum to Rod Wise, former Deputy Commissioner, Operations', Data provided to the Cultural Review.

may recommend that the incident be referred to the Integrity and Reviews business unit for a formal misconduct investigation or be referred to the relevant Assistant Commissioner and general manager for a local response.

Where the Operations Directorate has determined a force incident meets the threshold for assault under SDO 7, the matter will be referred to the Integrity and Reviews business unit for formal investigation. We understand referrals are also made where assault has not been determined but an incident is considered to be 'excessive'.

As noted above, there were 212 allegations of assault by a staff member against a person in custody between 1 July 2016 and 30 June 2021.<sup>153</sup> During this period, 20 allegations of unlawful use of force proceeded to a formal misconduct investigation by the Integrity and Reviews business unit. Of those:

- ▶ eight were unsubstantiated
- ▶ eight were substantiated resulting in a disciplinary outcome
- ▶ four were incomplete due to resignation of the employee (but may otherwise have been substantiated).<sup>154</sup>

The Victorian Ombudsman's Use of Force Report found that several factors contributed few misconduct allegations being substantiated in use of force investigations, including a lack of objective evidence, the high burden of proof and perceptions of a lack of credibility accounts by people in custody.<sup>155</sup>

Through our recommendations, we are proposing a renewed approach to the investigations and audits led by the Operations Directorate, discussed below, which will likely see a rise in the number of use of force incidents referred to the Integrity and Reviews business unit for investigation. We discuss DJCS's misconduct investigations process in Chapter 13, where we recommend DJCS adopt a more flexible approach to its formal investigations and evidentiary threshold.

We also recommend below that there are additional monthly audits alongside improvements to the availability and retention of evidence to support enhanced management of integrity risks related to use of force.

### **The Operations Directorate should broaden its focus to consider the spectrum of unlawful force and related conduct**

We have been pleased to see that, in reviewing or auditing use of force incidents, the Operations Directorate makes findings and recommendations to the Commissioner about behaviour that may not meet the threshold of assault but is still concerning, including where staff failed to activate BWCs in line with policy

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<sup>153</sup> Department of Justice and Community Safety (Corrections Victoria), 'Notifiable Incidents', Data provided to the Cultural Review.

<sup>154</sup> Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

<sup>155</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022).



requirements.<sup>156</sup> However, while these conduct issues should be sufficient to trigger a referral to the Integrity and Reviews business unit for a separate misconduct investigation, they are not routinely referred on.

We have also heard concerns that senior staff at prison sites were not appropriately identifying and reporting instances of unlawful use of force and inappropriate conduct in relation to force as part of their review and authorisation of incidents.<sup>157</sup> Concern about senior staff failing to perform their review functions to the appropriate standard, or potentially engaging in corrupt conduct by failing to report the misconduct of their staff, should itself warrant a referral to the Integrity and Reviews business unit for formal investigation.

Further, under current reporting systems, misconduct related to use of force that does not reach the high threshold of 'assault' under SDO 7 but is still a breach of the Victorian Public Sector Code of Conduct and Commissioner's Requirements is not recorded centrally and, therefore, is not visible to DJCS more broadly. We understand that Corrections Victoria is addressing this issue by developing a register to capture data from both use of force reviews and referrals to formal misconduct investigations resulting from use of force incidents and allegations of assault by people in custody.<sup>158</sup>

### **Monthly force audits should be increased**

As noted above, the Operations Directorate currently only has capacity to audit 10 use of force incidents each month, representing around 10 per cent of all use of force incidents across the system.<sup>159</sup>

This means that, while all use of force incidents must be reported and reviewed at a local level, unless the incident is raised as a concern at the prison level (by staff involved or by a manager or supervisor who reviews the incident), or a person in custody makes an allegation of assault, it will not be routinely reviewed centrally by the Operations Directorate.

These audits provide important intel, including information about under-reporting and performance issues; however, there is a need to increase audits in the short term to enable meaningful analysis and benchmark cultural change.

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<sup>156</sup> In all eight of the complaints investigated by the Victorian Ombudsman in her 2022 Use of Force report, she found behaviours of concern and poor decision making by officers: Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 4.

<sup>157</sup> Corrections Victoria, *Deputy Commissioner's Instruction 1.13 - Use of Force (Tactical Options) Compliance, Capability, Training and Assessment* (May 2021) 6.

<sup>158</sup> See DJCS response to recommendation 10 in Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 87.

<sup>159</sup> Use of force data provided to the Cultural Review from 2016-2021 indicates that there are an average of 1,238 use of force incidents each year across Victoria's prison system - approximately 103 incidents each month: Department of Justice and Community Safety (Corrections Victoria), 'Use of force', Data provided to the Cultural Review.

**Recommendation 4.4**  
**Enhanced audit function to address unlawful use of force**

The Department of Justice and Community Safety should increase the capacity of the Operations Directorate within the System Performance Branch of Corrections Victoria, to expand its monthly audit activities of use of force incidents to ensure the review of all use of force incidents across the adult custodial corrections system, improving oversight of integrity risks associated with the use of force.

The Operations Directorate should prioritise monthly audits at front-end locations which accommodate people in custody with the most complex needs, including Metropolitan Remand Centre, Melbourne Assessment Prison, the Dame Phyllis Frost Centre, Ravenhall Correctional Centre and Port Phillip Prison, with all locations audited monthly within 12 months.

### **CCTV footage should be available and retained**

In order to protect the integrity of staff and the rights of people of custody and support investigations into use of force, DJCS should:

- ▶ install additional CCTV cameras in blind spots<sup>160</sup>
- ▶ require staff to use common areas or holding cells for private conversations with people in custody
- ▶ avoid moving people in custody to locations where there are CCTV blind spots such as offices or cells unless the staff member is wearing a BWC.

Limited retention periods for CCTV and BWC footage mean that unless a complaint or report of unlawful force is made within seven days, footage may be destroyed. Commissioner's Requirements only require footage to be kept for seven days, unless it relates to a use of force or an assault allegation, in which case it must be retained for seven years.<sup>161</sup> This means any delays in reporting or making a complaint can leave investigators without critical evidence to help ascertain what occurred. DJCS should extend the period of retention for CCTV footage to 14 days to support investigations of integrity concerns.

<sup>160</sup> Recommendation 3 in the Victorian Ombudsman's Use of Force Report (June 2022) recommended that DJCS improve CCTV coverage of use of force incidents in Victorian prisons by: (a) eliminating CCTV blind spots in corridors and entrances to unit holding cells and (b) conducting a review of at least 12 months of data about use of force incidents, assaults and alleged assaults by staff on prisoners, to identify high-risk locations in order to eliminate CCTV blind spots in these locations. DJCS has accepted part (a) in principle, stating 'Corrections Victoria is aware of CCTV blind spots that present the greatest risks and will work to mitigate these risks. This will entail communication to staff to stress that non prisoner areas should not be used to address prisoner behaviour without the presence of an activated BWC. DJCS cannot commit to further action such as the installation of further CCTV without a funding source for this work.' Part (b) was not supported, with DJCS stating 'Corrections Victoria does not consider a review of 12 months of data to be useful as it is already aware of these high-risk areas. The identification of such areas occurs contemporaneously as part of regular continuous improvement processes such as use of force reviews': Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 85-6.

<sup>161</sup> <sup>161</sup> Corrections Victoria, *Commissioner's Requirement 1.4.2 – Surveillance, Taping Protocols and Retention Periods* (January 2020) 3.

For comparison, Victoria Police maintains BWC footage for 90 days,<sup>162</sup> and the South Australian Independent Commission Against Corruption recently recommended that corrections CCTV footage be retained for at least three months.<sup>163</sup>

**Recommendation 4.5**  
**Further action**  
**on Victorian**  
**Ombudsman's use of**  
**force recommendations**

The Department of Justice and Community Safety should accept and implement the Victorian Ombudsman's recommendations from its *Report on Investigations into the Use of Force at the Metropolitan Remand Centre and the Melbourne Assessment Prison* (May 2022) including:

- a) Recommendations 1 and 2, to increase accountability for body-worn camera activation by adding fields to incident reporting template
- b) Recommendations 3 and 4, to improve CCTV coverage of use of force incidents in Victorian prisons and require custodial officers to use CCTV-monitored areas, such as holding cells, whenever possible while having conversations with people in custody about behaviour
- c) Recommendation 5, to review the effectiveness of current training programs for custodial staff in de-escalation techniques, including considering more frequent training
- d) Recommendation 6, to review the practice of securing people in custody to cell doors by placing a baton through their handcuffs while their hands are through the trap
- e) Recommendation 7, to review the information provided to people in custody during orientation about use of force to ensure they are receiving clear information about their rights and avenues for complaints.

In addition to the above recommendations from the Victorian Ombudsman, the Department of Justice and Community Safety should amend the Commissioner's Requirements to extend the time that surveillance footage is kept from 7 day to 14 days, to ensure it is available for investigations into integrity issues.

<sup>162</sup> Victoria Police, Body Worn Cameras (BWC) (Web page, 4 April 2022) <https://www.police.vic.gov.au/body-worn-cameras>.

<sup>163</sup> South Australian Independent Commissioner Against Corruption, *Evaluation of the Practices, Policies and Procedures of the Department for Correctional Services* (Report, June 2021), recommendation 14.

## Misuse of BWCs

The introduction of BWCs in 2016 has undoubtedly enhanced oversight, accountability and security within the adult custodial corrections system.<sup>164</sup>

We heard how the requirement for custodial staff to activate BWCs in certain situations provides comfort to both staff and people in custody, as it creates an independent record of events. Anecdotally, we also heard through our engagement, that BWCs have positively influenced the behaviour of both staff and people in custody, thus enhancing safety.

However, we also found that the potential benefits of BWCs are undermined by instance of noncompliance with policy and procedure or misuse which create some integrity concerns, while also masking others. In our workforce survey, 10 per cent of respondents reported witnessing their colleagues engaging in masking behaviours, including covering up BWCs, in the last five years. This is consistent with the concerns we heard from people in custody at a number of custodial sites, who stated that staff often do not activate BWCs, turn them off mid-incident, obscure their lens or manipulate them, with officers yelling 'do not resist' on camera in order to justify use of force even when the person in custody is not resisting. Without footage, many reporting processes and accountability mechanisms can become ineffective as they lack objective evidence to support findings of misconduct:

'When I was with the Security and Emergency Services Group it was talked a bit about like person with the body-worn camera stays out of the cell or acts as if they can't get in.'

**Staff member**

'[BWCs] are shithouse. There's no point to them I think they've got more footage of each of us going to the toilet than they do interactions ... In saying that, we choose when to turn the cameras on.'

**Staff member**

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<sup>164</sup> Commissioner's Requirement 1.4.7 – *Body Worn Cameras* (March 2022), which outlines the use of body-worn cameras.

**'I asked, "Why aren't you wearing cameras?" None of them were wearing cameras. They all had the little holster where the camera should go, but none of them were there.'**

'[An officer] decided to jump in front of me and then double-punched me in the chest. It nearly put me on my ass. It was all done under video camera ... I said, "You just assaulted me. You had no right to do that." As soon as I said that he pushed the button on his duress, and he called a Code Blue [Officer needs assistance] ... The officers [he called for] came and I was just twisted up ... you would see anyway [on the footage] and they dragged me and put me into [a management cell].

Before they put me in the cell ... they give me a big rough up in the back cell ... I got thrown, thrown against the wall, fell to the seat. I got a couple of punches laid into me. They were saying things like, "I'm going to smash your face in. We don't tolerate people like you assaulting our officers" and things like that. I said, "Have you looked at the footage?" [They said nothing] then I asked, "Why aren't you wearing cameras?" None of them were wearing cameras. They all had the little holster where the camera should go, but none of them were there. They were right in my face. There was probably about half a dozen officers ... very aggressively on top of me. It was a big psychological [ordeal] – it's traumatic to be assaulted and be accused of assault.'

*A person in custody*

Failure to activate BWCs was a common concern in the sample of use of force audit reports from the Operations Directorate we reviewed. In such instances, the conduct is generally referred back to general managers for them to discuss with their staff.<sup>165</sup>

Concerns about BWC misuse were also raised by IBAC in its 2021 Special Report on Corrections, which found that 'during two critical incidents at Port Phillip Prison a number of corrections officers failed to comply with surveillance related policy and guidelines, including by failing to activate their BWCs, failing to announce they were wearing a BWC and recording the incident, or by intentionally interfering with BWC recordings'.<sup>166</sup> Similarly, the Victorian Ombudsman's Use of Force Report identified several situations where BWCs were not activated for the duration of an incident as required, hindering the investigation.<sup>167</sup> BWC footage was available in only two of the eight incidents the Victorian Ombudsman investigated and, in these cases, 'it was only partial because officers activated cameras after the incident started or turned them off during'.<sup>168</sup>

<sup>165</sup> Department of Justice and Community Safety (Corrections Victoria), 'Operations Directorate Use of Force Reports sample', Data provided to the Cultural Review.

<sup>166</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 10.

<sup>167</sup> For example, Mr Ruiz's case in Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 34.

<sup>168</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 33. In the Victorian Ombudsman's investigation of Mr Ruiz's alleged assault, one custodial staff was heard saying 'stop resisting' and 'I'll break your fucking neck' before the two staff turned off their BWCs.

### **Measures for central oversight of noncompliance should be introduced**

We found that DJCS does not have a way to systematically track BWC use and compliance with Commissioner's Requirements, instead relying on local-level identification as part of the incident reporting process<sup>169</sup> or through the monthly random use of force audit process.<sup>170</sup> Lack of centralised data collection related to BWC use means identifying trends and overall system compliance with BWC activation requirements would be a laborious manual process.

We support the recommendations by the Victorian Ombudsman directed at increasing accountability and oversight of BWC compliance by adding additional fields to incident reporting templates and PIMS, and conducting quarterly audits of BWC activation data across all Victorian prisons.<sup>171</sup>

Other workforces that use BWCs have encountered similar challenges with overseeing compliance. For example, the Victorian Auditor-General's recent report *Managing Body-worn Cameras* examined the use of BWCs in Victoria Police and highlighted the importance of a clear system for monitoring and reporting on BWC use to track their impact on the conduct of staff and people in custody.<sup>172</sup>

We suggest DJCS work with Victoria Police to identify and adopt best practice in relation to automation, compliance-monitoring and use of a central corrections online dashboard to monitor BWC use and other integrity risks. We recommend the creation of a system-wide risk dashboard for monitoring integrity issues and workplace harm in Recommendation 2.6.

### **BWC use should be expanded in line with the Victorian Ombudsman's recommendation**

A further limitation of BWCs is that they are generally only worn by specialist custodial roles such as SESG, ERG and TOG officers due to these roles being more likely to be called into codes or other emergencies and incidents. However, custodial staff are also required to respond to incidents and may be required to use force or find themselves in a situation where their integrity is questioned. In these situations, it would benefit both staff and people in custody to have an objective record of events.

We recommend DJCS increase the deployment of BWCs across the adult custodial corrections system, prioritising deployment to staff working posts where they are more likely to be first responders to incidents – for example, staff in operational

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<sup>169</sup> Schedule 1.19(1) 'Incident/Injury/Investigation Report Form' and corresponding incident report forms in place at the private prisons currently include a checkbox that asks if BWC footage is available and retained: Corrections Victoria, *Deputy Commissioner's Instruction 1.19 – Incident Reporting and Monitoring* (March 2021), sch 1.19(1).

<sup>170</sup> It was noted in the Ombudsman's Use of Force Report that data about whether staff activated BWCs during an incident has been collected as part of the monthly use of force audit process since October 2021: Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 41. DJCS has advised that they have identified an increase in compliance since monitoring and awareness raising began.

<sup>171</sup> See Recommendations 1 and 2 in Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 82.

<sup>172</sup> Victorian Auditor-General's Office, *Managing Body-Worn Cameras* (Report, June 2022).

support teams at all front-end and remand prisons as well as locations where more complex cohorts are placed.

### **Noncompliance should be taken more seriously**

DJCS has taken steps to address BWC noncompliance in recent years, including updating the Commissioner's Requirements in January 2020 to require control room staff to issue a reminder to activate BWCs when a code is called.<sup>173</sup> Nevertheless, we consider that DJCS needs to take further steps to address the misuse of BWCs by:

- ▶ increasing the consequences for staff who fail to appropriately use a BWC, referring matters to Integrity and Reviews for a misconduct investigation where it is determined that 'it was reasonably likely' that the staff member intentionally failed to activate the BWC
- ▶ track repeat noncompliance among individual staff and work groups, triggering misconduct investigations and systemic responses.

As discussed below, we recommend that if a staff member does not use a BWC appropriately, there is a presumption of improper conduct, triggering an investigation.

## **Inappropriate relationships**

Inappropriate relationships with people in custody is both a product of and contributor to cultural issues within a prison. Inappropriate relationships can present significant integrity risks, compromising impartiality, fairness and, potentially, the direct safety of people in custody and staff.<sup>174</sup> We heard about two different types of inappropriate relationships during our engagement:

- ▶ relationships in which people in custody attempt to 'groom' corrections staff to enable corrupt activity such as the introduction of contraband or favourable treatment
- ▶ relationships in which custodial staff sexually abuse or exploit people in custody through intimidation, threats or incitement.

In our workforce survey, 10 per cent of respondents had witnessed their colleagues engaging in inappropriate sexual or intimate relationships with people in custody over the last five years. These findings were relatively consistent across all security classifications.<sup>175</sup>

<sup>173</sup> 'When an alarm or Code is raised, control room staff will issue a reminder to staff to activate their Body Worn Camera. Staff responding to incidents must activate their Body Worn Camera as soon as they can, to enable footage to be captured at the earliest opportunity': Corrections Victoria, *Commissioner's Requirement 1.4.7 - Body Worn Cameras* (March 2022) [5.1.2].

<sup>174</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 68-9.

<sup>175</sup> Six per cent of staff at minimum security prisons reported witnessing inappropriate sexual relationships, 10 per cent at medium security prisons and eight per cent at maximum security prisons.

## Grooming of staff by people in custody

IBAC's Special Report on Corrections explored concerns relating to people in custody 'grooming' staff to engage in corrupt activity. The report noted research that suggests that 'certain personal characteristics or life circumstances can increase a staff member's vulnerability to grooming'.<sup>176</sup> Consistent with IBAC's findings, management teams we spoke to described situations in which a staff member had entered an inappropriate relationship with a person in custody shortly after a relationship breakup or at a time when it was known they were experiencing personal issues.

We heard across multiple locations that staff, particularly younger female staff who were bullied, sexual harassed, excluded or otherwise ostracised by their colleagues, were more vulnerable to being groomed by people in custody:

'If you are ostracised by your workmates, you are ripe for grooming by a prison group. They watch everything and they know what's going on.'

Staff member

### Increased risks of grooming in the custodial workplace include experiencing workplace harm

A key theme that emerged through our engagement was that experiences of workplace harm can heighten the risk of a staff member being vulnerable to grooming. This was explicitly raised in staff focus groups and interviews with management.

The experiences we heard from staff are consistent with recent research which found that workplace bullying and exclusion creates a risk of staff developing inappropriate relationships with people in custody, as social isolation, loneliness and lack of support from colleagues can increase a staff member's vulnerability to grooming:

'You know who I get my most validation from is my laundry billet. Yeah, just having a conversation with her actually made me feel much better, and I thought, it's indicative. It's really indicative [of a culture gone wrong]. When I see [sic] how staff are treated and how undervalued we feel and we get [validation] from the women, no wonder some people cross boundaries. If you're feeling isolated from management or from your working group because of a culture, you're going to get drawn to the prisoner.'

Staff member

### Understanding cultural safety through professional relationships

Aboriginal staff told us that their integrity had been questioned due to their interactions with Aboriginal people in custody and the tension they feel in conforming with the broader workforce.

This is of particular concern for Aboriginal wellbeing officers and religious practitioners, who perceive that other prison officers do not understand certain

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<sup>176</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 69.



cultural context around their interactions with people in custody (for example, hugs, pats on back or cultural titles), which are an important part of establishing culturally safe relationships.<sup>177</sup> See Part 5 for further discussion of these challenges for Aboriginal staff.

### **Promoting professional and respectful relationships to address integrity risks**

While inappropriate relationships with people in custody present a significant integrity risk, we also heard that respectful and supportive relationships between prison officers and people in custody is an important part of supporting rehabilitation and dynamic security.<sup>178</sup>

Where staff cross professional boundaries in women's prisons, we heard that women in custody are often blamed because of an inherent belief that women in custody are not trustworthy and are interested in grooming staff.<sup>179</sup>

Being able to identify what is and is not professional and where to draw the line can be difficult for some staff regardless of their length of service; however, maturity, custodial experience, training and a supportive workplace environment can help mitigate the risk.

We support IBAC's recommendation to increase training on grooming behaviours;<sup>180</sup> however, we also note that training, intelligence functions and policies should consider the broader purpose and reorientation of the system toward a trauma-informed, therapeutic response to offending, in which relationships with people in custody play a central role. Strategies to mitigate the risk of inappropriate relationships forming should be proportionate to the risk posed and should be carefully balanced to avoid the unintended consequence of discouraging staff from engaging professionally with people in custody.

## **Contraband**

While only a very small number of respondents to our workforce survey said they has witnessed staff introducing contraband,<sup>181</sup> people in custody we spoke to at several remand and maximum-security prisons told us that drugs were freely available and, at one location, a staff member joked that they turn a blind eye to contraband.

While the introduction and availability of contraband was not a prominent theme in our engagement with staff or people in custody, we did hear some concerning

<sup>177</sup> Islamic Council of Victoria, Expert interview with the Cultural Review (2021).

<sup>178</sup> Caraniche, Submission to the Cultural Review (December 2021) 3.

<sup>179</sup> Sisters Inside, Expert interview with the Cultural Review (2022).

<sup>180</sup> See Recommendation 1(a) in Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 97.

<sup>181</sup> Only seven per cent of respondents to our workforce survey said they have witnessed staff introducing contraband to people in custody. This was relatively consistent across security classifications – six per cent from minimum security locations, eight per cent from medium security locations and five per cent from maximum security locations.

examples including one account from a person in custody who alleged a staff member asked them to give contraband to inmates involved in gangs.<sup>182</sup>

'I've had staff ask me to give contraband to inmates involved in gangs in prison.'  
Person in custody

This behaviour can both be unlawful and creates a culture of mistrust and suspicion between staff and people in custody. It can also directly impact on the safety and security of the prison, other staff and compromise the purpose of individual prison officers.<sup>183</sup>

The introduction of contraband is also closely related to other integrity concerns, such as inappropriate relationships, and can be used to justify personal and property searches, the deployment of drug dogs, use of force and other interventions that can create integrity risks and be deeply distressing to those involved.

## Unlawful strip-searching

Strip-searching is fraught with integrity challenges given the inherent vulnerability of a person being searched and potential for searches to be conducted in a way that is inconsistent with their human rights. For staff, they are an unpleasant aspect of the job and conducting strip-search may sometimes expose staff to a risk of harm.

The Charter protects people' right to humane treatment when deprived of their liberty,<sup>184</sup> including in relation to strip-searching in prison. The Mandela Rules state explicitly that searches should never be used 'to harass, intimidate or intrude on a person's privacy' and should only be undertaken if 'absolutely necessary'.<sup>185</sup>

While only 3 per cent of staff who responded to our workforce survey reported witnessing inappropriate strip-searching in the last five years, we heard many concerning examples of inappropriate and unlawful searches from people in custody, suggesting issues with the conduct of a minority of staff at some locations.

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<sup>182</sup> Person in custody – Confidential interview with the Cultural Review.

<sup>183</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021).

<sup>184</sup> *Charter of Human Rights and Responsibilities Act 2006 (Vic)* s 22.

<sup>185</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rules 51, 52.

Consistent with findings in other recent integrity reports,<sup>186</sup> we heard that strip-searching continues to be conducted routinely across the adult custodial corrections system and that there is insufficient knowledge among staff of the operation of the Charter and how to exercise their custodial discretion to strip-search a person in a way that is compatible with their human rights. In Part 6, Chapter 20 we recommend that routine strip-searching be phased out through legislative safeguards and fair, transparency and ethical decision-making.

## Integrity concerns with strip-searching

While we understand DJCS has made recent changes to strip-searching policies to reduce routine searching and introduce additional safeguards, we heard examples of searches not being conducted in compliance with regulations and policies. This included, for example, people in custody not being offered top/bottom searches or the option of being searched by a person of the same identified gender, being searched for dubious reasons or at the expense of a person's dignity, psychological wellbeing and safety.

Inappropriate examples of strip-searching often occur alongside other integrity concerns such as threats, verbal abuse or physical assault. When strip-searching is not conducted with dignity and privacy, it is more likely to lead to a situation where a person becomes agitated which may then lead to an altercation. People in custody have alleged that some staff may use strip-searching as a way to incite a person in custody to react aggressively or refuse to comply, then justifying the staff member using force to make them comply:

'They may select a person and pull them aside under the guise of a random drug search then take that person to a cell and instruct the person to undress – then re-dress – then undress again – then re-dress again until the inmate asks "Why?" in response.'

**Person in custody**

We consider that, where strip searching is used routinely, and not based on intelligence or a reasonable suspicion of the presence of contraband, there is an increased risk that integrity risks will arise. In Chapter 20 of Part 6, we recommend that routine strip searching is phased out and replaced by advanced additional body scanners and intelligence capability – and that safeguards are embedded into the new legislative framework.

Inappropriate strip searching should also be addressed through enhanced training and supervision, however, may also be symptomatic of a more pervasive culture of disrespect. Regardless, there is a need for central oversight of all incidents of strip searching to assess compliance, identify risks and facilitate continuous improvement.

<sup>186</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 9; Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017) 10. See generally Western Australian Office of the Inspector of Custodial Services, *Strip searching practices in Western Australian prisons* (Report, 2019).

## Misuse of separation regimes

The purpose of separation regimes is ensure that people in custody are accommodated in appropriate environments to manage any risk that they pose to prison security, the community, themselves or any other person.<sup>187</sup> The Secretary of DJCS has the power to make separation decisions;<sup>188</sup> however, in practice, this power is delegated to specific positions including prison supervisors, operations managers and general managers within prisons, other managers and executives, and the Sentence Management Division of Corrections Victoria.

A person in custody can only be separated for one of several reasons set out in the *Sentence Management Manual*; however, staff have broad discretion to determine that separation is required following an alleged incident or 'where a person poses a risk to the security, good order or management of the prison'.

Separation and management regimes are generally used to respond to violent and unsafe behaviour, including self-harm, and can form a legitimate part of a broader behaviour management strategy aimed at mitigating the risk of harm to both people in custody and staff – as reflected in the broadly framed Corrections Regulations. However, corrections policy sets out that the Corrections Regulations guidance on separations must be interpreted alongside the Charter and that these regimes should only be used as a last resort and for the shortest possible time:

'Prisoners accommodated on a separation regime are managed under the least restrictive conditions consistent with the reasons for the separation and to the extent necessary to minimise the risk associated with that reason.'<sup>189</sup>

Even the lawful and proper use of separation and management regimes can have significant mental health impacts for people in custody and risk breaching their human rights. For this reason, separations must comply with the Charter and international standards and be subject to stringent oversight and record-keeping to ensure they are not misused.

## Integrity concerns with seclusion and separation regimes

Corrections Victoria policy documents make explicit the need to manage people in custody through the least-restrictive means available, for the least amount of time needed to resolve an immediate threat to safety, and require that staff act compatibly with relevant human rights obligations and consider the human rights of people in custody when making decisions.<sup>190</sup>

However, we heard concerning examples from external stakeholders, people in custody and staff that the operating principles outlined in these policy documents do not always translate to the appropriate treatment of people in custody on the ground.

<sup>187</sup> Corrections Victoria, 'Separation Regimes' *Sentence Management Manual* (12 July 2022) 1.

<sup>188</sup> *Corrections Regulations 2019* (Vic) reg 32.

<sup>189</sup> Corrections Victoria, 'Separation Regimes' *Sentence Management Manual* (12 July 2022) 3.

<sup>190</sup> See for example, Corrections Victoria, *Deputy Commissioner's Instruction 1.17 – Separation Regimes* (11 July 2022) 2; Corrections Victoria, *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018) 2; Corrections Victoria, 'Separation Regimes' *Sentence Management Manual* (12 July 2022) 1, 3.

For example, Fitzroy Legal Service told us about the experience of one of their clients, 'Laura':<sup>191</sup>

'Laura had received distressing news about her prison sentence. She was upset but in her own words, "not attempting to self-harm nor causing trouble to anyone else". Nonetheless, she was placed in a "wet" cell. She was made to undress, including her underwear, in front of five male guards. She was on her period. She was provided one pad to hold against herself. She was watched by guards. She felt "humiliated" and like a "piece of shit". The mattress was blood stained, and blanket contained rat poo. She was cold. She had a migraine and was not provided Panadol. She vomited as a result. She received threats, "if you don't do as you're told we're going to keep you in here". After 24 hours she was released from the wet cell, and placed in supervision for a few days before being able to return to her cell.'<sup>192</sup>

**Fitzroy Legal Service**

While only 6 per cent of respondents to our workforce survey reported witnessing improper use of solitary confinement on people in custody, during our engagement we heard examples of the management regimes and seclusion being used pre-emptively or as 'punishment'.

A common theme in our conversations with people in custody around reporting options was a prevalent fear that those who complain may be subjected to time in 'the slot' or management regimes:

'I was bullied by my case officer. I was threatened to be placed in the slot unless I stopped attending the prisoner representative meetings. They said that the "[senior manager] was dissatisfied that we were raising issues that were embarrassing [them]". A couple of days after that the officer said they would reconsider their position if I was prepared to act as an informer for them. I declined their offer but was concerned I would be targeted further. I was not in a position to report this as they were promoted to a higher role where they would be the one to deal with the report.'

**Person in custody**

This is consistent with the findings of the Victorian Ombudsman who reported in 2019 that almost half of young people and staff at one adult prison believed that isolation was commonly used as a form of punishment.<sup>193</sup>

<sup>191</sup> Name has been changed to protect privacy.

<sup>192</sup> Fitzroy Legal Service, Submission to the Cultural Review (January 2022) 5.

<sup>193</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019) 89.

## Review of separations

A key protective measure against misuse of separation as a form of punishment is a robust reporting, review and oversight framework.

### **Separations are currently subject to a number of layers of review**

In recognition of the restrictive nature of management units, all decisions to separate a person in custody involve a multilayered approval process, designed to ensure the placement is justified and required to mitigate the risk identified.

In the first instance, custodial staff contact the duty sentence management manager to discuss the circumstances leading to the request for separation.

A separation order is then completed by the location and forwarded to the Sentence Management Division for endorsement. A separation order is required for any separation that involves transfer to a high security, management or medical/psychiatric observation cell, or any time when separation is expected to continue for longer than 24 hours.<sup>194</sup>

Generally, the period of initial separation endorsed under a separation order must not exceed seven days.

Where a person in custody is separated into a high security/management unit or cells for more than seven days, Sentence Management staff must conduct a Sentence Management Panel (SMP) to review the circumstances of the separation and consider the placement. The SMP is responsible for determining whether ongoing separation or an alternative placement is required.

An SMP can only classify a prisoner to remain in a high security or management unit or cell for up to 30 days. If an SMP believes that the person poses a risk to prison security, the community, themselves or any other person if not accommodated in a high security or management unit, a long-term management recommendation report must be approved within 30 days of the person's initial separation. All long-term management prisoners are to be reviewed at least monthly, or more frequently if necessary, by an SMP.

All separations in excess of 30 days must be approved by the Assistant Commissioner, Sentence Management Division.

Placement into and out of an intermediate regime requires the approval of an SMP. It may be in response to a recommendation from a Case Management Review Committee (CMRC) or classification decision by an SMP. CMRCs are responsible for reviewing prisoners classified onto an intermediate regime on a monthly basis.

Subject to the implementation of changes recommended by the Victorian Ombudsman, we consider that the documentation and review requirements of formal management regimes are comprehensive and designed to protect against the arbitrary confinement of people in custody. Where custodial staff comply with these requirements, integrity risks would likely be minimal.

We have, however, heard that review deadlines are not always met and that communication with people in custody can be limited, leading to feelings of

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<sup>194</sup> Corrections Victoria, 'Separation Regimes' *Sentence Management Manual* (12 July 2022) 4.

confusion about the purpose of the separation and perceptions of being targeted or punished.

There may also be a risk that separations for less than 24 hours (which do not require a separation order) and those for less than seven days (which are not subject to review by an SMP) could be open to abuse by custodial staff who wish to use separation as a form of retribution or punishment, as these placements are not closely monitored.

### **Lack of central oversight of separations**

Until recently, it has not been possible for DJCS to centrally oversee the use of separation across the adult custodial corrections system. We understand that DJCS is currently in the process of developing a system-wide separations register to address recommendations made by the Victorian Ombudsman,<sup>195</sup> which will include those separated outside of management units.<sup>196</sup>

In the interim, we understand that the Sentence Management Unit currently keeps manual records documenting prisoner movements from one unit to another across the adult custodial corrections system, including when a person is moved from their regular accommodation to a management unit. Prisons must have sign-off from the Sentence Management Unit using a separation order to keep a person separated in management, and the person must receive a copy of the order within 12 hours of being separated to indicate the reason for their separation.

We support the Victorian Ombudsman's recommendations relating to the legislative and regulatory framework applicable to separations.<sup>197</sup> We understand DJCS has initiated a Separation Reform Project which intends to address many of the recommendations made by the Victorian Ombudsman, including integrity risks in the use of separation.

This project aims to review Corrections Victoria's management of people who are subject to separation regimes and accommodated in management units, including a review of authorisation and oversight, and options for evidence-based reform. This will build on the Women's System Reform Project, which aims to develop strategies to effectively manage the growth in the population and ensure that the system can cater to the needs of women in custody in a gender-responsive and trauma-informed way. The Separation Reform Project is currently in the initiation stage,

<sup>195</sup> See recommendations 4 and 10 in Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019).

<sup>196</sup> Department of Justice and Community Safety (Corrections Victoria), 'VAGO VO IBAC Parliament Committees and Significant Review recommendations in Corrections Portfolio 2013-2020', Data provided to the Cultural Review; Department of Justice and Community Safety (Corrections Victoria), Summary of CJS Audit Tracking Register June 2021', Data provided to the Cultural Review. We understand that a separation flag has now been added into PIMS to identify every prisoner who is separated, whether in a management unit or in their own cell, and work to develop a reporting dashboard is underway. We also understand that amendments to the Corrections Regulations to require prisons to maintain a register of separations are progressing but have been delayed due to the COVID-19 pandemic. Prior to this, while prisons were required to maintain a record of all separation orders completed at their location, this information was not recorded in a dedicated register or centralised database. Separations data provided to the Cultural Review indicates that the use of separations across the Victorian prison system was not centrally collected until 2020.

<sup>197</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019), recommendations 5.

focused on planning and consultation. This project is an opportunity to ensure improvements at individual locations but, more importantly, a consistent and systemic approach across the system.

Below, we recommend additional audits of restrictive practices and seclusion. See Parts 2 and 6 for our recommendations related to legislative safeguards.

## Misuse of restraints and restrictive practices

The Corrections Regulations and Corrections Victoria policy dictate that instruments of restraint are only to be applied to people in custody when it is necessary for the safety or good order of the prison, and not for longer than is necessary to achieve these aims.<sup>198</sup> Instruments of restraint permitted by corrections policy include handcuffs, arm and leg restraints, escort belts which restrain parts of the body, chains connected to other instruments of restraint, and spitter protective hoods.<sup>199</sup>

As with the use of seclusion, discussed above, use of restraints in line with legislation and policy requirements is not an integrity issue and can be necessary to maintain the safety of people in custody and staff. However, due to the power imbalance that exists between prison officers and people in custody, their use must be closely monitored to ensure that they are not overused or misused.

'I have been physically assaulted through inappropriate use of force such as "pop the knee/fold leg" technique. Inappropriate use of restraints – handcuffs on so tight they draw blood, being lifted up by cuffs to cause hand/wrist nerve damage.'

Person in custody

We also heard examples of handcuffs used in medical procedures where they were not required.

While the use of instruments of restraint was not a prominent theme in our engagement with staff – only 6 per cent of respondents to our workforce survey reported witnessing improper use of restraints on people in custody – our engagement with people in custody raised concerns about the misuse of these practices, commonly in relation to allegations of assault.

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<sup>198</sup> *Corrections Regulations 2019* (Vic) s 14(2); Corrections Victoria, *Commissioner's Requirement 1.1.5 - Application of Instruments of Restraint* (August 2019) 1; *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018) 2.

<sup>199</sup> Corrections Victoria, *Commissioner's Requirement 1.1.5 - Application of Instruments of Restraint* (August 2019) 2.



These accounts reflect the use of restraints where it would appear to be unnecessary and arbitrary use of handcuffs seemingly based on which staff are working that shift. In some circumstances, misuse of restraints can amount to unlawful use of force or assault.

**‘Staff used the body belt for all the wrong reasons. It broke me and the pain was horrific. I still suffer nightmares from that.’**

‘I spent two-and-a-half days in a body belt. I was in pain due to excessive overfitting of the body belt. I had cut wrists, blisters and I was not given food or water for 24 hours. Staff were laughing at me, tormenting me, getting other staff to look at me. Staff used the body belt for all the wrong reasons. It broke me and the pain was horrific. I still suffer nightmares from that.’

*Written submission from a person in custody*

In addition to legislative safeguards and a new fair, transparent and ethical decision-making framework (see Recommendation 6.4), we also recommend an enhanced internal audit function and training to provide better oversight and assure the integrity of decisions regarding strip-searching, seclusion and restrictive practices. This function would require adequate resourcing and would operate in a similar way as the existing use of force audit for a period of 12 months – to establish a baseline and inform the development of the new legislative framework and policy tools.

**Recommendation 4.6**

**Enhanced audit function and capacity building to address inappropriate use of seclusion, strip searching and restrictive practices**

The Department of Justice and Community Safety should audit the use of strip-searching, restraints and other behaviour management techniques over a 12-month period against existing policies and practice guidelines and Victoria's Charter of Human Rights and Responsibilities, to improve oversight and analysis of integrity risks.

This audit should inform the development of policy frameworks for the use of strip-searches, restrictive practices and behaviour management techniques, to ensure they align with proposed reforms to the purpose and direction of the *Corrections Act 1986*. This audit should build on the Victorian Ombudsman recent examinations of isolation and seclusion practices.

## Enhancing the management of integrity risks

In order to enhance oversight of the adult custodial corrections system, we have recommended a range of improvements including more resourcing for internal oversight functions, improvements to information management systems and data capability, additional audits and legislative safeguards for the use of practices that carry significant integrity risks.

However, we have also considered the internal investigations carried out by the Operations Directorate and suggest changes to identify and respond to a broader range of risks – and consider the context and cultural influences in the custodial environment.

### Enhancing investigations and audits of the Operations Directorate

#### **Consider the specific cultural barriers that operate within the custodial context**

As noted earlier, only a small number of investigations and audits conducted by the Operations Directorate result in a referral being made to the Integrity and Reviews business unit for an assessment and formal misconduct investigation, although lower-level misconduct concerns can be referred to local management who may take a range of actions, including minor disciplinary action or a formal warning. While the issue has been considered in relation to use of force audits and investigations above, all investigations into integrity concerns must be fairly and appropriately assessed by the Operations Directorate, giving proper consideration to factors that may challenge investigations such as the significant fear of reprisal among staff and people in custody.

'The imbalance of power between a prisoner and prison officer is acute. While allegations of assault are sometimes referred to the police, many of their investigations, like our own, go nowhere for lack of evidence. Prisoners themselves may be reluctant to co-operate for fear of reprisal. The culture of silence within prisons makes it harder to obtain objective evidence than in other environments.'<sup>200</sup>

#### **A lower-evidentiary threshold should be applied by the Operations Directorate**

The Operations Directorate should not determine the probative value of evidence or the credibility of people in custody. Their primary role is not to mitigate the legal risk associated with industrial relations processes, but to support the Commissioner and DJCS to adequately manage any ongoing integrity risks and ensure DJCS fulfils duty of care toward staff and people.

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<sup>200</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 4.

Consistent with its expertise and internal function, the Operations Directorate should adopt the lower evidentiary threshold test of 'reasonable likelihood' to assess whether further examination of the incident is warranted, rather than applying the Briginshaw test. A lowering of evidentiary standards creates more opportunities for alternative responses to some lower-level conduct, including more timely interventions.

### **The circumstances leading to the integrity incident should be investigated and considered in context**

Investigations and audits by the Operations Directorate should also be careful to consider all potential integrity breaches and the context in which they may arise. For example, allegations of assaults frequently occur alongside allegations of disrespectful treatment of people in custody, inappropriate searches and use of restraints and masking conduct. In all eight of the complaints investigated by the Victorian Ombudsman in the Use of Force Report, the Victorian Ombudsman found behaviours of concern and poor decision-making by officers,<sup>201</sup> including failing to de-escalate situations and deliberate escalation where an officer incites a person or instigates an assault. Some allegations occurred in areas without CCTV footage and in alleged retaliation or 'the heat of the moment'.

The investigations should examine each matter rather than just the 'most serious' allegations which may be more difficult to substantiate.

### **Investigations data should be centrally recorded to inform integrity trends**

Further, as noted above, unless an audit or investigation results in a finding of assault, the outcome – such as feedback to a general manager, additional training or a reprimand for staff involved – is only captured in qualitative reports that are sent to the Commissioner. This prevents centralised oversight of the prevalence of unlawful force across the system.

### **People in custody should be considered, heard and supported during investigations**

DJCS should also ensure that investigations provide an opportunity for people in custody to share their account of events while being protected from victimisation and provided with wellbeing support. An experienced person independent of Corrections Victoria should assist a person in custody to submit their complaint or account of events. In Chapter 20, we recommend an independent advocacy service is provided to people in custody, which could play a role in this process.

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<sup>201</sup> Victorian Ombudsman, *Investigation into the use of force at Metropolitan Remand Centre and Melbourne Assessment Prison* (Report, 2022) 4.

**Recommendation 4.7**  
**Enhanced investigations conducted by the Operations Directorate**

The Department of Justice and Community Safety should revise the Operations Directorate's approach to audits and investigations into reports of possible misconduct toward people in custody. The revised approach should include:

- a) applying the evidentiary threshold of 'reasonably likely' in assessing the conduct, assessing systemic risk at a local level and making referrals to the Legal and Integrity Group for formal misconduct investigations
- b) considering the specific cultural barriers that operate within the custodial context that may explain a lack of objective evidence and give appropriate weight to the testimony of people in custody and the circumstances within which the conduct occurred
- c) ensuring all reported or identified conduct in contravention of the Victorian Public Sector Values and corrections policies are investigated in addition to the main allegation
- d) recording relevant data about the incident, outcomes and parties involved in a central database
- e) taking steps to ensure relevant people in custody (included alleged victims, complainants or witnesses) are:
  - offered the opportunity to be interviewed or submit their account of the events to an appropriate person independent of the custodial location
  - offered appropriate support and protection from victimisation during and after the investigation process
  - advised of the outcome and actions related to an incident report related to use of force.

## **Central record-keeping and data management will enhance oversight and accountability**

Decentralised, inconsistent and paper-based management of data severely limits the ability of prisons, DJCS and other integrity or oversight bodies to have meaningful oversight of prevalence, compliance and patterns in the use of force and other custodial practices across different locations or on different cohorts of people in custody.

Limited record-keeping and data management is also impacting the intelligence capacity of Corrections Victoria and reduces its ability to identify risks and issues relating to individual staff or workgroups who present increased integrity risks. This capacity is critically important to allow DJCS to address inappropriate behaviour, identify possible problematic locations or units, and facilitate early intervention and risk mitigation. Intelligence capacity is needed both centrally and as a routine local management tool to enable leaders to intervene where concentrations of high-risk behaviours are occurring.

In Part 2, we recommend an investment in whole-of-system record-keeping and data capability, including moving away from paper-based systems and developing a dashboard for central oversight and risk monitoring.

### **Training and professional development to ensure up-to-date operational knowledge of relevant policy changes**

Managing integrity risks also involves ensuring all staff have up-to-date training as part of their ongoing professional development and progression, and that additional training is developed following a policy change or incident – such as a ‘near miss’ or report of misconduct. Regular training and reflective practice should be built into rostering systems and occur regularly – see Part 3 for further discussion.

DJCS should develop specific training to identify and prevent integrity concerns, with a focus on lawful and ethical decision-making in complex operational contexts.

We understand DJCS provides use of force training and online learning, with an annual practical assessment in the use of force and de-escalation techniques such as ‘non-contact’ person-centred techniques. DJCS has also recently conducted its first ‘whole of package’ review of its tactical operations training since 2017. We understand there may be changes to this training from early 2023. DJCS is also trialling a new de-escalation technique at Barwon Prison, which will be evaluated and considered for adoption in the broader training program.

DJCS should audit its training on the use of other restrictive practices, seclusion and strip-searching, to ensure staff have a good understanding of how to use these practices:

- ▶ in appropriate situations (as a last resort)
- ▶ in compliance with the Charter
- ▶ in a way that minimises integrity risks.

This training should support the implementation of our recommendation for a fair, transparent and ethical decision-making framework for staff (see Recommendation 6.4).

**Recommendation 4.8**  
**External training on integrity issues**

The Department of Justice and Community Safety should partner with the Independent Broad-based Anti-corruption Commission and the Victorian Equal Opportunity and Human Rights Commission to review staff training to ensure it equips staff with the capability to prevent, identify and respond to integrity risks. The review should inform the new approach to ongoing mandatory training (delivered at a minimum every 12 months) and include:

- a) guidance on making decisions that comply with Victoria's Charter of Human Rights and Responsibilities
- b) acknowledgement of the unique risks in custodial settings, including the need to balance the rights and interests of people in custody with security and safety
- c) opportunities for reflective practice.

The training should be centrally delivered at the proposed Centre for Correctional Practice and support implementation of the proposed ethical decision-making framework.

## 13 Responding to and preventing unlawful and harmful conduct

Appropriately responding to and preventing workplace harm and integrity risks is key to building the trust of the workforce and their confidence in complaints and reporting processes. It is also central to cultural reform and promoting safety, inclusion and integrity within the adult custodial corrections system. Modern complaints and reporting systems must be person-centred, fair and effective, and must prioritise the wellbeing of all involved.

Comprehensive prevention and response is not only best practice – the law requires employers to take proactive steps to eliminate sexual harassment, discrimination and victimisation in the workplace.<sup>202</sup> DJCS must also identify and address integrity risks in meeting its duty of care to people in custody and ensure a just, safe and effective custodial environment.

Appropriate responses to workplace harm and misconduct also minimise the risk of matters escalating to legal proceedings, adding to the complainant's distress and outcomes such as lengthy staff absences, WorkCover claims, and disruptions to custodial operations.

In this chapter, we assess local and departmental responses to misconduct and provide guidance on what a modern, best practice complaints and reporting system requires.

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<sup>202</sup> *Equal Opportunity Act 2010* (Vic) s 15.

While the focus of this chapter is on complaints and reporting processes for corrections staff, people in custody are sometimes also victims, witnesses or otherwise involved in staff misconduct matters. See Chapter 20 for further discussion of safe pathways for people in custody to report their concerns about their treatment in custody.

DJCS has a new Integrity Strategy<sup>203</sup> aimed at preventing and responding to integrity risks– which addresses many of the behaviours the Cultural Review has examined. This is one of several ways that DJCS has sought to address misconduct.

Notwithstanding some positive steps to increase reporting across DJCS and some custodial sites, few participants told us they had made a formal complaint of unlawful or harmful conduct despite use hearing from a large number of staff about these experiences being prevalent across custodial workplaces. Persistent, historical workplace norms including a culture of secrecy and ‘mateship’ and attitudes such as ‘Blue don’t dob on Blue’ continue to shape responses to complaints and reports of workplace harm and misconduct across the system.

There is a continued focus on reacting to complaints rather than reflecting on what those reports may indicate about systemic risks and the custodial workplace culture and using this information to inform prevention initiatives.

More investment is needed to prevent harm before it occurs.

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<sup>203</sup> Department of Justice and Community Safety, ‘Integrity Strategy 2021-2023’ (12 May 2021), Data provided to the Cultural Review.



## Key findings – Responding to and preventing unlawful and harmful conduct

- ▶ A significant number of staff distrust existing complaints and reporting systems, fearing victimisation or reprisal, or that responses will be ineffective.
- ▶ Most staff who told us they had reported misconduct or made a complaint about workplace harm did not have a positive experience, often due to a lack of action, significant delays in processes, a lack of communication, or feeling unsafe and unsupported..
- ▶ While DJCS has a ‘no wrong door’ approach to receiving complaints, in practice available complaints processes are highly complex to navigate, resulting in inconsistent responses and outcomes. Complainants also found that some ‘doors’ are less effective complaint pathways than others.
- ▶ There is limited local-level management capability to respond appropriately to complaints and reports or resolve matters locally, and little evidence of a person-centred response. There is a need for further training and support from DJCS's central HR team.
- ▶ Current complaints and reporting processes, including investigations, are not person-centred or trauma-informed and do not adequately support the wellbeing of parties involved. There is no clear accountability for wellbeing, and the complaints process is often re-traumatising for those involved.
- ▶ Misconduct investigations do not adequately recognise that people in custody are more vulnerable to being mistreated, have fewer avenues to raise complaints and are less likely to be believed. These factors, and the tendency for staff to not testify against their peers, are not given proper consideration in assessing the probative value of evidence.
- ▶ DJCS's investigations processes are not victim-centric and should be reviewed to ensure an appropriate and balanced approach to assessing evidence.
- ▶ Current efforts to identify and mitigate risks are ineffective and inconsistent, and do not represent a cohesive and shared approach between DJCS and Corrections Victoria to preventing workplace harm and integrity issues.
- ▶ The workforce requires targeted messaging to drive a clear narrative for cultural reform, communicate expected standards for behaviour and ensure that people know where to report if they experience harm or witness integrity issues.

## What staff told us about

# PREVENTING WORKPLACE HARM

**Effective responses to workplace harm rely on leaders who are open, capable and accountable.**

Having staff trained when they go up the ranks ... They are trained to know what to do with fires and when someone is assaulted ... What about sexual harassment? ... When I report to my manager, "Hey, I've just been sexually harassed in the tearoom", they are trained and professional enough to handle it.'

I had a good role model in the person that was my manager previously and she backed me on a couple of things that I had to report. So I never felt like it was going to be a negative.'

We've had recent deaths through accidents, through suicide by staff members and, over the last couple of years, the EAP has been pushed, making sure we've got access. We've had a staff member die; the next day we've got EAP walking around. We never used to have that before. So, change has happened.'

**The system needs a zero-tolerance approach to harmful workplace behaviour by managers and leaders.**

I had a junior staff member report to me so upset, in tears, as a result of the way one of the correctional managers treated her or spoke to her. As part of my investigation around it, and I watched CCTV, you could really see how this correctional manager was treating this person. That correctional manager was suspended and went through the entire disciplinary process. He was put on a final warning, and he's been here for a very long time. That had an impact across all the correctional managers and - I was OK with that, to set the tone of what's acceptable and what's not. That was the first thing.'

I have witnessed bullying and poor behaviour. At times this is not addressed or confronted; however, it is managed by moving people out of areas, downplaying the situation, blatantly ignoring [it].'

**Clear messaging and campaigns reinforce expected standards of behaviour and create momentum for positive change.**

Corrections used to be very flamingo-like and put our heads in the sand and just ignore [harmful behaviours]. I think, as our prison has evolved, and our staff group has matured, I think we're a little bit more capable in being honest with ourselves and addressing that type of thing - definitely across the leadership.'

I guess across the board we want staff to be role modelling prosocial behaviour to the prisoners, it's so important. That's where change starts. There are a few men that stand up but they quickly become out of favour, so they're quickly excluded and I guess people view their experience and go, "Well, I don't want that to be me".'

Ten years ago, it used to be that unless you brought drugs in or slept with a prisoner, you couldn't get sacked ... Now it's like there's a whole lot of things that you're accountable for ... Don't mess around with it, because you'll be held to account. I think that's loud and clear out there.'

**Staff at all levels needs training the drivers, impacts and organisational responses to workplace harm.**

They need training in people management so that we have better communication for difficult conversations. We all have heard about it, and if you're lucky enough to get on an officer development program, which are few and far between, you learn that stuff, but we're not practising it and two and a half, three years ago when I was being treated so poorly and I went to my supervisors, they didn't know how to manage it.'

I think mental health in particular, I think they're trying stuff but I think they're so far short of what needs to be done, so far short.'

**Complaints and reporting systems must be accessible, timely, transparent, and victim-centric.**

[We need an] HR department with swift action and stop protecting the perpetrators as the victim gets nothing. Victims are still frightened to report that other staff will find out and they will be disowned by their colleagues. We need to stand up and clap the victim for reporting and everyone see the perpetrators be disciplined if you ever want to change the culture once and for all.'

It takes forever to get resolution [to a workplace harm complaint]. A staff member who's been walked off the premises still on full pay. It's not a murder investigation; it shouldn't take that long. Read the reports – I mean, in my naïve thinking, read the bloody reports, interview people, maybe provide an opportunity to clarify some of the questions, ask them questions. You can finish an investigation in a couple of weeks.'

**Restorative justice, accountability and acknowledgement of harm can help rebuilding trust.**

I think there's a culture of not reporting ... The prisons, managing lower-level issues – it'll be largely ignored. And then, a staff member will do something significant in the prison and they'll say, "This is misconduct" and push to get the person terminated, essentially. But there could have been five years of escalating behaviour that hasn't been managed.'

[Corrections Victoria] needs to invest in the staff that you've got and keep them happy. You don't need to give them more money or anything to do that. Just give them purpose and get them fulfilled. It's not about giving us bacon and eggs once every couple of months; I don't care about that. Like, give them a purpose, and give them a home to work from, and I'll tell you right now, you'll get less people quit.'

## Low reporting does not mean low levels of harm

A low number of complaints or reports of workplace harm does not neatly translate to a low number of incidents. On the contrary, the absence of reporting in a large and dynamic workforce with known risk factors will often indicate that incidents are going unreported. Low reporting also impacts the availability of data and intelligence that allows the workplace to identify risks and issues and build safe and professional cultures.

We heard from general managers and leadership at some custodial sites that complaints of workplace harm were low or non-existent – however, this suggests an over-reliance on complaints data to support their belief that conduct such as sexual harassment was not taking place at their location, without understanding the limitations and barriers to reporting.

We heard many examples of workplace harm at the same locations where there are apparent low levels of formal complaints, particularly about sexual harassment, bullying and integrity concerns. At these sites, staff spoke of their low level of confidence in the reporting processes and fear of reprisal as reason for why they did not or would not make a formal complaint:

'I remember this kid [on squad] who was like "Yeah, I would write someone up if I saw something I didn't agree with". And I remember two [staff members] were like "Come with us, mate, we're going to have a conversation", and they escorted him out of the classroom, and they went and had a private conversation with him. And we were all just in class like "well I'm never writing someone up if they've singled him out to have a chat for that" ... To me that solidified you don't write staff up ... You either talk to them or you just quit or you [complain] about them relentlessly.'

**Staff member**

Data from the VPSC's 2021 People Matter survey indicates that only 28 per cent of custodial staff who responded were confident they would be protected from reprisal if they reported improper conduct.<sup>204</sup> Further data from our workforce survey demonstrates a real and justified fear of reprisal and victimisation for reporting misconduct and integrity risks – for example, 12 per cent of custodial staff who said they spoke up after witnessing unwelcome workplace behaviours advised that they were ostracised, victimised or ignored by their colleagues as a result of speaking up.<sup>205</sup>

<sup>204</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

<sup>205</sup> Cultural Review, Corrections workforce survey (2021).

The Community and Public Sector Union (CPSU) also noted that many people fear reprisals when making a complaint or reporting inappropriate conduct.<sup>206</sup> These issues are exacerbated in regional locations where there are overlapping social and community connections due to the location of the prison in or adjacent to a community. At these locations, there is an increased need to ensure that complainants are provided with pathways to anonymous reporting as well as additional support following making a complaint, including consideration of a complainant's work location.

This fear of reprisal and victimisation persists within the custodial workforce despite recent efforts by DJCS to address the cultural and systemic barriers to reporting workplace misconduct and inappropriate behaviours. We note that some of these barriers relate to the high rates of harm allegedly perpetrated by senior staff in the workplace, impacting the confidence of more junior staff to feel that they would be safe and supported if they spoke up.

Increased messaging during squad training has focused on encouraging new recruits to use the formal complaint response and 'speak up' against workforce misconduct. This messaging emphasises DJCS's 'zero tolerance' approach to harm as well as updated policies and FAQs that detail the avenues available for staff to report.<sup>207</sup>

Trauma, shame and inadequate support to make a complaint from management and co-workers are also barriers to reporting, but they can be addressed through person-centred and trauma-informed complaints processes.

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<sup>206</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 21.

<sup>207</sup> The Department's Integrity Strategy 2021-2023 and other recent reforms to the reporting and complaint process include encouraging a 'speak up culture' and improving the capability of monitoring and compliance processes. While it is too early to consider the effectiveness of these measures, we have found that the reform activities have not comprehensively addressed and targeted the specific barriers and obstacles to reporting within the adult custodial corrections system workforce.

## Building a safe, accessible and fair complaints and reporting system

Workplace reporting and complaints processes are important mechanisms for preventing and responding to workplace harm and other misconduct.<sup>208</sup> They should be accessible, fair, transparent, confidential, effective,<sup>209</sup> person-centred and based on trauma-informed principles. In addition to improving organisational safety, culture and productivity, a good complaints process is instrumental to learning and continuous improvement.

Given DJCS's Integrity Strategy and complaints processes apply department-wide, we see an opportunity to embed a best practice response to workplace harm and other types of misconduct for the benefit of all DJCS staff.

Noting the significant caseload for legal and HR teams in managing corrections-related complaints, an investment in HR is required to support and build the capacity of the corrections workforce to respond effectively to complaints. 'Lighter touch' investigations should also be considered to reduce the complexity and length of investigations for lower-level or more clear-cut misconduct.

In addressing the poor experiences of parties, we recommend that DJCS invest in additional specialist HR to support the workforce and ensure a more person-centred complaints process with end-to-end support, advice and advocacy to parties to a complaint and to local managers. We also recommend, below, a focused effort to build the capacity of local leaders to, over time, develop their capability to safely resolve more matters locally, including through more flexible alternative dispute resolution options. This recommendation is linked to reform measures to increase the skills and capability of leaders set out in *Chapter 10. Leadership* in Part 3.

We consider that this work will build staff confidence in leadership responses and increase interventions before behaviour escalates into more serious conduct. The improved capability of leaders to introduce more flexible, site-based dispute resolution will take time – until that capability is established, DJCS should provide close oversight and support to site-based management where local resolution takes place.

Finally, we encourage DJCS to reorient its approach to investigations and resolving misconduct matters to prioritise accountability, continuous learning and systemic responses to mitigate the risk of workplace harm and corruption in the custodial context.

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<sup>208</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 35; WorkSafe Victoria, *A guide for employers: workplace bullying* (March 2020) 12.

<sup>209</sup> Victorian Equal Opportunity and Human Rights Commission, *Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010* (Guideline, August 2020) 29; Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 373; Australian Human Rights Commission, *Good practice guidelines for internal complaint processes* (Guideline, November 2014) 1-2; Australian Institute of Health and Safety, Submission to the Cultural Review (December 2021) 5.

## The current experience of reporting and complaints in the corrections workforce

Our findings indicate that the current DJCS complaints process is not meeting best practice standards for responding to allegations or concerns of misconduct. Our engagement with corrections staff revealed poor experiences of making complaints over the last five years. Very few people described feeling supported or satisfied with the process, referring both to reports managed within DJCS and by local management.

The current complaints process is perceived as lacking efficiency, timeliness, transparency and effectiveness. It is also overly complex and difficult for staff and managers to navigate:

'I am all for integrity, values and behaviours etc but when the department only looks at one side of the story whilst punishing others, it is simply unfair, unjust and unreasonable.'

**Staff member**

'I heard nothing more [about the incident]. My general manager said, "It's been taken out of our hands and it's all on People and Culture now". Then I heard nothing.'

**Staff member**

We heard many experiences of complainants, respondents and bystanders feeling frustrated, dissatisfied, and sometimes traumatised by the complaints and reporting process. These experiences are contributing to staff feeling undervalued and dispensable – a key theme explored in *Part 3. Workforce*. CPSU has raised many of these concerns, including inconsistency in how complaints are managed across locations, an overly punitive focus, lack of transparency and unacceptably long time frames to reach an outcome.<sup>210</sup>

Concerningly, 70 per cent of respondents to our workforce survey who made a formal complaint indicated that they were 'dissatisfied' or very dissatisfied' with the process. In contrast, only 8 per cent reported being satisfied or very satisfied. Further, only 9 per cent of survey respondents who made a complaint about workplace harm said that the conduct stopped as a result of making a complaint. Of those who made a complaint, 55 per cent said they believed that there were no consequences for the respondent through the process.

Further data from our workforce survey indicates that these negative experiences are deterring others from making formal complaints, with only a quarter of those who told us they had experienced workplace harm formally reporting the behaviour. When asked why they did not make a formal complaint, 40 per cent of respondents thought it would not change things, that nothing would be done or they lacked confidence in how well they would be supported during the process.

<sup>210</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 17-22.

Data collected by the VPSC on the complaints behaviour of the VPS also indicates that the custodial corrections setting is of particular concern when it comes to perceptions of the safety of internal reporting processes. As noted above, only 28 per cent of custodial staff who responded to the 2021 People Matter Survey indicated that they feel confident they would be protected from reprisal for reporting improper conduct. This is considerably lower than the rest of DJCS, with 46 per cent of employees indicating they feel confident they would be protected from reprisal for reporting improper conduct.<sup>211</sup>

'People and Culture have staff that are personally aligned to certain managers and when those managers are the perpetrators of the misconduct, the person making the complaint gets targeted.'

Staff member

While these results do not suggest the complaints system is working as intended, we acknowledge the action taken by DJCS in recent years to promote and improve its complaints and reporting processes including through the development of the DJCS Integrity Strategy.

We observed and spoke with custodial leaders who are clearly committed to a safer and more responsive complaints system. Nevertheless, significant work is required both at a DJCS and local level to realise the objectives of the DJCS Integrity Strategy, including ensuring DJCS can 'support staff and managers well during internal and external investigations' and 'increase awareness of integrity risks and how to effectively manage them'.<sup>212</sup>

### The outcomes of a safe and effective complaints process

Key outcomes of a safe and effective complaints and reporting process include:

- ▶ staff know how and where to make a complaint or report, and are supported to do so
- ▶ responses to complaints are fair timely and consistent with proportionate disciplinary outcomes
- ▶ staff are safe and supported throughout the process, including through identifying and preventing victimisation<sup>213</sup>
- ▶ staff feel confident their complaint or report will be responded to appropriately and the behaviour will be addressed.

<sup>211</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the VPSC People Matter Survey.

<sup>212</sup> Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review, 4.

<sup>213</sup> Adapted from the Victorian Equal Opportunity and Human Rights Commission, *Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010* (Guideline, August 2020).



### Limitations with complaints data and oversight

We found significant deficiencies in local and central record-keeping and data management systems which hinder DJCS's understanding of the nature of workplace harm and integrity concerns and the effectiveness of the complaint and reporting system. For example, we learned that where complaints are made locally, they may not be recorded formally or consistently, and that this data is not easily accessible by DJCS.

Further, limitations to the electronic infrastructure, including the complaints case management system, are preventing DJCS from developing a clear understanding of the nature and prevalence of workplace misconduct and integrity issues. Human resources data is not captured in a way that allows for the disaggregation of complaints about bullying, discrimination, sexual harassment and victimisation.

The current case management system also creates challenges for analysing conduct data, as multiple people may record the same matter in the system. For example, it could be listed as a report by the complainant, an assessment of the allegation, a misconduct matter, a WorkCover and/or ill health matter, or a general issue depending on how the report has moved through the process. The only way to identify that all these matters relate to one report is manually examining the data.

As the workforce begins to develop trust in the complaints and reporting system, it is likely custodial management and DJCS will see an increase in complaints. DJCS should expect and welcome an initial increase in complaints followed by a decrease over time, as an indication of positive organisational change, increasing confidence and effectiveness of complaints process.

This process may have already begun in response to DJCS's recent focus on creating a 'speak out' culture across its workplace. This work has involved regular communications and initiatives to encourage the use of complaints processes for workplace harm and integrity issues:

'We certainly have had an increase in the number of sexual harassment complaints. Corrections Victoria started its own campaign about "Speak Up" and "Draw the Line" and trying to encourage people around that component. But I also think with changes in the department there's been a lot more serious consequences for people. Two to three years ago it was quite hard to take really strong action. But now there's a much stronger willingness to end up in termination if an investigation is found to be substantiated. So there has been a shift and I think that will start to encourage more people to actually complain because they can see it's taken seriously and something is done about it.'

**Expert interview**

Public prison misconduct data provided to us demonstrates that referrals to DJCS's Integrity and Reviews business unit doubled from 60 referrals in 2019–20 to 123 in 2020–21 which may indicate growing confidence in the complaints process.<sup>214</sup>

## Creating a more accessible and consistent process for complainants

Making a complaint or report about misconduct can be challenging in any organisation,<sup>215</sup> especially where information about unacceptable behaviour and making a complaint is located across several different policy documents.

As noted earlier, one of the challenges for DJCS is offering a complaints and reporting process that applies within Corrections Victoria, a highly differentiated business unit within DJCS. Consistent with the VPS Code of Conduct's recognition of workplace diversity<sup>216</sup> and our recommendation to increase the knowledge of the workforce on what constitutes unacceptable workplace behaviour, DJCS should issue corrections-specific guidelines on acceptable behaviour and the complaints process to ensure relevant information is accessed by and resonates with the corrections workforce.

### **Policies and guidelines are inconsistent, lack relevant information and are confusing**

Complaint and reporting processes should be easy to access and simple for employees and managers to understand and follow.<sup>217</sup> However, under DJCS's current processes, key information is currently located across different documents<sup>218</sup> with no single policy containing all the relevant information about complaint and reporting pathways. The proliferation of documents is confusing, difficult to navigate and, in some cases, inconsistent.

In particular, we were not able to identify any information for a complainant about how their complaint will be managed, including the process for responding and investigating complaints, time frames, confidentiality or how they will be supported or protected from victimisation.<sup>219</sup>

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<sup>214</sup> Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review.

<sup>215</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (Report, 2020) 155.

<sup>216</sup> The Code of Conduct notes the need for the Code 'to be supported by additional information and guidance at the local level': Victorian Public Sector Commission, *Code of Conduct for Victorian Public Sector Employees* (2015) vi.

<sup>217</sup> Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies* (Guideline, September 2016) 7, 15.

<sup>218</sup> For example, the 'Respect in the workplace guideline and related policy', 'Sexual harassment guideline and related policy' and 'Victimisation guideline and related policy' outline some complaint and reporting pathways in relation to workplace harm. For integrity issues, the 'Reporting corrupt conduct guideline', 'Speak Up guideline' and 'Making a Public Interest Disclosure guideline' are relevant.

<sup>219</sup> For example, the 'Respect in the workplace guideline and related policy' directs employees to utilise the Department's 'Workplace behaviour complaint resolution guidelines' to raise a complaint or report about harmful or unlawful conduct but provides no information about this process.

While DJCS's Integrity Strategy broadly defines 'integrity' and considers unlawful workplace conduct like bullying and sexual harassment as integrity concerns, information about responding to misconduct allegations related to workplace harm and integrity concerns is set out in distinct policy documents – without significant differences in the complaints pathways offered. It also unclear, across these documents, how particular conduct is defined.

### What is misconduct?

Misconduct is not consistently defined but the relevant DJCS policies and guidelines, however, refers to clause 25.3 of the VPS Enterprise Agreement and includes a contravention of a provision of the *Public Administration Act 2004*.

A contravention of the Victorian Public Sector Values and Code of Conduct is also capable of constituting misconduct<sup>220</sup> and involves a range of conduct including discrimination, sexual harassment and bullying as well as integrity concerns consistent with corrupt conduct in section 4 of the *Independent Broad-based Anti-corruption Commission Act 2011* and conduct in contravention of Victoria's Charter of Human Rights and Responsibilities.

A public sector employee can be terminated on the ground of serious misconduct.<sup>221</sup>

Inconsistent and unclear information about complaints avenues is likely contributing to staff feeling unsafe at work or hesitant about reporting.

We are also concerned that, where a complaint escalates to a formal misconduct investigation (undertaken by the Integrity and Reviews business unit), complainants are not consistently kept informed of the progress of the investigation, despite internal policy requiring that people are kept apprised of the status of their complaint.

We recommend, below, that DJCS refine and streamline its complaint and reporting policy and guideline documents to ensure a single set of comprehensive, up-to-date and accessible policy documents, including a guideline for managers and staff on the process for responding to complaints and service delivery standards.

DJCS should also adopt a messaging strategy to communicate updates to the policies and guidelines to staff through a range of channels, including emails, physical messaging and updates in staff meetings. In this chapter, Recommendation 4.21 proposes a messaging and communications strategy for the corrections workforce on workplace harm and reporting mechanisms, to create safer custodial workplaces.

<sup>220</sup> *Public Administration Act 2004* (Vic) s 61(6).

<sup>221</sup> *Public Administration Act 2004* (Vic) s 33(1)(d); See also *Fair Work Regulations 2009* (Cth) reg 1.07, which defines serious misconduct as including wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment, and conduct that causes serious and imminent risk to:

- the health or safety of a person; or
- the reputation, viability or profitability of the employer's business.

**Recommendation 4.9**  
**Streamlined,**  
**accessible, safe and**  
**consistent reporting,**  
**complaints and**  
**misconduct policies**

The Department of Justice and Community Safety should streamline policy documents related to reporting, complaints and workplace misconduct into a single policy and set of guidelines to ensure consistency, clarity and accessibility. At a minimum, the guidelines, should:

- a) provide a comprehensive list of how, where and to whom a complaint or report can be made, including the available internal and external options
- b) options for making an anonymous report and confidential complaint or protected disclosure, including the differences between these options
- c) provide guidance to managers and supervisors on their responsibilities for responding to complaints and reports (including where reports are made anonymously)
- d) provide legal and behaviour-based examples of the inappropriate workplace conduct that staff may witness or experience and wish to report, including examples of sexual harassment, discrimination, bullying, victimisation and corrupt conduct demonstrating a spectrum of conduct
- e) include information about the process, including:
  - how a complaint or report will be managed according to the type and level of conduct
  - the steps involved
  - the roles and responsibilities of key staff
  - service standards that clearly set out timelines, what information they will receive and how their information will be handled
- f) provide guidance about when a complaint or report will be immediately escalated to a formal complaint or investigations process or referred to an external agency
- g) provide information about victimisation, including a clear statement that it is unlawful under Victoria's *Equal Opportunity Act 2010*
- h) recognise the important role of bystanders in reporting misconduct and workplace harm
- i) outline support pathways for employees, bystanders/witnesses and managers including how complaints will be managed in a trauma-informed way
- j) be informed by consultation with the workforce, the Community and Public Sector Union and WorkSafe Victoria.

Information about the policy and guidelines should be made widely available across custodial workplaces, in electronic and physical formats, through regular communications, training and education.

### **DJCS's policies for responding to misconduct are not adapted to the corrections workforce**

Corrections Victoria also issues information about unacceptable conduct and making a report or complaint within Commissioner's Requirements and local operating procedures, but DJCS's key policies and processes are not comprehensively incorporated into these documents.<sup>222</sup>

For example, each public prison has a local operating procedure called 'Respect in the Workplace' which outlines the behaviours expected of people in custody and staff. However, as noted in the box below, the procedure does not provide sufficient information to enable staff and managers to understand their rights and obligations with respect to responding to workplace harm and other forms of misconduct.

#### **MRC local operating procedure: 'Respect in the Workplace'**

The local operating procedure<sup>223</sup>, which we understand exists in each public prison, is the key policy document which sets out expected conduct in the workplace and how to make a complaint. However, the procedure is not comprehensive or consistent with DJCS's policies on workplace harm and integrity concerns:

- ▶ It provides no examples of what constitutes discrimination, sexual harassment, bullying or victimisation.
- ▶ The policy applies to 'behaviour expected of all persons' at MRC but does not differentiate or detail the different complaints pathways available for staff and people in custody or how different conduct may be experienced by staff or people in custody.
- ▶ The policy does not outline the responsibility of the employer under the Equal Opportunity Act to prevent and respond to sexual harassment, discrimination and victimisation.
- ▶ There is no information about corruption and integrity concerns or mandatory reporting obligations under the IBAC Act.
- ▶ The policy does not provide any contact details for wellbeing support, information about the rights of complaints – for example, to confidentiality and privacy.
- ▶ There is no information about how to make a complaint or report other than providing the option tell the person that they find the behaviour unacceptable/unlawful and want the behaviour to stop, or to tell their supervisor or manager.
- ▶ There is no information about options to make a complaint to an external body such as the Victorian Ombudsman for people in custody, or the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or other complaint-handling bodies.

<sup>222</sup> For example, *Commissioner's Requirement 1.4.8 – Conduct and Ethics* (November 2022), applies to all public and private staff, outlining the responsibilities of all correctional employees to conduct themselves in a way that is consistent with the Victorian Public Sector Code of Conduct and assist in limiting reputational and actual risks to the correctional system.

<sup>223</sup> Corrections Victoria, Metropolitan Remand Centre, *Local Operating Procedure No 10.01/1 - Respect in the Workplace* (20 January 2021).

- ▶ Managers and supervisors are provided with no guidance on how they should respond to complaints and reports of misconduct, and what their obligations are if they receive a report from staff or a person in custody.

Based on these limitations in the local operating procedure, corrections managers would be unlikely to be able to demonstrate that they have met their positive duty to take reasonable and proportionate measures to eliminate sexual harassment, discrimination and victimisation under the Equal Opportunity Act.<sup>224</sup>

While the intention of these policy documents is to provide information about acceptable conduct and making a complaint or report in line with DJCS's policies in a format that is meaningful to corrections staff, the information provided lacks sufficient detail and context. We recommend that DJCS develops corrections-specific guidance to the workforce and local managers that:

- ▶ comprehensively and accessibly translates key DJCS policies for the corrections workforce
- ▶ incorporates employee obligations in the VPS Enterprise Agreement, particularly relating to complaint handling and misconduct processes
- ▶ considers the obligations set out in the VPS Code of Conduct.

**Recommendation 4.10**  
**Complaints and reporting processes translated for the corrections workforce**

The Department of Justice and Community Safety should develop a corrections-specific guideline for making a complaint or report about a workplace misconduct.

The guideline should cover all conduct within the scope of the Department of Justice and Community Safety's Integrity Strategy and department policies on workplace harm and misconduct.

The complaints and reporting guideline should be incorporated into key corrections policy documents such as Commissioner Requirement's and local operating procedures to provide comprehensive information about acceptable conduct and the complaint and reporting pathways available.

<sup>224</sup> *Equal Opportunity Act 2010 (Vic)*, s 15(2).

**There are multiple internal and external complaint pathways available but not all options result in an effective response**

Corrections staff can report integrity issues and inappropriate workplace conduct through multiple channels including to:

- ▶ a direct line management, supervisor or other manager
- ▶ DJCS's regional human resource business partners
- ▶ the Employee and Workplace Relations team within the People, Safety and Culture group
- ▶ the Integrity and Reviews business unit within the Integrity, Legal and Law Reform group.

Staff can also make a complaint or report to an external body such as the VEOHRC, the Victorian Ombudsman, IBAC or WorkSafe Victoria.

While the provision of multiple avenues for formal complaints is widely considered best practice as it supports choice for complainants, the challenge for DJCS staff, including corrections staff, appears to be a lack of clarity around how complaints will be managed, including the level of anonymity or confidentiality afforded by each option, and a tendency toward formalisation in the avenues offered.

In addition, the fragmented approach to the complaints system and lack of clarity around the most appropriate pathways for different types of misconduct or poor behaviour may be contributing to inconsistent responses and inefficiencies.

We also heard that some complaints pathways are more suitable than others. For example, we heard in some instances, reports and complaints made through DJCS's electronic Justice Information Management System (JIMS) were not acknowledged, leaving staff confused and uncertain about the outcome. We understand from DJCS that the primary purpose of JIMS is not to receive complaints of misconduct and it may not be a suitable complaint pathway unless a person wishes to make a 'sensitive' or 'confidential' report, in which case it is the only option available.<sup>225</sup>

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<sup>225</sup> JIMS is the Department's system for reporting and investigating injuries, hazards, and near misses. Staff can raise a matter in the JIMS if they believe an issue is causing a risk to health or safety. There is also the ability to mark an incident as confidential and it will go to the Safety, Wellbeing and Compliance team for assessment and appropriate delegation: Department of Justice and Community Safety, 'DJCS intranet - Justice Incident Management System (JIMS)' (30 August 2021), Data provided to the Cultural Review; Department of Justice and Community Safety, 'DJCS intranet - Workplace Behaviour Complaints' (25 August 2021), Data provided to the Cultural Review.

'We put in JIMS reports about our mental health dealing with it. Nothing ever happened.'

**Staff member**

'I put JIMS reports in, saying "I'm actually quite fearful and the trauma inflicted". The JIMS report does nothing. It goes nowhere.'

**Staff member**

DJCS's 'Speak Up' Guideline also advises that corrections staff can report concerns about professional boundaries via the intelligence platform Centurion; however, the platform is managed by Corrections Victoria's Intelligence Unit (sitting outside of the DJCS complaints process),<sup>226</sup> with the primary purpose being to record 'information reports' about issues, events or incidents that they perceive as a risk to the safety and good order of a prison or pose a threat to staff or the general community.<sup>227</sup> While staff can make reports in Centurion about other staff, the system primarily collects information related to people in custody and is not designed to provide a formal response to complaints of workplace misconduct. Some staff expressed concern about the lack of clarity around how complaints made through Centurion are handled.

### **There is no process for making an anonymous report**

The 'culture of silence' described earlier as a pervasive feature of the custodial context and the very real risk of victimisation for those who report integrity concerns of their colleagues<sup>228</sup> create a clear need for an anonymous reporting pathway:

'We had a staff member whose behaviour was so concerning that we've written numerous reports of inappropriate stuff with prisoners and there was some stuff that if proven, is criminal behaviour but it was hard to prove. We reported that and then had their supporters come in and abuse us, call us "rats", supporters who ostracised us, who bullied us – I've had them come in and yell at me.'

**Staff member**

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<sup>226</sup> Corrections Victoria Intelligence Unit receives intelligence reports, assesses reports and refers matters for investigation to CV executives. Matters may then be referred to the Integrity and Reviews business unit.

<sup>227</sup> Corrections Victoria, 'Information reports' *Intelligence Manual* (9 June 2020) 1.

<sup>228</sup> A coronial inquest into the 2018 suicide of a prison officer at DPFC explored the issue of bullying in response to making adverse statements about fellow officers. The wife of the deceased, William Maxwell, gave evidence that her husband's death was the result of bullying and ostracism after he provided evidence against a colleague who was alleged to have kicked a person in custody in the head. The coroner found there was insufficient evidence in relation to the bullying of Mr Maxwell but concluded that there was 'a recognised culture at MAP that it is not acceptable to make an adverse statement or allegation against a colleague': Coroners Court of Victoria, *Inquest into the death of William Maxwell* (21 May 2021) 13.



The importance of anonymous reporting pathways has also been highlighted by a number of stakeholders.<sup>229</sup>

We sought clarification on the availability of anonymous reporting as it is listed as an available option in DJCS's Sexual Harassment Guideline and Related Policy.<sup>230</sup> DJCS confirmed that there is no current process available for making an anonymous report; however, staff have the option of submitting a 'sensitive' report through JIMS which is triaged by Safety, Wellbeing and Compliance prior to being assigned to the business unit delegates. We highlight the critical distinction between anonymous and confidential complaint and reporting pathways and urge DJCS to invest in establishing an anonymous pathway, while clarifying for staff the level of confidentiality attached to existing pathways.

### **Anonymous reporting and complaint pathways**

For large organisations, the VEOHRC recommends that anonymous reporting mechanisms should be established to address power imbalances and provide safe pathways that protect privacy and mitigate victimisation. Anonymous complaints provide the employer with critical information about the nature of risks and potential harm in the workforce to support learning and systemic action.

There are a number of steps employers can take without identifying the complainant, the respondent or the incident that has been raised. These may include:

- ▶ confidential and de-identified data collection
- ▶ ongoing monitoring of the alleged respondent and the workplace
- ▶ reflecting whether incidents reported raise broader cultural or systemic problems in the workplace – this may prompt investigation of those issues, as well as the efficacy of the strategies, policies and procedures currently in place.<sup>231</sup>

<sup>229</sup> Australian Institute of Health and Safety, Submission to the Cultural Review (December 2021) 5-6; Confidential stakeholder submission.

<sup>230</sup> The policy (at the time of the Cultural Review) acknowledges that anonymous avenues are sometimes preferred by sexual harassment complainants but does not outline how employees can access them: Department of Justice and Community Safety, Sexual harassment guideline and related policy, Data provided to the Cultural Review.

<sup>231</sup> Adapted from the Victorian Equal Opportunity and Human Rights Commission, *Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010* (Guideline, August 2020).

**Recommendation 4.11**  
**Complaints and reporting processes are revised to be accessible, efficient and person-centred**

The Department of Justice and Community Safety should revise its complaints and reporting processes for workplace misconduct to enhance the accessibility, efficiency, transparency and fairness of responses.

The revised complaints and reporting processes should:

- a) protect and prioritise complainants' safety and wellbeing, including through end-to-end support, advocacy, advice, information, and counselling
- b) ensure a consistent and fair approach across the adult custodial corrections system, using clear definitions of levels of conduct and delivering outcomes seen to be impartial, proportionate and consistent
- c) facilitate a range of responses and outcomes, including to an anonymous report or a formal complaint, and flexible options for informal, alternative resolution where appropriate
- d) provide clear and accessible pathways that are well communicated and easily understood
- e) deliver responses that are timely and supported by regular communication to all parties about the status of the complaint and outcomes
- f) prioritise early intervention and flexible approaches wherever possible to resolve complaints and reports before they escalate, based on alternative dispute resolution and restorative approaches delivered by trained and supported staff
- g) ensure transparency and hold perpetrators accountable, with all parties having a clear understanding of the reasons for decisions and outcomes and the option to have the decision reviewed.

The Department of Justice and Community Safety should regularly prepare deidentified case studies from complaints and reports, including any action to address systemic issues raised in the complaint or report. These case studies should be shared with the workforce to demonstrate accountability and as a learning tool to educate all staff on acceptable conduct.

The Department of Justice and Community Safety should capture complaints and reports data (including for anonymous or confidential reports) and use it to inform risk management processes at both the local and system level.

To achieve these outcomes, the Department of Justice and Community Safety should measure the performance of the complaints system against service standards and, including timelines for key steps and actions and for the resolution of 'simple', urgent or priority complaints, satisfaction with the process and outcomes, and quality measurements.

## Building the capacity of local level management to safely respond to reports of harm

As set out above, corrections staff employed in public prisons have access to the DJCS-wide complaints and reporting processes; however, they may also make their complaint or report directly to their direct report, manager or supervisor. In our workforce survey, 42 per cent of respondents who had made a formal complaint about unlawful or harmful workplace behaviour told their direct manager.

When a complaint or report is made locally it may be resolved locally<sup>232</sup> or referred through to DJCS's People, Safety and Culture group or the Integrity, Legal and Law Reform group. Local managers are required to follow DJCS policies for resolution and referral of matters; however, in practice, we found divergent local practices due to managers lacking expertise, support and understanding of their responsibilities in responding to workplace misconduct. There is also wide discretion and inconsistent guidance on what matters should be referred to DJCS.

We heard many experiences where serious or unlawful workplace behaviours and integrity concerns were not addressed, documented or escalated appropriately at the local level:

'There were various instances where a staff member would say something just blatantly racist towards another member of the team who would then confide in a few of us that were around that they were feeling uncomfortable that it happened. The report went up to our supervisor who then reported it to the officer's supervisor that said it and then it was just swept under the rug, no follow up. When that supervisor pushed it up further to say, "Well no, where's the follow up on this?" They just got brick walled. Even though it was all in emails and very clear, there was just nothing. The supervisor just did nothing.'

**Staff member**

We also heard how local management rely on and view responding to workplace harm and misconduct as primarily the responsibility of DJCS's central HR team and Integrity and Reviews business unit. In practice, the devolved operational model for the adult custodial corrections system requires shared accountability for identifying and responding to unlawful and harmful workplace conduct. At a minimum, this requires local-level responses to reports and complaints with the support and oversight of human resources, and escalation through to DJCS where necessary.

We identified significant limitations with the way in which local custodial management resolve complaints and reports of workplace harm and misconduct. This is primarily due to varying levels of local capability and capacity to resolve

<sup>232</sup> DJCS's misconduct referral form notes that 'a Misconduct referral to EI [Employee investigations] should only be considered in circumstances where the conduct is serious in nature and has potential to cause significant harm to individuals and/or DJCS. Conduct that is low level or relatively low impact, should be dealt with through local management action in the first instance'. Behaviour that should be considered for local management action first includes: failing to comply with the Code of Conduct in circumstances that are not serious in nature, failing to perform to the required standard of the employee's role, failing to uphold departmental values in circumstances that are not serious in nature, workplace conflict and/or bullying in circumstances that are not considered serious in nature, and failing to comply with a policy, process or procedure that is not considered to be serious.

matters appropriately and a lack of consistent advice, support and oversight by DJCS's central HR team. The lack of a single point of accountability and oversight for disciplinary outcomes within Corrections Victoria is also problematic, with authority delegated to each Assistant Commissioner, rather than held by a single executive role.

At a local level there is:

- ▶ a lack of clarity and guidance about which matters are suitable for local resolution
- ▶ no clear and consistent requirement to record and oversee local complaints or report complaints information to DJCS's central HR team
- ▶ inconsistency in outcomes of complaints processes and a perception that processes are unfair, biased or ineffective
- ▶ concerns with the level of independence, impartiality and confidentiality with local resolution pathways
- ▶ lack of a trauma-informed approach to managing complaints and ensuring the wellbeing of parties involved
- ▶ limited capability to resolve matters informally through flexible and alternative dispute resolution options.

The impact of the lack of capability in responding to complaints at a local management level has been devastating for many corrections staff:

'Three years ago, when I was being treated so poorly and I went to my supervisors, they didn't know how to manage it ... I was crying out for help for someone to come and save me, and I ended up having to save myself, which is a hard thing to do, but I wish I had a supervisor who ... had the skill to do that.'

**Staff member**

### **There is limited training and support for local managers to respond effectively and consistently to complaints or reports**

Where complaints or reports are resolved locally, we have heard that local management may not be trained or skilled in delivering a person-centred response to complaints, resulting in poor management practices locally, and contributing to the perception that staff disciplinary processes and outcomes are opaque and flawed.

Senior custodial staff told us about the difficulties they encounter in dealing with issues on the ground, including serious misconduct and unlawful workplace behaviours and their concern that they are not appropriately trained or supported.

'I haven't had any training to be a supervisor. I've moved up through the ranks based on knowledge that I've gained on the worksite ... I'm a people person, so I try and manage the better nature of people to get them to work cohesively ... I actually don't know where to go to report a harassment allegation. I don't know where to go to report people above me? So how do I report when I've got staff coming to me making a complaint about my manager? Where do I go? Who do I trust?'

Staff member

### **Resolving issues locally under the Workplace Behaviour Resolution Guideline**

DJCS's Workplace Behaviour Resolution Guideline states that, in assessing a reported workplace behaviour concern, managers and supervisors should talk with the employees involved, either individually or together, to:

- ▶ discuss the behaviours and their impact
- ▶ develop an understanding of different interpretations of the incident(s)
- ▶ remind parties of expectations of acceptable and unacceptable behaviour in the workplace
- ▶ explore ways forward that are reasonable and appropriate.

While the policy represents best practice, there are varying levels of local capability among managers and supervisors in the corrections workforce to deliver a person-centred, safe and effective response.

We did not hear of any specialist training offered to local managers to support them to develop these skills, including identifying and responding to harmful workplace behaviour and creating a safe reporting environment for complainants. We also heard that some managers struggle to balance their operational responsibilities with their people management roles.

DJCS's Workplace Behaviour Complaint Resolution Guidelines offer avenues for local resolution of workplace behaviour issues, including conflict coaching, mediation, a facilitated discussion, workplace conferencing, awareness raising sessions, skills development training for relevant staff, or arranging for a mentor or buddy to be appointed to assist.<sup>233</sup>

<sup>233</sup> Department of Justice and Community Safety, 'Workplace Behaviour Complaint Resolution Guidelines', Data provided to the Cultural Review.

We could not identify any further documents that provide additional guidance to managers about facilitating these resolution approaches, such as the types of complaints that are suitable for each option, the outcomes that could be achieved and the extent of involvement required from both the complainant and respondent.

We heard from some supervisions a genuine desire to be trained to resolve matters informally and support staff through the process, but that they did not even know where to go for support:

'Where do I go to develop that appropriately and actually have [challenging conversations?] I'd love to have really difficult conversations knowing that I've got a really solid platform or baseline that is my support as well. You sort of wing it, and sometimes that's pretty dangerous in these types of situations when you're dealing with human beings.'

Staff member

We are concerned that the varied capability of leadership in the workforce to respond to harmful workplace behaviour may result in inconsistent responses to complaints and outcomes for perpetrators. It is important that any flexibility in responding to harm is supported by clear guidance for management to ensure that outcomes are consistent, proportionate and fair across the adult custodial corrections system. We address the need to increase the knowledge and capability of leaders to drive safer workplaces at the end of this chapter.

### **There is a need for additional local human resources support**

Throughout our engagement, we heard reports about inconsistent human resources support across the adult custodial corrections system and significant workload issues due to the volume of corrections-related complaints and other issues managed by human resources.

Historically, each prison location retained its own 'in-house' human resources function and dedicated staff; however, over recent years, most internal human resources advisers have been replaced with shared central HR business partners (VPS4) who report to DJCS's central HR team. We understand that the decision to centralise human resources functions was made for a variety of reasons, including achieving operational efficiencies and supporting consistency in the process for dealing with complaints and misconduct across locations. However, in practice, the centralised model may be constraining the ability of local managers to resolve complaints where appropriate and is causing a significant resourcing burden on DJCS's central HR team.

Regional HR business partners and their teams have a number of responsibilities including payroll and rostering, but we have heard that they do not necessarily have the training, expertise or experience to effectively support the resolution of complaints. In practice, regional HR business partners may provide some advice, but more serious or complex matters are necessarily referred to their colleagues in the centralised HR team. There is also a perception among some custodial staff that the centralised human resources function negatively affects the organisation's ability to apply a person-centric and trauma-informed approach to complaints management and lacks an understanding of the custodial context.

'Having to explain what you do to someone who's supposed to be investigating an incident, and not having any idea of what the difference between [location] or the other location was, it was like well what's the point of talking to someone who has no context. I think that by not having that context it unfolded the way that it did.'

**Staff member**

DJCS is currently considering ways to improve regional HR functions; however, custodial sites should also be supported through local-level human resources support as well as specialist advice from dedicated human resources experts, as we set out in Recommendation 4.12.

Our recommendations propose a phased approach for increasing the volume and complexity of matters suitable for local resolution, alongside a model for central reporting of matters and their outcomes. A phased approach should consider measures to improve the capability of managers over time, to help them provide consistent and proportionate local responses to reports of harm. To increase the capability for management, DJCS should provide additional support and resourcing to managers through the creation of site-based human resources roles.

Over time, local managers should be equipped to introduce more flexible, alternative dispute resolution options where suitable. It is important that rigorous monitoring and oversight of site-based interventions is conducted to ensure consistency of outcomes. To support a staged improvement in sites' capacity to respond to reports of harm, DJCS's central HR team should be resourced to oversee site-based complaint handling and provide ongoing guidance to management and human resources roles at custodial locations. The role should not include transactional human resources duties – such as payroll or rostering – and may be time-bound to support the uplift of local-level management capability in the short-term.

**Recommendation 4.12**  
**Local human resources capacity to support workplace reform and complaint handling**

The Department of Justice and Community Safety should appoint a senior human resources advisor to each public prison.

The position description and key selection criteria for these roles should require capabilities and experience to:

- a) provide local level human resources advice and support to the leadership team at each prison, to implement cultural reform and resolve complaints or reports of workplace harm
- b) support supervisors and managers to identify, manage and respond to workplace harm through both informal and formal processes
- c) support teams following complaints or investigations to identify and address drivers of harm, including through facilitating debriefing sessions and reflective practice, dispute resolution, support and counselling, communicating messages about acceptable workplace conduct, and distributing key resources to support learning and continuous improvement.

### **Local managers and leaders do not consistently address poor behaviour by staff**

At some custodial locations, we heard that managers were reluctant to have difficult conversations with staff about their behaviour due to 'close working relationships' and, instead, did nothing or referred matters to DJCS's central HR team without taking any action or communicating effectively with employees who demonstrated inappropriate behaviours.

We heard that this lack of early response to behaviours meant that the poor conduct of some staff escalated over time, resulting in incidents requiring formal investigation. We found that this is due to managers' lack of skills, training and confidence in assessing and resolving matters locally and informally, as discussed above, as well as the limited human resources support available to local managers.

In its submission to the Cultural Review, CPSU said that management do not receive adequate training on how to resolve poor performance or interpersonal conflict between staff and, as a result, they are reluctant to do so outside formal processes.<sup>234</sup> This concern has been described by staff as a 'zero or misconduct' approach:

'I find that there doesn't seem to be anything in between misconduct and zero. The prisons, managing lower-level issues. And then managing to prevent them from escalating, doesn't seem to happen. So, it'll be largely ignored. And then, a staff member will do something significant in the prison and say, this is misconduct. And push to get the person terminated, essentially. But there could have been five years of escalating behaviour that hasn't been managed. So, as far as performance improvement plans, those kinds of things. I think I've seen one in five years.'

**Staff member**

### **Local managers must take accountability for the behaviour of staff**

Managers must be equipped to understand, identify and respond to the risk factors that drive harm in their workplace. Resolution processes must also ensure that managers are equipped to consider the circumstances in which harm occurred under their leadership and oversight. This should include:

- ▶ reflective practice processes to identify where earlier intervention – including identification of behavioural and performance issues – may have prevented the harm from occurring
- ▶ mitigation processes to respond to risks identified in a complaint process – for example, where a complaint identifies a need for specific training on a particular type of misconduct
- ▶ where a complaint alleges serious misconduct or where there are many reports relating to a workplace, consideration of the manager's performance in role modelling the shared responsibilities of a safe workplace.

<sup>234</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 17.



## Ensuring local managers understand when complaints must be reported

We have heard that some staff do not raise complaints at the local level because of concerns that local management will not respond to the complaint fairly and in accordance with reporting requirements. This was a recurrent theme in our conversations with staff in regional prisons:

'Of the supervisor's group, they all know each other from the footy club, from the golf club, and they sort of defend each other. So, if you report something that someone that they like have said, well that's what I said the brush under the carpet thing. Because basically, you're a part of that club and that establishment, and that's what happens.'

**Staff member**

As noted above, there is very little guidance on when local resolution may be appropriate for complaints or reports of workplace harm and other misconduct. We have noted that the Respect in the Workplace Guideline and Related Policy is confusing and gives limited guidance to managers on which matters should be resolved locally and what must be formally reported:

'Complaints with hardly any details/information or facts should be addressed at the local level through local resolution methods.'<sup>235</sup>

While the workplace increases its capability for local response, clear parameters should be established to increase the rates of reporting. These circumstances include where:

- ▶ the allegation relates to criminal conduct
- ▶ the allegation could substantiate misconduct
- ▶ the allegation involves the conduct of a manager or member of the leadership team
- ▶ there is a potential, perceived or actual conflict of interest or perception of bias – for example, because of personal relationships or the close-knit community within which the workforce engages
- ▶ the complainant has little confidence in local management's ability to resolve the matter effectively and elects for the complaint to be resolved through DJCS
- ▶ the confidentiality and privacy of the complainant cannot be protected locally.

In addition to concerns about how fairly a complaint would be treated where staffing cohorts have personal involvement beyond the workplace, many staff raised privacy concerns about the way complaints made within their workplace were managed. We heard many examples of personal details becoming public in what some described as a 'culture of gossip':

<sup>235</sup> Department of Justice and Community Safety, 'Respect in the workplace guideline and related policy' 6, Data provided to the Cultural Review.

'There was a time I had a complaint about another colleague based on suspicion of personal relations with a prisoner, of which [my manager] went and approached this prison officer that then came back to me. So there was no professionalism or confidentiality there which compromised my working relationship with this officer.'

Staff member

Other staff expressed their concern that a complaint or report would not be taken seriously because of the attitudes or conduct of managers within the leadership team, including gender assumptions and stereotypes. In several cases, we heard that staff had little confidence that the matter would be responded to appropriately because management and leadership themselves were known to have engaged in similar unwelcome workplace behaviour:

'There have been several forms of sexual harassment ... over my [many] years of employment in corrections and ... I have been advised not to make a complaint, I thought I would not be believed, I was embarrassed, and warned by co-workers that there would be negative consequences for everyone, each time was managed differently. In one case I did nothing because the authority and collusion by senior staff would have been severe ... so I chose not to do anything about it because I would not be supported and feel that remains the case.'

Staff member

Over time, through enhanced training, values-based recruitment and promotional processes and broader cultural change, more matters will be able to be resolved safely and effectively within at local level. While the workforce increases its capability, DJCS should focus on implementing measures to increase reporting.

Alongside these changes, there is a need for enhanced oversight of complaints and reports through a central point within Correction Victoria (and by DJCS, as discussed below).

### **There is limited oversight by DJCS of local resolution including no central tracking of complaints and outcomes**

We were also concerned about DJCS's lack of oversight over local complaints, resolution processes and outcomes.

While the relevant complaints guidelines advise managers to attempt to facilitate a local resolution – and contact their own manager, their regional HR business partner or the central HR team if they require additional support – data provided to us suggests this does not always happen.<sup>236</sup> We could not obtain information about what advice and assistance local management teams sought from regional HR business partners. Similarly, while we understand the central HR team regularly

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<sup>236</sup> If the complainant is dissatisfied with the outcome reached through local resolution processes, the guidelines advise that they can contact the Department's Workplace Relations team for a review. If the complainant remains dissatisfied with the Department's review findings, they may request a review of actions under the Victorian Public Service Enterprise Agreement 'Review of Actions' policy.

provides support and advice to local managers in local resolution processes, data was not available to quantify the volume or nature of this advice. This data must be recorded to ensure that DJCS has oversight of the rates and effectiveness of the local resolution of complaints.

We also learned that in cases where local management resolves a matter without contacting DJCS for support, the complaint and relevant outcome is not documented using DJCS's case management system or otherwise centrally recorded.

This failure to require local management to consistently document and report on local complaints or reports including resolved matters and for DJCS to maintain a central register of locally resolved complaints is limiting DJCS's ability to assess the effectiveness of local resolution processes across custodial locations. It also significantly limits DJCS's understanding of the nature of workplace harm and integrity issues reported and resolved. Finally, it also limits the overall transparency of the custodial system. We address the importance of increased data collection, reporting and monitoring in *Chapter 6. Data capability and information management systems*.

## Formal investigation and misconduct processes

### Facilitating timely, proportionate and fair investigations

DJCS has a rigorous investigations process, reflecting its commitment to creating a safer workplace while ensuring procedural fairness. However, we found a gap between the intention of the investigations processes, individual experiences and outcomes, and the broader objective of responding efficiently and effectively to workplace harm and integrity issues.

We note that there has been a promising increase in the number of substantiated investigations over the past five financial years:

- ▶ approximately 58 per cent of misconduct investigations relating to Corrections Victoria staff substantiated the conduct and resulted in a subsequent disciplinary outcome
- ▶ 23 per cent of investigations were not completed due to the resignation of an employee during the investigations
- ▶ the remaining 20 per cent resulted in a finding that the complaint was unsubstantiated.<sup>237</sup>

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<sup>237</sup> Department of Justice and Community Safety, 'Misconduct data – 2016–2021', Data provided to the Cultural Review. Note: Percentages may not total 100 due to rounding.

A significant number of matters referred for investigation do not make it past the assessment phase. Data provided to us indicates that, during the five-year period we considered, a total of 397 misconduct matters referred to Integrity and Reviews business unit from custodial work locations were completed.<sup>238</sup> Of those, 41 per cent (163 matters) were closed at the assessment stage and did not proceed to investigation. Of those matters closed at the assessment stage:

- ▶ 37 per cent (61) were returned due to no prima facie evidence
- ▶ 35 per cent (57) were referred for local management action<sup>239</sup> – this includes three matters referred to Workplace Relations for further action
- ▶ 21 per cent (34) resulted in conduct reminder letters
- ▶ 7 per cent (11) ceased because the staff member resigned.

DJCS should ensure that the process for deciding whether a referral will result in investigatory action reflects the nature of the evidence in instances of interpersonal, unwelcome conduct. We emphasise that conduct such as sexual harassment is often only evidenced by the account of the impacted person, and that rates of false reporting are estimated at around 5 per cent.<sup>240</sup>

We also heard from corrections leaders, the Victorian Ombudsman and corrections staff that formal investigation processes are failing to hold those responsible to account. Complainants told us that the harm they experienced was not sufficiently acknowledged or accounted for by DJCS's investigations processes.

We also heard concerns about the complexity of investigation and referral processes, under-resourcing of the Integrity and Reviews business unit and the excessive length of time for the resolution of some matters.

Staff told us about significant wellbeing impacts due to limited case management, information and support during the investigations process, which we discuss further in this chapter. Some staff and CPSU also criticised investigators for lacking operational expertise and a person-centred approach.

We acknowledge that there are differing views regarding the fairness of formal misconduct processes.

CPSU and some staff told us that too many matters are referred to DJCS for investigation, where they could be better dealt with locally or informally – for example, using more restorative justice and alternative dispute resolution options.<sup>241</sup>

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<sup>238</sup> The Review understands that an even higher number of complaints made to the People and Workplace Services unit are not referred to Integrity and Reviews, however, this data was not readily available and not provided to the Review despite several requests.

<sup>239</sup> This includes three matters referred to Workplace Relations for further action (a category that is no longer used).

<sup>240</sup> Patrick Tidmarsh and Gemma Hamilton, 'Misconceptions of sexual crimes against adult victims: Barriers to justice' (Trends & Issues in Crime and Criminal Justice No 611, Australian Institute of Criminology, November 2020) 4.

<sup>241</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 17-8.

CPSU also submitted that some members feel investigations lack transparency, procedural fairness and are unfairly 'punitive'.<sup>242</sup>

Some of these matters may have benefited from a more flexible local response initially; however, as discussed above, there is a system-wide lack of capability to safely resolve complaints at a local level and an urgent need for additional human resources support.

We also heard from many staff concerned that there is a lack of accountability for workplace harm and corruption and that few matters – particularly related to sexual harassment and bullying – are formally investigated and even fewer result in a formal disciplinary outcome.

Investigation processes must be able to deliver fair and proportionate disciplinary outcomes where matters are substantiated to ensure a safe workplace and custodial environment for staff and people in custody. We note that some of these issues – including streamlining investigations processes, enhancing support for staff and improving timeliness for complaints – are within the scope of the proposed new investigations framework, set out in DJCS's Integrity Strategy,<sup>243</sup> however, further work is required.

Investigations processes should also support systemic outcomes and broader cultural change. We are concerned, for example, that DJCS investigations may not be focused on the conduct of managers and supervisors. We heard that, in some cases, managers had failed to identify and report misconduct and masking behaviours. This may represent performance issues or, at worse, corrupt conduct. Either way, senior corrections staff must play a significant role in modelling good conduct and identifying and addressing misconduct – and be held accountable when they do not.

### **DJCS investigations take too long to resolve**

We heard repeatedly that DJCS's investigation process is often protracted, frequently causing significant distress to either or both parties.

In our workforce survey, 18 per cent of respondents who had directly experienced unwelcome behaviours and made a formal complaint indicated that it had taken more than 12 months to get an outcome. A further 8 per cent of respondents indicated that an outcome took between 7 and 12 months.

'The investigations process dragged on for so long ... It was a nine-month investigation. It was very hard to go through, very hard. I was counselled and heavily medicated and had silly thoughts and all this stuff ... It really took a lot out of me and my family, my relationships. It really did.'

**Staff member**

<sup>242</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 17.

<sup>243</sup> Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review, 4.

Timeliness of reporting and complaint processes are described as a key principle of good complaint handling by ombudsmen across different jurisdictions.<sup>244</sup> The VEOHRC outlines that receiving, managing, and resolving complaints within reasonable time frames demonstrates that a report is being taken seriously and is given immediate attention consistent with the risk it poses to those involved and the broader staff cohort.<sup>245</sup>

Some of the reasons we identified for the excessive length of some misconduct investigations include:

- ▶ unnecessary referral of some minor matters from local management<sup>246</sup>
- ▶ complexity with complaint pathways and internal and external referral processes including some double-handling of matters<sup>247</sup>
- ▶ lack of flexibility and scalability of formal investigation processes with an over-emphasis on ensuring investigations are 'water-tight' where this may not be necessary in the circumstances – for example, because of the nature of the complaint or evidence available
- ▶ staff on WorkCover and personal leave being unable to participate in investigations and contested matters.

In addition to timeliness being critical to a person-centred and trauma-informed complaints processes, timeliness is also a key requirement under the VPS Enterprise Agreement, which states that procedures for managing misconduct or alleged misconduct must 'be investigated and addressed expeditiously and with minimal disruption to the workplace'.<sup>248</sup>

Where a misconduct investigation has not been completed within six months of the employee being advised of the alleged misconduct and they consider the delay to be unreasonably caused by the other party, they may raise a dispute under clause 13 through dispute resolution internally or, if that option has been exhausted, through the Fair Work Commission.<sup>249</sup>

Misconduct investigations must be timely and reflect the seriousness of potential outcomes, particularly where termination of employment may be a reasonable outcome of a substantiated complaint. In these circumstances, DJCS should consider a four-month time frame for the finalisation of an investigation.

The responsibility to resolve the matter in a timely way is a shared responsibility, and we note that staff subject to misconduct investigations and their representatives

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<sup>244</sup> Commonwealth Ombudsman, *Better Practice Complaint Handling Guide* (Guideline) 21; Victorian Ombudsman, *Complaints: Good Practice Guide for Public Sector Agencies* (Guideline, September 2016) 12.

<sup>245</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 420.

<sup>246</sup> Such as interpersonal conflict and issues that should be dealt with as performance management issues.

<sup>247</sup> We understand that it sometimes takes significant time for IBAC and Victoria Police to assess some matters, and that many are then referred back to the Department for resolution.

<sup>248</sup> *Victorian Public Service Enterprise Agreement 2020* (Vic), cl 25.1(b).

<sup>249</sup> *Victorian Public Service Enterprise Agreement 2020* (Vic), cls 13, 25.14(b).

sometimes contribute to delays – for example, being unavailable to investigators – which may make it difficult for DJCS to progress investigations. While it is essential that DJCS ensure procedural fairness – including when the employee or witnesses has leave that affects their capacity to participate in the investigation (including any disability or other circumstance that justified reasonable accommodation) – we recognise the difficulty extended leave can present in resolving matters in a timely way.

We heard that when staff are suspended on full pay for serious misconduct allegations likely to result in termination there may be little incentive for them to assist investigators. In cases where there is sufficient evidence to substantiate the allegation of serious misconduct, it would be preferable for DJCS to expedite its investigation and terminate the employee's employment. This option is open to the employer under the VPS Enterprise Agreement so long as procedural fairness is afforded. An efficient investigations process in these circumstances would reduce the risk of distress and harm to either party associated with unnecessarily complex and prolonged investigations.

### **The Integrity and Reviews business unit requires additional resourcing and expertise**

We understand that corrections-related integrity risks and misconduct cases represent a significant proportion of DJCS's misconduct investigations.<sup>250</sup>

<b>Integrity and workplace harm employee misconduct referrals (1 July 2016 – 30 June 2021)<sup>251</sup></b>	
<b>Primary allegation category<sup>252</sup></b>	<b>Total referrals</b>
<b>Disrespected co-worker(s)</b>	<b>97</b>
▶ Use of abusive language	36
▶ Bullying	24
▶ Physically aggressive/intimidatory	16
▶ Harassment	9
▶ Discriminatory behaviour – racism	7
▶ Discriminatory behaviour – sex	5

<sup>250</sup> Expert interview – DJCS staff member

<sup>251</sup> Note: This table has been adapted from data provided by the Department and is not exhaustive. It provides an overview of integrity and workplace harm-related behaviours relevant to the terms of reference for this review. 'Total referrals' includes referrals that did not proceed to investigation.

<sup>252</sup> The Department has advised that 'one investigation may contain a number of allegations in different categories, which can be either substantiated or unsubstantiated. For example, the primary allegation category of the investigation could be 'Used excessive force', however the investigation also included allegations of 'Created inaccurate records'. The primary allegation category is usually the most prominent allegation.

<b>Integrity and workplace harm employee misconduct referrals (1 July 2016 – 30 June 2021)<sup>251</sup></b>	
<b>Primary allegation category<sup>252</sup></b>	<b>Total referrals</b>
<b>Sexual harassment of co-worker/prisoner/other</b>	<b>58</b>
▶ Co-worker	52
▶ Prisoner	6
<b>Did not maintain professional boundaries / declare relationship</b>	<b>37</b>
<b>Excessive force</b>	<b>28</b>
<b>Did not follow direction/procedure/legislation</b>	<b>26</b>
<b>Criminal offences</b>	<b>19</b>
<b>Accessed or disclosed official information</b>	<b>23</b>
<b>Disrespected prisoner(s)/other(s)</b>	<b>19</b>
▶ Use of abusive language	14
▶ Physically aggressive/intimidatory	2
▶ Bullying	1
▶ Discriminatory behaviour – racism	1
▶ Harassment	1
<b>Created inaccurate records</b>	<b>18</b>
<b>Misused drugs or alcohol</b>	<b>14</b>
<b>Inattentive/asleep on duty</b>	<b>11</b>
<b>Did not supervise/secure prisoners</b>	<b>9</b>
<b>Physically assaulted co-worker</b>	<b>9</b>
<b>Misused resources or systems</b>	<b>5</b>
<b>Introduced contraband</b>	<b>5</b>
<b>Total</b>	<b>378</b>

Data provided to us does not identify what proportion of these matters that are considered 'serious misconduct' allegations are referred from Corrections Victoria Operations Directorate or Intelligence Unit or result in a mandatory notification being made to an external integrity body or to Victoria Police. Nevertheless, it is clear the pathways into the Integrity and Reviews business unit are complex and often involve



multiple points of handling and referrals to various internal business units and external bodies.

As recognised in DJCS's Integrity Strategy<sup>253</sup>, there is benefit in streamlining investigations and referral processes to reduce the workload of the Integrity and Reviews unit and expedite the resolution of matters. There is also a need for better resourcing within the Integrity and Reviews business unit to ensure the efficient resolution of corrections-related misconduct allegations.

Given the significant caseload arising from Corrections Victoria's misconduct referrals, DJCS should consider introducing a specialist corrections investigations team with investigators who have or can develop a more in-depth understanding of the corrections workforce context. Better resourcing and development of the specialist corrections expertise within Integrity and Reviews business unit is consistent with recommendations made by CPSU to the Cultural Review, to appropriately resource the investigations unit 'to deal with all investigations they are responsible for in a timely manner and in a standalone Corrections team', and to improve the environmental awareness of investigators.<sup>254</sup>

In considering additional resources and expertise for corrections misconduct investigations, it's important that DJCS identify candidates with experience in and/or the ability to provide a trauma-informed approach as well as an understanding of the different approach for workplace investigations to criminal investigations.<sup>255</sup>

### **Misconduct investigations must be consistent with the principles of procedural fairness**

Where the nature of a complaint could fall within the definition of 'misconduct', relevant sections of the VPS Enterprise Agreement require that certain processes be followed, consistent with the principles of procedural fairness.<sup>256</sup>

Clause 25.7 states that where employee misconduct is alleged, the employer 'may make an initial assessment of the alleged misconduct before commencing the formal process to determine if an investigation is required.'<sup>257</sup> The initial assessment takes into consideration the seriousness, complexity and urgency of the complaint and any risks it poses to the health, safety and wellbeing of the employees involved.

They may alternatively determine that it is appropriate to immediately commence an investigation and/or direct the employee to perform alternative duties or work at an alternative place of work. They may also suspend the employee with pay.

In the event that the initial assessment warrants an investigation, clause 25 of the agreement requires that particular processes be followed.

<sup>253</sup> Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review.

<sup>254</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 20-22.

<sup>255</sup> CPSU submission noted that the recruitment of former Victoria Police staff as Investigators may be contributing to the sense that the investigation is 'punitive'. The Review also consider this may be contributing to the application of criminal standards for investigations that are not appropriate for internal misconduct investigations.

<sup>256</sup> *Victorian Public Service Enterprise Agreement 2020* cl 25.6.

<sup>257</sup> *Victorian Public Service Enterprise Agreement 2020* cl 25.7(a)(i).

### **Management of misconduct – Clause 25, VPS Enterprise Agreement**

Misconduct and performance management processes, which are set by heads of Departments, must be consistent with the public sector employment principles including that public sector employees:

- ▶ be treated fairly and reasonably<sup>258</sup>
- ▶ have a reasonable avenue of redress against unfair or unreasonable treatment.<sup>259</sup>

In ensuring procedural fairness, the employer must:

- ▶ advise the employee of the purpose of any meetings; and
- ▶ provide the employee with a copy of the formal process to be followed; and
- ▶ provide a reasonable opportunity for the employee to seek advice from the Union or representative of their choice at any stage of the misconduct process; and
- ▶ allow the employee the opportunity to provide details of any mitigating circumstances.<sup>260</sup>

When a formal investigation is required, the employee must be provided with an opportunity to speak with an investigator if they wish to do so and provide the employee with specific particulars to allow the employee to respond to the alleged misconduct.<sup>261</sup>

Where the investigator makes a finding that the allegation is substantiated and a disciplinary outcome is proposed, the employer must, as soon as reasonably practicably, give the employee information about the findings and proposed disciplinary outcome, and reasonable time to respond.<sup>262</sup>

Once the employer has considered the findings, any recommended disciplinary outcomes, the response of the employee and any previous disciplinary outcomes, they may then determine the disciplinary outcome that is to apply to the employee. The outcome must not be disproportionate to the seriousness of the matter.<sup>263</sup>

An employee may raise a dispute or review of action under clause 13 following a disciplinary outcome<sup>264</sup>, other than a grievance about termination which may be referred to the Fair Work Commission. If the matter cannot be dealt with through an internal dispute resolution process such as mediation or conciliation, either party can apply to the Fair Work Commission to have the dispute dealt with by conciliation.<sup>265</sup>

<sup>258</sup> *Public Administration Act 2004* (Vic) s 8(b).

<sup>259</sup> *Public Administration Act 2004* (Vic) s 8(d).

<sup>260</sup> *Victorian Public Service Enterprise Agreement 2020* cl 25.6(c).

<sup>261</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 25.10(b)-(c).

<sup>262</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 25.11.

<sup>263</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 25.12(a).

<sup>264</sup> *Victorian Public Service Enterprise Agreement 2020*, cls 13, 25.14.

<sup>265</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 13.9(c).

### **There are various options for carrying out investigations**

DJCS's Integrity and Reviews business unit, within the Integrity, Legal and Law Reform group, is responsible for carrying out misconduct investigations which, as outlined in the VPS Enterprise Agreement, can include collecting relevant materials, speaking with the complainant, speaking with relevant witnesses and providing the respondent with information to allow them to respond to the alleged misconduct.<sup>266</sup>

Despite the rigorous process outlined in the VPS Enterprise Agreement, staff feel a distinct lack of faith in DJCS's investigation processes – in the Victorian Public Sector Commission's 2021 People Matter Survey, only 25 per cent of custodial corrections staff respondents said they believed a workplace grievance would be investigated thoroughly and objectively.<sup>267</sup>

CPSU has criticised the investigations processes as lacking timeliness and flexibility.<sup>268</sup> The VPS Enterprise Agreement is not prescriptive in how an investigation should be conducted, providing various options for scaling the investigation process or condensing steps, depending on the circumstances. For example, where there is sufficient probative evidence to substantiate the allegation (such as CCTV footage) or an admission, there may be no need for a formal investigation, enabling a disciplinary outcome or termination to be progressed more expeditiously. DJCS should continue to adopt this practice wherever possible.

On the other hand, where the probative evidence is unclear or conflicting, the investigation process may be more involved. Where it's unclear if there is any basis for the misconduct allegation, an initial assessment may quickly determine that the matter be referred back to local management for informal resolution. Consistent with CPSU's recommendation, it would be beneficial for DJCS and CPSU to discuss their processes, investigation options and any concerns with procedural fairness.

We also found that in mitigating legal risk (should disciplinary outcomes be challenged in the Fair Work Commission), DJCS may be overly complicating the investigations process in a way that goes beyond the requirements in the VPS Enterprise Agreement and the standard of proof for civil employment misconduct matters. For example, Clause 25 regarding the management of misconduct only requires that alleged misconduct is investigated and addressed expeditiously, with minimal disruption to the workplace and in a way that reflects the public sector values of integrity, impartiality, accountability and respect, with the aim of ensuring that staff are treated fairly and reasonably.<sup>269</sup>

<sup>266</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 25.10(c).

<sup>267</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

<sup>268</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021) 17-22.

<sup>269</sup> *Victorian Public Service Enterprise Agreement 2020*, cl 25.1.

The employer has sufficient discretion in determining whether a formal process is required and how the investigation should be conducted while still ensuring procedural fairness – the requirements differing with individual circumstances. For example, what particulars are put to the employee for a response and how many interviews (if any) are conducted as part of an investigation should be determined in each case with reference to the complexity and seriousness of the matter as well as the nature of probative evidence available.

### **The consistent use of the Briginshaw standard of proof should be reconsidered**

We heard a consistent perception that there is not enough accountability for workplace harm and other misconduct in the adult custodial corrections system.

There is an opportunity for DJCS to reconsider its preference for a strict interpretation of Briginshaw in workplace harm and misconduct investigations, particularly in consideration of the difficulties with attaining objective evidence within the corrections context and the research on workplace sexual harassment. We understand that DJCS's investigations process is informed by the Whole of Government Management of Misconduct Policy.<sup>270</sup> We suggest the Victorian Government review this policy to ensure its interpretation of the VPS Enterprise Agreement is consistent with a victim-centric approach, particularly in relation to complaints of sexual harassment.

The Briginshaw principle acknowledges that the evidentiary requirements of civil cases will be different depending on the nature and seriousness of the allegations made. It requires an account to be proven on the balance of probabilities in a variation on the civil standard of proof. DJCS, like many other employers, uses this evidentiary test to satisfy themselves that the conduct occurred and ensure disciplinary action can be justified and proportionate. This is because internal investigations can result in disciplinary action, including dismissal, and unfair dismissal laws require that the employee's conduct was proportionate to the act that occurred.<sup>271</sup>

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<sup>270</sup> Victorian Government, 'Management of Misconduct', *Common policies on the Victorian Public Service Enterprise Agreement 2020*.

<sup>271</sup> *Ashley-Cooper v Palm Beach Motor Yachts Co P/L T/A Palm Beach Motor Yachts* [2019] FWC 8305 (Saunders DP): 'It is necessary to consider whether the employer had a valid reason for the dismissal of the employee, although it need not be the reason given to the employee at the time of the dismissal... In cases relating to alleged conduct, the Commission must make a finding, on the evidence provided, whether, on the balance of probabilities, the conduct occurred.'

## The Briginshaw test

The 'Briginshaw test' has become a widely used evidentiary principle across distinct areas of Australian law, including workplace misconduct investigations. The test sets out the High Court's decision in *Briginshaw v Briginshaw* on how the standard of proof should be applied in civil proceedings.<sup>272</sup>

Briginshaw acknowledges that the evidentiary requirements of civil cases will be different depending on the nature and seriousness of the allegations made. In civil law contexts, Briginshaw assists court and tribunals to evaluate whether the evidence available is compelling enough. In the context of workplace misconduct investigations, Briginshaw requires investigators to ensure all the evidence collected about the allegation will prove, on the balance of probabilities, that the misconduct occurred.

Briginshaw has been widely acknowledged as being inappropriate for assessing alleged conduct such as sexual harassment, which requires significant evidence of the account to be provided by the victim-survivor in the context of frequently having limited physical evidence and a lack of corroboration by witnesses in these matters. As a result, this test is not considered to be victim centric.<sup>273</sup> The same concerns could be said for other workplace harm such as discrimination, bullying and integrity concerns, particularly within the custodial context which has a culture that creates additional evidential hurdles for complainants and a significant risk of victimisation for staff who give testimony adverse to their colleagues.

According to the Management of Misconduct policy., the standard of proof required means the employer needs to be reasonably satisfied based on the available evidence that the alleged misconduct occurred:

'The standard of evidence required to meet the balance of probabilities increases in accordance with the seriousness and consequences of the allegations. Where a serious allegation is made, reasonable satisfaction should not be produced by inexact proofs, indefinite witness statements or indirect inferences.'<sup>274</sup>

Although adopted by the Fair Work Commission, a narrow interpretation of Briginshaw may not, in all circumstances, align with DJCS's duty to provide a safe workplace for staff while protecting the rights of people in custody. The adult custodial corrections environment is very different to other Victorian public sector workplaces. Investments must consider the context of the environment where people in custody are more vulnerable to being mistreated, have fewer avenues to raise complaints and are less likely to be seen as credible witnesses. Staff may also be unwilling to give adverse evidence against their colleagues and face significant victimisation when they do. Masking conduct may also contribute to the lack of available objective evidence.

<sup>272</sup> *Briginshaw v Briginshaw* [1938] HCA 34.

<sup>273</sup> Harry Stratton, 'Perfectly safe, five times out of six: The Briginshaw principle and its paradoxes' (2019) 42(2) *UNSW Law Journal*, 377-379.

<sup>274</sup> Victorian Government, 'Management of Misconduct', *Common policies on the Victorian Public Service Enterprise Agreement 2020*, 4 [7.2].

We understand that in applying *Briginshaw*, DJCS's investigations frequently require the type of probative evidence that is rarely available in a custodial context – for example, because the conduct occurred in an area where CCTV cameras were not present and in circumstances where BWCs were not used appropriately. As a result, even where the circumstances and testimony available suggests its reasonably likely the conduct occurred with significant impact on the alleged victim and broader custodial culture, the individual likely responsible is not held accountable and may continue to pose a risk within the custodial environment.

We recommend DJCS recast its evidentiary threshold and legal risk profile to support the expeditious and effective resolution of complaints. In doing so, DJCS should work across government to review and update the whole-of-government investigations policy, in line with a victim-centric approach, to ensure the justice needs of impacted persons are reconciled with the requirements of the VPS Enterprise Agreement. This should ensure government is correctly interpreting *Briginshaw* by giving appropriate weight to the testimony of complainants, nature of the alleged conduct and the circumstances in which the misconduct allegedly occurred.

In addition, DJCS should ensure all related misconduct matters are investigated, rather than focusing on the most serious conduct (which may be most challenging to substantiate). It may be, then, that lesser conduct – for example, related to breaches of the Code of Conduct or Commissioner's Requirements – may result in a disciplinary outcome that addresses the risk present in the workplace. This approach including adopting a lower standard of proof for lower-level conduct, is consistent with *Briginshaw*. In this way, DJCS may be able to ensure related matters are substantiated while reducing the investigative burden and ensuring accountability.

Finally, DJCS should also consider investigating the conduct of managers and supervisors who fail to adequately oversee staff conduct – for example, by not reviewing incident reports or incident footage – or engage in corrupt conduct by masking or failing to report misconduct.

### **There are various disciplinary outcomes available but little consistency**

If misconduct allegations are substantiated, the VPS Enterprise Agreement provides a range of possible disciplinary outcomes, including:

- ▶ no action
- ▶ performance management
- ▶ formal counselling
- ▶ a formal warning
- ▶ a final warning
- ▶ assignment to a role at a lower classification
- ▶ transfer to a different work location
- ▶ termination of employment.<sup>275</sup>

A report produced by DJCS's Integrity and Reviews business unit is provided to the relevant delegate (usually the relevant Assistant Commissioner) for them to consider and propose a disciplinary outcome. As part of the natural justice process, the employee must be given a reasonable opportunity to respond to any factor relied upon in determining the proposed disciplinary action, such as whether it is alleged the misconduct poses a risk to health and safety within the custodial environment.

One of the issues we identified is that there is no single decision-maker across the corrections workforce responsible for overseeing and ensuring fair and consistent responses to complaints of workplace harm and misconduct. We heard that the fact that different Assistant Commissioners are responsible for determining the disciplinary action may be creating an actual or perceived level of inconsistency in disciplinary outcomes for similar conduct across the system.

As a result of inadequate data and information systems, it is not possible to adequately assess whether outcomes are fair and consistent, further highlighting the need for central oversight of corrections complaints. Inconsistent data management processes also limit DJCS's ability to oversee and assess whether outcomes are fair and proportionate across the system.

We recommend that alongside a revised investigations framework focused on more efficient, effective and trauma-informed process, DJCS develop a set of service delivery standards that could be used as a baseline to measure success and improvements over time. The service delivery standards should be based on delivering best practice investigations, including setting standards for timeliness, information provision and support for parties, data and information-sharing and user experience. The standards should be measured against data and user experience – for example, regular pulse surveys and formal feedback processes.

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<sup>275</sup> *Victorian Public Service Enterprise Agreement 2020* (Vic), cl 25.12(b)-(d).

**Recommendation 4.13**  
**Revised and victim-**  
**centric investigations**  
**framework**

The Department of Justice and Community Safety should adequately resource the Integrity and Reviews business unit with specialist corrections expertise to help it resolve complaints related to prisons and enable more effective and timely responses to complaints of misconduct.

The revised investigations framework should:

- a) deliver more consistent and proportionate disciplinary outcomes
- b) review the approach to investigations to ensure the interpretation of Clause 25 of the Victorian Public Service Enterprise Agreement is consistent with a victim-centric approach
- c) ensure all allegations of misconduct related to an incident are investigated as separate allegations capable of each giving rise to disciplinary outcomes and as context to the main allegation
- d) update investigations processes to align with best practice principles for person-centred and trauma-informed responses
- e) develop a set of service delivery standards that can be used to measure the effectiveness of complaint and investigation processes.

The Department of Justice and Community Safety should consult with the Community and Public Sector Union, Victorian Public Sector Commission and other parts government in the development of the investigations framework.

### **Flexible and informal dispute resolution options**

DJCS has several options to resolve complaints or reports of misconduct informally including without a formal investigation. For example, where an initial assessment suggests non-disciplinary alternatives are more appropriate, DJCS (including local managers) can offer the employee assistance to improve their performance, education, additional supervision, relevant training, or an agreement to mediate the dispute.<sup>276</sup>

As suggested by CPSU and others, more flexible and informal options for the resolution of matters should be used in responding to less serious complaints or reports of misconduct. Staff we spoke to also supported more opportunities to deal with allegations of staff misconduct.

Increased options for informal resolution may offer a powerful response to systemic issues of workplace harm. Alternative options for resolution may also address the significant barriers to reporting and lessen the experience of victimisation for those who do make formal complaints.

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<sup>276</sup> Victorian Government, 'Management of Misconduct', *Common policies on the Victorian Public Service Enterprise Agreement 2020*, 7.



As capability is increased to deliver restorative practices, alternative dispute resolution could be offered in circumstances where the parties are willing to engage in a facilitated conversation to rebuild trust and address any behaviours of concern. They should not be considered formal disciplinary processes although may be conducted instead of, prior to, or following a formal investigation. Any conciliated outcomes must be agreed by both parties. Alternative dispute resolution can be utilised between the complainant and respondents or the complainant and employer and must always be trauma informed.

DJCS should develop a framework and develop capacity to offer internal informal and alternative dispute resolution options, informed by principles of restorative justice in the following circumstances:

- ▶ where the conduct could not substantiate serious misconduct and there are no insurmountable power imbalances
- ▶ where both parties are willing to engage in a facilitated conversation to rebuild trust and address any behaviours of concern
- ▶ where the complainant does not wish to participate in a formal investigation because the process may be re-traumatising to the complainant or they are seeking an informal outcome such as an acknowledgment of harm, behaviour change and an apology
- ▶ where a formal process is unlikely to result in a disciplinary outcome or address a plausible workplace risk – for example, because the legal evidentiary threshold cannot be met on the evidence available – but there would be benefit in addressing the alleged harm and restoring workplace relationships
- ▶ where there is a need to restore trust and preserve the relationship between the complainant and employer and ensure the complainant is supported to continue their work safely, during or after an investigation or disciplinary process
- ▶ where the conduct experienced is repetitive, cumulative or has previously been poorly managed by DJCS in the past, and there is a need to rebuild trust in the individual and/or workforce.

These may include alternative dispute resolution that is:

- ▶ conciliated between the parties
- ▶ focused on the respondent's conduct
- ▶ between the complainant and employer, focused on acknowledging harm, providing support and addressing systemic concerns.

Given the challenges substantiating some corrections-related misconduct allegations, alternative dispute resolution between the complainant and custodial leadership may be beneficial, particularly where it is plausible the harm occurred and there is an imperative to support the staff member and restore their trust.

The incorporation of restorative justice practices in response to workplace harm and misconduct may also provide a valuable opportunity to rebuild trust between staff and corrections leadership by senior leaders acknowledging harm on behalf of the organisation, ensuring the individuals are supported within the workforce and actively taking steps to prevent the alleged harm from recurring.

**Recommendation 4.14**  
**Flexible dispute resolution and restorative practices**

The Department of Justice and Community Safety should introduce flexible and alternative dispute-resolution options – drawing on restorative justice practices, where appropriate – for responding to workplace harm and occupational violence.

Dispute resolution and restorative practices may be facilitated by trained specialist staff and may be suitable in situations where:

- a) the conduct is less serious, there are no insurmountable power imbalances and both parties are willing to engage in a facilitated conversation to rebuild trust and address any behaviours of concern
- b) the complainant does not wish to participate in a formal investigation because the process may be re-traumatising or they are seeking an informal outcome such as an acknowledgment of harm, behaviour change and an apology
- c) a formal process is unlikely to result in a disciplinary outcome or address a plausible workplace risk – for example, because the evidence available will not meet the legal evidentiary threshold
- d) there is a need to restore trust and preserve the relationship between the complainant and employer and ensure the complainant is supported to continue their work safely, during or after an investigation or disciplinary process
- e) where the conduct the complainant experienced was repetitive, cumulative or poorly managed previously by the Department of Justice and Community, and there is a need to rebuild trust in the individual and/or workforce.

## Ensuring a supportive, trauma-informed complaints process for affected staff

Best practice responses to workplace harm and other integrity concerns should be person-centred and embed a trauma-informed approach to ensure complaints systems are safe and supportive, minimise further harm and centre the individual's needs. A person-centred and trauma-informed approach focuses on wellbeing and continuous support, addresses victimisation and empowers the complainant to exercise choice and control throughout the process, wherever possible. It also ensures parties receive regular and clear information throughout the process and are afforded procedural fairness.

Person-centred and trauma-informed approaches recognise that the impact of harm such as bullying, sexual harassment and discrimination on individuals can be profound and lasting,<sup>277</sup> and the process of bringing a complaint can risk further trauma.<sup>278</sup>

Where the complaints and reporting process is not person-centred or trauma-informed, it risks causing additional harm and trauma to the parties involved.

For complainants, additional harm may be caused due to:

- ▶ not being believed, victim-blaming or having their experience minimised by management or other staff
- ▶ being discouraged to report or progress a complaint
- ▶ being required to retell a traumatic experience – for example, to multiple investigators
- ▶ victimisation experienced including workplace bullying, exclusion and rumours
- ▶ feeling unsupported and uninformed about the complaints process.

Our conversations with staff – including both complainants and respondents – indicated that DJCS's current complaints and investigations processes are not person-centred or trauma informed. As discussed above, the excessive length of time it takes to resolve complaints and lack of support during investigations processes can have a profoundly negative impact on staff. The process of attempting to substantiate complaints of sexual harassment – for example, against an unattainable burden of proof – can also be re-traumatising.

'The investigation process needs to change ... The process is not good for anyone's mental health ... I genuinely think that someone will kill themselves if things do not change.'

**Staff member**

<sup>277</sup> Australian Law Reform Commission, 'Improving financial assistance and truth telling for victim survivors of sexual violence', *Improving the Justice System Response to Sexual Offences* (Report, 2021) [10.1]-[10.7].

<sup>278</sup> Lori Haskell and Melanie Randall, *The Impact of Trauma on Adult Sexual Assault Victims* (Report, 2019) 6-11.

Another person described their experience as a respondent:

'The investigation process is so horrible. You are directed to hand in your uniform, your corrections pass – this is handed in, in front of your peers and then the gossip and rumours start from then ... comments such as "You have lost your job" before the investigation has even been started. I was at the point where I was having thoughts to kill myself after that, due to the lack of support.'

**Staff member**

We have made several related recommendations that will support DJCS to deliver a trauma-informed response – for example, through streamlined and more expedient investigations processes, the provision of more comprehensive information about complaints processes in consolidated, accessible policies, and capability building within local management. However, the process itself must embed trauma-informed approaches and be delivered by trained specialists. The process should also include additional wellbeing support within DJCS and formally through proactive professional counselling.

### **Key steps to embed a person-centred and trauma-informed approach**

There are several steps DJCS can take to ensure its complaints and investigations process embeds a person-centred and trauma-informed approach:

- ▶ Supporting the complainant's choice and control over the process – for example, providing multiple avenues for making a complaint or report, establishing processes for anonymous or supported reporting (recommended above), providing the complainant options for how the complaint might be handled (informal or formal reporting), maintaining their confidentiality and consulting them about any interim steps to prevent further harm.
- ▶ Ensuring complainants are respected, supported and believed, acknowledging the distress that may be caused in making a complaint and the trauma inherent in not being believed. Managers, human resources and investigators must also be conscious of and address any bias they may have toward the complainant such as gendered assumptions, stereotypes or prejudice against people based on a particular attribute such as their race, trans status or disability, or against people in prison due to their incarceration.
- ▶ Addressing power imbalances and assumptions within the complaints and reporting process – for example, options to report conduct of a supervisor to central management or another supervisor. Allowing the complainant to have a support person with them and ensuring processes where any perceived or actual conflicts are managed appropriately.
- ▶ Providing regular and clear communications to both parties to a complaint about the process and outcome, including reasons why a process may be delayed. Ideally, end-to-end support, advocacy and case management should be provided by a dedicated human resources staff member trained in trauma-informed processes, to ensure regular communication and updates with the staff member. Parties including witnesses should be provided with information about the outcome of the investigation and key findings.

- ▶ Reducing the need for complainants to have to retell their story by streamlining investigation processes and ensuring dedicated case management.
- ▶ Protecting the privacy and confidentiality of parties and addressing victimisation by ensuring only those who need to know about the nature of the complaint, while not preventing the complainant from accessing relevant information about the outcome of the investigation.
- ▶ Ensuring investigators are trained in trauma-informed approaches and put the person first rather than DJCS's interests. For example, neither complainant nor respondent should be interrogated or required to sit through lengthy interviews but rather should be provided with an opportunity to tell their story and respond in a manner of their choosing, as appropriate for an employment matter rather than a criminal investigation.
- ▶ Ensuring managers are trained in a trauma-informed approach to handling reports, including in the need for impartiality, an understanding of the impacts of experiences of harm on the wellbeing and mental health of complainants, and processes to ensure that staff are supported to return safely to work.
- ▶ Adopting restorative practices such as acknowledging harm which are designed to reduce trauma and promote healing.

### **Complainants are often provided with little choice and control through a process**

Respecting the complainant's choice and autonomy is a key part of a trauma-informed approach.

Complainants should be consulted about the options and preferred approach to managing a report but should not be pressured into progressing a formal complaint. We note that, in some instances, a complaint may constitute a mandatory notification that must be reported by law, irrespective of the wishes of the complainant.<sup>279</sup> However, we emphasise that complainants should be provided with consistent information and support, even when mandatory reporting requirements apply.

Where the complainant does not wish to make a formal complaint, they should have access to an anonymous reporting option. In these circumstances, the manager should make a confidential file note, offer support and information to the individual, including discussing their options for making a formal complaint at a later point, and address any safety concerns they may have. The manager should then consider and monitor the potential risk present in the workforce including through additional supervision, inviting others to make reports or complaints, introducing team-level training and reminding staff about acceptable behaviour – including key preventative actions.

<sup>279</sup> *Independent Broad-based Anti-corruption Commission Act (2011)* (Vic) s 57.

### Parties to a complaint often feel left in the dark

Informing the complainant (and relevant witnesses) of the outcome of the complaint is a key to a person-centred approach to complaint handling, yet we consistently heard concerns that parties to a complaint received little information about the status, process or outcome of a complaint.

We heard many examples of complainants and witnesses not being provided with information about the outcome of the investigation due to privacy concerns.

The Management of Misconduct Policy states that the employer may provide the employee who made the complaint with other information as is reasonably practicable, while observing confidentiality and privacy obligations.<sup>280</sup> The interests and rights of the complainant to know that their complaint has been dealt with appropriately should be balanced against the interests and rights of the employee subject to investigation. This appears to be a point of confusion among managers we spoke with:

'The original complainant wasn't happy about the process. And, in fact, wrote to me about the process and ... said [they] didn't feel like we had given [them] enough information and we didn't give [them] the detail of the investigation. But ... we definitely responded with all the links to all the different documents, procedures, policies and everything that she could have access to.'

**Staff member**

At minimum, the complainant should be provided with regular updates on the progress of their complaint and information about:

- ▶ whether an investigation has been conducted
- ▶ if the matter was not investigated, why not
- ▶ if the matter was investigated, whether a disciplinary outcome was applied.

We found that the same information should also be provided to people in custody where they are the complainant or alleged victim in a misconduct matter – discussed below and in Part 6).

We suggest that DJCS ensure that evidence-based, person-centred, trauma-informed standards guide all investigations processes. This work should be led by experts in trauma-informed practice and be reflected in the complaints processes and training to frame responses more broadly.

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<sup>280</sup> Victorian Government, 'Management of Misconduct', *Common policies on the Victorian Public Service Enterprise Agreement 2020*, 12 [20.1].

### **'I ended up in a complaints process that was completely disempowering and demoralising and humiliating.'**

'I met some of the most amazing and brilliant people in corrections. When I left, I was so shattered because I'd never imagined myself working anywhere else – I loved it so much.

The reason I left was because I was being bullied by my boss. He kept making comments to me about my appearance and my religion. I'd laugh it off, but the people around me would say, "They can't say that stuff to you", and I'd be like, "Oh whatever". But it became untenable, and it became so blatantly obvious that I had to go. Rather than holding that person to account, I got moved. I felt a bit broken that moving me was the easier option.

I made a formal complaint. There are not many things I regret in my life, but I regret that. I ended up in a complaints process that was completely disempowering and demoralising and humiliating. I spent hours sitting with independent investigators being grilled, and then I got a letter at the end of it saying, "The investigation has been concluded, but you are not entitled to the findings".

When I asked for a version of the report with whatever redactions were required, the Department of Justice and Community Safety took me to VCAT. The Freedom of Information Commissioner found in my favour, so they appealed. They put barristers on this. It went on for two years after I left.

My career and my mental health would've been better off if I had not challenged the treatment I received.'

*A former staff member*

## **Support for complainants and other parties to a complaint**

A troubling theme throughout our engagement with corrections staff was the lack of wellbeing support provided to parties to a complaint and throughout an investigations process. In addition to any stress and trauma caused by the alleged conduct, parties may experience additional impacts due to victimisation and their experience of the complaints and investigations process. The wellbeing and mental health of respondents may also be impacted by rumours, exclusion and stigma as well as stress due to the threat to their employment and reputation. Where respondents are stood down, they will likely experience additional wellbeing concerns and require support. As one staff member explained:

'When the department suspends someone, the negative impacts on their mental health don't get acknowledged or supported in any way. You sit at home for months, you're not supposed to talk about what your [sic] going through. It's quite harmful to people's mental health.'

**Staff member**

The VPS Management of Misconduct Policy states that 'employee health and wellbeing is valued, and it is recognised that participating in a misconduct process may have an effect on Employees' health and wellbeing'. Under the policy, the employer must inform the employee subject to the misconduct process that they have access to the employee assistance program (EAP) or equivalent and provide relevant details. An appropriate representative of DJCS should also conduct 'regular welfare checks'.<sup>281</sup>

We heard that the burden is on staff to seek support, and persistent stigma around mental illness and seeking help may be deterring some staff from accessing support services. We also heard that the EAP service is not specialised enough to provide effective support to corrections staff who working within a very specific work environment that is unlike many others:

'Staff believe the disciplinary process isn't fair or transparent, or that there isn't enough communication about the problem ... There is a huge chasm between HR and managers, there was a recent death and staff pass away because of mental health and being suicidal. EAP is available to talk too but staff don't use the service.'

Staff member

The current approach to staff wellbeing is reactive and ad hoc, concerned with responding to more acute 'welfare' concerns rather than proactively supporting parties to a complaint to ensure their mental health and wellbeing does not deteriorate during or following a complaint process. For example, both complainants and respondents told us they felt unsupported during the complaint process, with support being little more than a cursory reminder that EAP services are available.

DJCS's Integrity Strategy commits to minimising harm to staff health, safety and wellbeing including formalising 'welfare and legal support options for staff required to participate in improper conduct proceedings' and 'specific welfare support mechanisms to ensure staff are informed and supported during investigations'<sup>282, 283</sup> – however, the detail of these changes have not been shared with us.

In addition to the Welfare Risk Assessment tool described in the Integrity Strategy, DJCS should engage a specialist mental health provider with experience working with frontline or first-responder workplaces to provide continuous mental health and wellbeing support for a party to a complaint or investigation. To overcome stigma, the additional new processes to increase the support of complaints should include (with consent) provide a warm referral to the support service as soon as the complaint process commences.

<sup>281</sup> Victorian Government, 'Management of Misconduct', *Common policies on the Victorian Public Service Enterprise Agreement 2020*, 2-3 [2.2]-[2.3].

<sup>282</sup> Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review, 7, 11.

<sup>283</sup> The Integrity Strategy's Implementation Strategy provides that a 'Welfare Risk Assessment and ongoing welfare support for staff that report misconduct and Public Interest Disclosures' should be developed and implemented immediately (3-6 months), suggesting this action should have already been implemented. However, the Review has not received information on implementation at the time of writing: Department of Justice and Community Safety, 'Integrity Strategy 2021-2023' (12 May 2021), Data provided to the Cultural Review, 12.



### **'If you're part of the liked crew, you have better return-to-work options from WorkCover.'**

'We're not working to best practice as far as training people who've got a work-related injury and staff on WorkCover. The prisons rely on HR to support staff when someone's on WorkCover, but that's not effective in getting someone to return to the workplace and won't make them feel welcomed.

WorkCover matters are not treated confidentially. Some of the conversations that managers have about people on WorkCover and their opinions of the WorkCover claim are really inappropriate.

If you're a part of the liked crew, you probably have improved outcomes and return-to-work options than those who aren't. I see it happen all the time – they get looked after in project roles created for them, working directly with the leadership team. Those who are a little bit on the outer, they get shunted into the usual return-to-work roles.

The leadership attitudes toward towards people who request things like flexible work arrangements or who are on WorkCover is really, really bad. There's still stigma that is attached to WorkCover.'

*A corrections staff member*

## **Increasing support for staff wellbeing**

In order to support the delivery of a safe and effective complaints and reporting process, we recommend that DJCS increases consistent and dedicated end-to-end support and case management to parties to a complaint or misconduct report, delivered by practitioners with expertise in counselling, case management, complaints management and alternative dispute resolution. This support should be independent from Corrections Victoria and the workgroup responsible for assessing or investigating the complaint to ensure the focus on individual wellbeing, support and information, rather than investigating claims and decision-making.

This increased support would work to address the significant wellbeing concerns raised by corrections staff where human resources have not had the capacity to provide regular information and support to ensure the wellbeing of parties to a complaint process:

'The fact that I have not had any contact with the HR ops manager, that all welfare calls are initiated by [the one] operations manager, that the return to work officer doesn't return emails or return text messages and the fact that everybody in that place is aware of the circumstances and that's why [I] had to take the WorkCover, not because she was struggling personally to deal with how it had happened and it happened at work.'

**Staff member**

Increased support for complainants should ensure that approaches are person-centred and trauma-informed and provided to complainants or victim-survivors, bystanders or witnesses, and respondents, and be informed by the needs of the individual including:

- ▶ providing a consistent end-to-end relationship with a single case worker
- ▶ being believed and heard
- ▶ record-keeping and information-sharing premised on not having to retell their story
- ▶ provision of timely and impartial information about the status of the complaint, process and outcome
- ▶ facilitation of referrals to counsellors or specialist support services where additional support is needed.

**Recommendation 4.15**  
**End-to-end support**  
**for complainants**

The Department of Justice and Community Safety should ensure that corrections staff have access to:

- a) a consistent point of contact within the department for reports and complaints of workplace harm
- b) impartial, confidential, timely information and advice about workplace harm and complaint pathways, and processes and procedures for both staff and managers
- c) continuous support throughout formal complaints processes to ensure the safety and wellbeing of impacted individuals.
- d) The Department of Justice and Community Safety should ensure there are dedicated staff for receiving reports and complaints and providing support to the corrections workforce. These staff should:
- e) have operational knowledge of Corrections Victoria and custodial workplaces
- f) have expertise in:
  - promoting safe and inclusive workplace cultures
  - human resources
  - victim-centric and trauma-informed complaint management
  - dispute resolution and restorative justice processes
- g) work with site-based management teams to build their capacity.

## Acknowledging employee experiences of harm through restorative justice

As we have set out in Chapter 11, many custodial staff have experienced unwelcome and unlawful behaviours in their workplace resulting in significant impacts to their wellbeing, mental and physical health, and careers. We heard that, for some staff, the experience of reporting harm and the complaints process was just as damaging as the unwelcome behaviour.

Restorative justice creates an opportunity for an organisation to acknowledge the impact of unwelcome behaviours and recognise how the culture and systems of a workplace enabled or did not adequately respond to an employee's experience of harm.<sup>284</sup> Organisations including Victoria Police, South Australia Police and the Australian Defence Force have established restorative justice schemes to address the harm that has been experienced by their workforces and rebuild the trust of employees.<sup>285</sup> These schemes have included some or all of the following elements:

- ▶ a facilitated process, often called restorative engagement, where an employee can share their experience of harm and have it heard and acknowledged by senior leaders in their organisation
- ▶ financial redress, where a payment is made to an employee in acknowledgement of the harm they experienced
- ▶ non-financial redress, where lost entitlements such as annual leave and progression opportunities are restored to an employee
- ▶ mismanagement payments where an organisation's reporting and complaints processes was insufficient or cause further harm to the employee
- ▶ counselling and therapeutic services to support the wellbeing of an employee during a restorative justice process.

Any restorative justice scheme established by DJCS must be independent of Corrections Victoria, administered effectively and focused on the safety of participants. We note that a restorative justice process will provide an opportunity to increase leaders' understanding of the impact of workplace harm. To prepare selected senior leadership for participation in a restorative justice scheme, DJCS should undertake processes to train leaders who model the highest standards of behaviour in restorative justice processes and trauma-informed responses to harm.

<sup>284</sup> See generally Andrea Parosanu, 'Restorative justice in context of gender-based violence and harm', in Anita Gibbs and Fairleigh Gilmour (eds) *Women, Crime and Justice in Context: Contemporary Perspectives in Feminist Criminology from Australia and New Zealand*, (Taylor & Francis Group, 2022) 119.

<sup>285</sup> The Victoria Police Restorative Engagement and Redress Scheme commenced operation in 2019 and is currently administered by the Department. Ambulance Victoria has also accepted a recommendation made by the Victorian Equal Opportunity and Human Rights Commission to 'establish an independent restorative engagement scheme for current and former employees and first responders who have experienced past discrimination, sexual harassment, bullying and victimisation at Ambulance Victoria'.

**Recommendation 4.16**  
**Establishment of a**  
**restorative justice**  
**scheme for corrections**  
**staff**

The Department of Justice and Community Safety should establish and adequately fund a redress and restorative justice scheme for corrections staff who have experienced workplace harm, including bullying, sexual harassment, racism, discrimination and victimisation in the custodial workplace.

The scheme should be based on the Victoria Police Redress and Restorative Justice Scheme.

## Considering, supporting and ensuring the safety of people in custody who make a complaint

As we set out in Chapter 12, people in custody are sometimes the complainants in misconduct matters. We considered the experiences of people in custody during internal complaints processes and heard that they are less likely to make a report to DJCS, may only report to an external body such as the Victorian Ombudsman and are less likely to be perceived as credible witnesses.

People in custody seeking to report misconduct may encounter significant challenges including power imbalances, fear of consequences for complaining, and a workforce culture in which staff may be reluctant to testify against the colleagues, making it difficult to obtain objective evidence to substantiate claims .

We did not find a specific policy document that sets out how DJCS should respond when a person in custody is the complainant or alleged victim of misconduct. We understand that people in custody are rarely interviewed by DJCS and may not be offered the opportunity to share their experience. DJCS may also assume that a person in custody does not want to provide their account of events if they have declined to participate in police investigations despite it being likely many people in prison would be reluctant to engage with police.

We also found that there is no formal process to communicate the outcome of an investigation to an impacted person in custody. In circumstances where the misconduct was identified other than through a complaint, the person in custody may not be made aware of the investigation at all.

While we understand that people in custody are frequently moved to a different location following, for example, a complaint or allegation that they have been assaulted, we did not identify any evidence that a trauma-informed response is routinely provided.

Given the potential significant impact of certain misconduct on people in custody, their sense of safety and confidence in reporting mistreatment and realising their rights, as well as the impact their experience may have on their rehabilitation, it is critical that DJCS implement a policy for communicating with, hearing from and supporting the wellbeing and safety of people in custody involved in misconduct matters.

The local operating procedures at each location advise that people in custody report disrespectful behaviour to their case manager, their regular unit staff or to ask for a referral to a psychological support service or an appropriate program.<sup>286</sup> However, it is not clear how people in custody might access this procedure and what proactive steps are taken to encourage them to share their experiences without risking victimisation.

We recommend that complaints and reporting policies, including corrections-specific policy, set out a process that must be followed when DJCS becomes aware that a person in custody is the alleged victim of an integrity or misconduct report.

Concerns with complaints processes for people in custody more generally is discussed in Part 6 alongside a recommendation for an independent advocacy and advice service for people within custody.

**Recommendation 4.17**  
**Safety and support for**  
**people in custody**  
**involved in an integrity**  
**report**

The Department of Justice and Community Safety should establish a procedure to ensure the safety of people in custody when they are the alleged victim and/or complainant in a complaint or report of misconduct, in recognition of the significant power imbalance experienced by people in custody.

This procedure should:

- a) ensure a person in custody has the opportunity to attend an interview with an investigator independent of the correctional facility, or to otherwise provide their testimony in relation to the alleged misconduct
- b) provide an independent assessment of the person in custody's support needs including identifying their risk of victimisation, health or wellbeing needs and whether their case management and rehabilitative goals can be met within the correctional facility where the alleged incident took place
- c) offer counselling services to the person in custody available at any time during the process
- d) provide a referral to enable the person in custody to seek independent legal advice and support regarding the allegation and meeting their justice needs
- e) ensure the person in custody receives regular updates and information on the status of the investigation including any outcome
- f) address any safety and justice needs of a person in custody where the allegation has been substantiated.

In following the procedure, the Department of Justice and Community Safety should protect, as far as possible, the confidentiality and privacy of the person in custody, and take any action required to protect them from victimisation.

<sup>286</sup> See, for example, Corrections Victoria, Melbourne Assessment Prison, *Local Operating Procedure 10.01/1 - Respect in the Workplace* (25 January 2022) 6.

## Private prison complaints processes

Custodial staff employed at privately managed prisons are expected to behave in accordance with corporate policies that set out the values and standards of the private prison operators, G4S and the GEO Group Australia. Private prison staff are also bound by the VPS Code of Conduct.

At Fulham Correctional Centre and Ravenhall Correctional Centre, managed by the GEO Group Australia, the operating instructions around bullying, racism and discrimination advise that custodial staff may contact their unit or departmental manager, the prison's human resources manager or their staff mentor if they wish to make a complaint. The corporate policies outline the process for both a local level and formal complaint process.<sup>287</sup>

For custodial staff working at Port Phillip Prison, managed by G4S, the *Employee Guide to Raising Issues, Complaints and Formal Grievances* provides employees with advice on resolving interpersonal conflict and complaints. The guide distinguishes between 'self-help' and formal grievances, stating that informal resolution can resolve a grievance more effectively than a formal process and improve relationships. The policy outlines that in cases where serious policy breaches, sexual harassment, victimisation or discrimination has occurred, a formal process may be required.<sup>288</sup>

Both G4S and the GEO Group Australia have whistleblowing policies that outline the protections available for custodial staff who report integrity issues.<sup>289</sup> Notably, at Port Phillip Prison, staff also have access to Speak Out, a 24-hour, 7-days-a-week confidential telephone and web-based service for reporting breaches of group policy, law or G4S values. The service is operated from the United Kingdom. However, we did not receive any information about whether custodial staff in private prisons access this service or if it is an effective confidential avenue for handling complaints relating to unlawful workplace misconduct and integrity breaches at Port Phillip Prison.

While we found that the complaints and reporting procedures accessible to private prison staff are broadly aligned with best practice, our conversations with staff revealed that, in practice, they are not achieving their intended outcomes. Similar issues regarding the effectiveness, perceived fairness and accountability were raised by staff employed within private prisons. Victimisation, under-reporting and masking behaviours were also common themes arising from our engagement with staff at private prisons.

We understand that while private prisons manage their own complaints of misconduct and disciplinary processes, DJCS may receive intel about conduct within private prisons and audit use of force incidents across both public and private

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<sup>287</sup> The GEO Group Australia, 'Code of Conduct – HR 1.01', (17 September 2020) Data provided to the Cultural Review

<sup>288</sup> G4S, 'Employee Guide to Raising Issues, Complaints and Formal Grievances' (12 March 2021), Data provided to the Cultural Review

<sup>289</sup> The GEO Group Australia, 'Whistleblower Policy GA 1.03' (17 December 2019), Data provided to the Cultural Review; G4S, 'Whistleblowing Policy' (25 January 2021), Data provided to the Cultural Review

prisons. When DJCS identifies a report of workplace harm or integrity concern, it notifies the private prison general manager who, in most instances, initiates their own investigation process. The Commissioner, however, has the power to revoke an individual staff member's accreditation if the Commissioner feels the staff member is not competent to continue to work in a prison and the private prisons have not taken action to dismiss them.

**'A staff member reported sexual harassment. I took it as exactly that and treated it as exactly that. And it did get investigated, and head office did get involved ... And when that [evidence] was all put to [the respondent], they resigned.'**

'If someone makes a complaint, in the first instance they will go to HR [internal to the prison]. Or it could come directly to me. But I will always get it back to HR to, in the first instance, have a look at what we're dealing with and think about, depending on what the issue is, if we need to provide immediate support for the staff member – it's always about the staff member first. And then what processes we put in place after that. And sometimes the staff member can dictate that.

This complaint did get investigated, and head office did get involved. And it uncovered more about the individual that was being investigated. And when that [evidence] was all put to [the respondent], they resigned.

To support the complainant, we provided all the links to all the different documents, procedures, policies and everything that they could have access to.'

*A corrections staff member*

## Preventing unlawful and harmful conduct

We have detailed the pervasiveness and impact of workplace harm in the custodial environment. We have also addressed the impact of integrity risks, particularly the unlawful use of force, on people in custody and the culture of the workforce. While the rates of harm remain significant, we must recommend that significant investment, resourcing and efforts are devoted to addressing the impact of harm, ensuring perpetrators are held to account and correcting the culture of the workplace. The critical need to invest in these responsive efforts will endure unless more is done to prevent harm before it occurs.

Investment in prevention will demonstrate to the workforce that DJCS is committed to improving their outcomes and values their safety at work. It will also communicate to staff and leaders that behaviour that was previously a part of the normal culture of the custodial workplace will no longer be tolerated. Increased messaging on the processes in place to respond to and investigate harm will reinforce that DJCS is taking allegations seriously, providing an additional mitigating factor to discourage unlawful and unwelcome behaviours.

We note that the prevention of some forms of workplace harm are a legal requirement in Victorian workplaces, under:

- ▶ the positive duty in section 15 of the Equal Opportunity Act, which requires employers to prevent sexual harassment, discrimination and victimisation in the workplace<sup>290</sup>
- ▶ the positive duty in section 21 of the *Occupational Health and Safety Act 2004* which requires employers to provide safe and healthy workplace for staff.<sup>291</sup>

While our recommendations work toward meeting this legal duty, we consider that prevention efforts must be broad enough to address all cultural risk factors, including those that drive integrity issues and workplace harm in the custodial workplace.

## Preventing workplace harm and integrity issues in the custodial workplace

There are currently limited intervention mechanisms in place that specifically address the drivers of workplace harm and integrity issues in the custodial workplace. This is despite high rates of harm being reported by staff in, for example, the VPSC's People Matter survey for several years<sup>292</sup> and multiple reviews of integrity issues in the custodial workplace by oversight bodies as we detail in *Chapter 12. Integrity*.

There are multiple DJCS and local initiatives to promote respectful behaviour, minimise integrity risks and encourage reporting currently operating in the custodial workplace. While these initiatives have positive elements, they do not do enough to address the rates of harm that are currently occurring or the specific cultural norms that drive these risks.

Current initiatives within DJCS and Corrections Victoria are outlined below:

- ▶ The DJCS Integrity Strategy (2021) which aims to increase the detection, investigation and prevention of most workplace harm<sup>293</sup> and integrity risks in the DJCS workforce. While the Integrity Plan contains elements of effective prevention, it does not sufficiently address the specific drivers and cultural issues in the custodial workplace as it is a department-wide strategy intended to cover many distinct business units. While the DJCS Integrity Strategy does include plans to engage the broad DJCS workforce, it does not include a specific plan to empower, engage or seek feedback from any specific cohort of the

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<sup>290</sup> Employers in Victoria must take all reasonable and proportionate measures to eliminate these forms of harm from occurring in the workplace. This work must include engaging the workforce in prevention, addressing systemic risk factors and drivers of workplace harm, and continuously monitoring prevention efforts to ensure they are effective.

<sup>291</sup> *Occupational Health and Safety Act (2004)* (Vic) s 21. Workplace harm is a health and safety issue that must be treated like an occupational hazard in an organisation's risk management processes. See for example Champions of Change Coalition, *Disrupting the System: Preventing and responding to workplace sexual harassment* (2021) 34.

<sup>292</sup> Victorian Public Sector Commission, People Matter Survey data provided to the Cultural Review (2021). Note: private prison staff do not participate in the People Matter Survey.

<sup>293</sup> We note that the Integrity Strategy does not currently address discrimination or racism as integrity risks. As we set out in Chapter 11 and Part 5: Aboriginal Cultural Safety, these are significant issues in the custodial workforce and represent critical integrity risks.



workforce. This may limit the ability for custodial staff to engage with or inform improvement of the Integrity Strategy.

- ▶ The Corrections Victoria Cultural Reform Strategy (2019–22) which sets out a number of priorities relating to capability, values-based leadership, and creating positive and safe workplaces for all staff and people in custody.<sup>294</sup> The Corrections Victoria Cultural Reform Strategy includes a priority to ‘develop and implement strategies to address and prevent harm that may occur in the workplace’ and sets out a zero-tolerance approach to workplace harm. The specific initiatives to realise this goal included a ‘Walking the Line’ messaging campaign, which we set out in more detail below. The Corrections Victoria Cultural Reform Strategy also includes broad goals to increase respectful behaviours in the workplace; however, it does not contain clear measures to prevent harm or minimise integrity risks. We understand that the Corrections Victoria Cultural Reform Strategy was developed independently by Corrections Victoria in an attempt to address emerging issues prior to the existence of a department-wide approach.<sup>295</sup>

The lack of aligned efforts to prevent harm in the custodial workplace is diluting the efforts of both DJCS and Corrections Victoria and undermining the effectiveness of reform. The proliferation of policies, messaging and campaigns with conflicting initiatives and inconsistent behavioural expectations is confusing for the custodial workplace and fails to create clear and unequivocal standards. It also further underscores the perception that the corrections workforce is separate from, and less valued than, the broader justice system.

We consider that there are three critical reform areas to prevent harm from occurring in the custodial workplace. Each prevention focus area below ties to one of our recommendations:

- ▶ **Increased risk management** – work to identify the risks that harm will occur and create effective, ongoing mitigation strategies to reduce or eliminate those risks.
- ▶ **Messaging** – work to provide consistent communications to the workforce to set standards for behaviour, provide information on reporting processes and available supports, and ensure that staff understand why cultural reform is necessary.
- ▶ **Leadership** – work to ensure that leaders are positioned to create and maintain safe and respectful workplaces and are held to account for harmful behaviours.

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<sup>294</sup> Department of Justice and Community Safety (Corrections Victoria), ‘2019-22 Corrections Victoria Prisons Cultural Reform Strategy’ (January 2020), Data provided to the Cultural Review.

<sup>295</sup> We have received advice from DJCS that the Corrections Cultural Reform Strategy and its initiatives are not aligned with DJCS’s current approach to workplace harm and was not authorised by DJCS. That this plan was not endorsed indicates a strong need for a more comprehensive and unified approach by DJCS to support prevention of harm in the custodial workplace

### **Current measures to manage the risk of workplace harm and integrity issues in the custodial workplace**

There are currently multiple risk-detection and mitigation strategies that operate in the custodial workplace. We found that these could be more effective for detecting and mitigating harm and integrity issues in the custodial workplace:

- ▶ DJCS's Risk Management Framework has an integrated approach to all strategic, workforce, cultural, legal and quality assurance risks.<sup>296</sup> The framework sets out clear governance for risk monitoring; however, it does not specifically consider workplace harm as a health and safety risk or establish mechanisms to identify or treat those risks. We have not seen evidence of this framework being applied to workplace harm and integrity risks in the custodial workplace.
- ▶ Corrections Victoria holds an organisation-wide risk register containing mitigation strategies. While the register does address some risks that relate to workplace safety against a significant breadth of operational, legal, service delivery and compliance risks, it does not address workplace harm, its drivers, or controls and treatment strategies to prevent harm from occurring. The risk register addresses 'assaults' as an ongoing consequence of the risk event 'failure to provide a safe workplace in all correctional environments'; however, there is no direct mitigation strategy to address staff conduct and no acknowledgement of other integrity risks in the custodial work environment.

We recommend that DJCS ensure that a dedicated risk management process is created for Corrections Victoria which creates a clear focus on the mitigation of integrity risks and workplace harm. These efforts should:

- ▶ create clear accountability for identifying and reporting workplace issues and risks in the custodial workplace, including responsibility for responding to and escalating risks, supported by centralised reporting processes
- ▶ include processes to ensure that all staff understand their role in risk assessment and are empowered to raise risks at their workplace
- ▶ create clear process for managing and mitigating workplace harm risks in the custodial environment
- ▶ enhance the collection and analysis of data to ensure DJCS can understand the experiences of the workforce, including analysis of anonymous staff surveys and complaints data to identify high-risk areas that require systemic intervention.

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<sup>296</sup> Department of Justice and Community Safety, 'Risk Management Framework' (16 June 2022) Data provided to the Cultural Review.

We note that the policy framework and infrastructure for these measures exists at the departmental level through its Risk Management Framework; however, these systems are not being effectively administered by Corrections Victoria.

DJCS's approach to prevention must address and seek to mitigate the cultural risks we have identified in this part of the report, including:

▶ **Low bystander safety**

Increasing support for bystanders and encouraging them to speak up can both increase support for people experiencing workplace harm and help to reduce the culture's tolerance for unwelcome workplace behaviours.<sup>297</sup> Effective risk mitigation to increase the safety of bystanders should consider increased messaging supported by relevant, operational examples of how to speak up,<sup>298</sup> emphasising the protections and support available to bystanders and the pathways bystanders can take to raise complaints, and ensuring that additional support is offered to bystanders in recognition of the negative impact of witnessing harmful workplace behaviours.

▶ **Low rates of reporting**

Encouraging people to report requires a multifaceted approach that both ensures the safety of people who report in the workplace and that safety of the experience of going through a complaints process. In this chapter, we recommend reforms to increase the safety and accessibility of complaints processes and increased support for complainants. These reforms will operate as a preventative factor that encourages further reporting. We also acknowledge that victimisation is a persistent experience in the custodial workplace and that this has a significant impact on the safety of people to report. Mitigation strategies should consider initiatives to communicate DJCS's victimisation policy to the custodial workplace and ensure that leadership promote the protection of staff who report and emphasise the repercussions for people who victimise staff.

▶ **Cultural norms that embed a high tolerance for harm, including a focus on security, the traditional characteristics of a custodial officer, and insular, site-based workforces**

Mitigation strategies should include continued and reinforcing messaging on the purpose of the system (see Recommendation 4.21) and the key skills, capabilities and behavioural expectations of the workforce toward delivering on a new system purpose.

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<sup>297</sup> See generally Paula McDonald and Michael Flood, Australian Human Rights Commission, Encourage. Support. Act! Bystander approaches to sexual harassment in the workplace (Report, 2012).

<sup>298</sup> See, for example, VicHealth, *Take action: Empowering bystanders to act on sexist and sexually harassing behaviours in universities - Final report from the Phase Two bystander trials 2018-2019* (Final report, 2019) 24-29.

### **More data collection on experiences of harm and integrity issues is needed to inform risk management**

We heard that despite measures to improve understanding of the rates and nature of workplace harm in the custodial workforce, incidents related to workplace harm and integrity are under-reported, obscuring trends or systemic issues and limiting effective responses to incidents. One senior representative from DJCS referred to Corrections Victoria as ‘the black box’, noting that oversight and monitoring of data relevant to the operations and activities within prisons is very difficult to obtain.<sup>299</sup>

‘There is so much opportunity to do a lot with the data that we have, and we haven’t invested the time and capability in it to get it done. We’re slowly building on that. I could go much faster if I wanted to, but there is a cultural reticence to share information.’

**Expert interview**

Without the right data, DJCS cannot identify or respond to risks. As we have discussed throughout this part of the report, DJCS does not consistently collect, disaggregate, analyse or act on data and reporting related to risks in the corrections workforce. There is limited centralised visibility of workplace harm and integrity issues, with information and reports stagnating at the site level. As a result, DJCS has reduced opportunity to understand the current nature, drivers or impact of workplace harm in the custodial workplace or respond to emerging systemic or site-based risks. Efforts to increase reporting will improve the scope of the data collected by DJCS; however, more targeted collection efforts are needed to ensure that DJCS is collecting the right information to identify risks and issues.

### **Using staff feedback to monitor the effectiveness of prevention measures**

An effective mechanism for monitoring the ongoing rates of harm in the workplace are confidential, anonymous ongoing surveys that are regularly distributed to the workforce.<sup>300</sup>

Currently, the corrections workforce is surveyed annually by the VPSC through the People Matter survey. While this survey is a useful model to understand the experiences of custodial staff as compared to the broader public sector workforce, there is an opportunity to collect more data to understand and measure the effectiveness of initiatives toward meaningful change.<sup>301</sup>

Effective mechanisms have been utilised by other organisations to understand the experience and attitudes of their workforce while undertaking their own reform journeys. Victoria Police, in its work toward achieving organisational gender equality, implemented Pulse Check surveys to understand the culture and tone of their

<sup>299</sup> Staff member – Expert interview with the Cultural Review.

<sup>300</sup> Victorian Equal Opportunity and Human Rights Commission, *Preventing and responding to workplace sexual harassment: Complying with the Equal Opportunity Act 2010* (Guideline, August 2020) 62-64.

<sup>301</sup> We note that the Department of Justice and Community Safety has recently commenced a Pulse Check process for measuring the experience of all DJCS staff. While we emphasise the value of a specific mechanism to monitor the experience of the custodial workforce, there may be an opportunity to review this who-of-organisation survey instrument to include specific questions to understand and identify the nature, drivers and impact of workplace harm in the custodial workplace.

workforce. Through the Pulse Check surveys, Victoria Police was able to identify and respond to site-based issues and risks, and monitor the effectiveness of messaging across the workforce.<sup>302</sup>

We see significant value in ongoing monitoring to understand the experience of staff in the workplace, identify risks and drivers of workplace harm, and measure the wellbeing and psychological safety of custodial staff. This should include targeted surveys of the corrections workforce at regular intervals.

**Recommendation 4.18**  
**A specific Corrections Victoria workplace harm and integrity risk management framework**

The Department of Justice and Community Safety should create a workplace harm and integrity risk management framework to identify, monitor and respond to risks and drivers of harmful and unlawful conduct in the custodial workplace.

This framework should align with the risk management principles, control processes and governance set out in the Department of Justice and Community Safety's Risk Management Framework and the approach to preventing, detecting, and investigating integrity risks in the department's Integrity Strategy.

The risk management framework should:

- a) consider site-based rates of complaints and reporting as a risk identification tool – noting that an increase in reports in the short term can be positive indicator of cultural change
- b) include ongoing analysis of workforce demographics
- c) identify current, ongoing and emerging risk factors and cultural norms driving workplace harm and integrity issues and create clear initiatives toward mitigating harm.

The workplace harm and integrity risk management framework must be supported by specific training and guidance for managers and supervisors on how to utilise and report against the framework. It should be linked to the proposed enhanced data systems and dashboard for monitoring system-wide risks.

## Increasing the capability of leaders to prevent harm

Leadership skills that foster safe work environments through effective people management are an important protective factor against harmful workplace behaviours.<sup>303</sup> For leaders to effectively influence the culture of the organisation and prevent harm from occurring, they must visibly, proactively and consistently commit to eliminating harm and calling out inappropriate behaviour.

Through our engagement, we found significant variation in leaders' understanding of workplace harm and integrity issues across the adult custodial corrections system. At some locations, managers and senior leadership addressed concerns about

<sup>302</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into sex discrimination, sexual harassment including predatory behaviour in Victoria Police: Phase 2 Audit* (Report, 2017) 95, 99.

<sup>303</sup> See generally Marie Hutchinson and John Hurley, 'Exploring leadership capability and emotional intelligence as moderators of workplace bullying' (2013) 21 *Journal of Nursing Management* 553.

workplace harm and some were proactively responding to what they had recognised as harmful cultures within their workplace. These leaders understood the depth and seriousness of the cultural issues driving harm in their workplace; however, many told us that they felt that DJCS was not providing sufficient resourcing or support to drive cultural change.

At other locations, managers and senior leadership did not acknowledge or understand the extent of harm at their locations or said that they did not believe it was happening where they worked. As set out in this chapter, we have found that workplace harm is currently occurring at every location. This was not reflected consistently in the knowledge or understanding of leadership across the system.

'Having staff trained when they go up the ranks ... They are trained to know what to do with fires and when someone is assaulted [by a person in custody] ... What about sexual harassment? ... When I report to my manager, "Hey, I've just been sexually harassed in the tearoom", they [need to be] trained and professional enough to handle it.'

**Staff member**

In the custodial workplace, we found there is inconsistent and limited education and support to equip leaders to set and uphold standards for safe and respectful workplace behaviour:

- ▶ There are limited tailored resources available to assist leaders within the corrections workforce to understand their obligations to prevent harm, the specific cultural drivers of harm in the custodial workplace, or the impact of harm on employees. DJCS has some guidance contained in a range of policies and strategies available on the employee intranet; however, they must be manually searched for, are not specific to the custodial workplace and do not provide accessible and relevant information to custodial management and leadership working in dynamic, operational environments.
- ▶ Education and training provided to leaders does not sufficiently or consistently help leaders to understand the law and what effective prevention requires. Corrections-led mandatory training modules for leadership do not have a specific focus on identifying, responding to or understanding the impact of workplace harm.
- ▶ One-off 'Integrity and Respect' training provided to leaders included some elements toward increasing the knowledge of leaders on the nature of workplace harm; however, the modules we reviewed did not sufficiently address the drivers and impact of workplace harm or address the positive duty. We note that 131 managers and leaders across the workforce attended this training in 2021, representing only a small proportion of corrections leadership.<sup>304</sup>
- ▶ Leaders are deferred to mandatory e-learning module on Nexus, DJCS's online learning platform hosting self-paced modules. Some e-learns on Nexus, like DJCS's Sexual Harassment Prevention module, contain helpful guidance on

<sup>304</sup> Department of Justice and Community Safety (Corrections Victoria), 'All Prison Staff Training Completions 2021' (27 August 2021), Data provided to the Cultural Review

understanding the law and the impact of harm. However, these modules do not help staff to understand all types and impact of workplace harm and do not specifically relate to the custodial workplace.

- ▶ Some initiatives, such as the DJCS Integrity Champions Network, aim to support leaders across workplaces through a champions model for promoting and modelling integrity. However, we have been advised the champions model has very low rates of participation from the custodial workplace.

'The importance of local leadership in promoting and modelling to change the culture is going to be critically important ... GMs and local leadership in prison environments is going to be really important to achieving that change.'

**Expert interview**

We recommend that DJCS provide tailored training for custodial leadership, including managers and supervisors, to ensure that they are equipped with a solid, evidence-based knowledge of workplace harm to lead efforts toward its prevention. This training must be regularly offered and refreshed, and successful participation must be a prerequisite for progression.

**Recommendation 4.19**  
**Leadership knowledge on prevention of workplace harm and integrity risks**

The Department of Justice and Community Safety should develop tailored training for Corrections Victoria leadership, including local site-based managers and supervisors, to ensure that they have skills in preventing workplace harm and integrity risks. This training should help leaders:

- a) understand the law and departmental policy addressing misconduct and the measures that the Department of Justice and Community Safety is undertaking to prevent harm in the custodial workplace
- b) can identify the drivers and risk factors of workplace harm in the custodial workplace and understand the impact of harm on the safety, psychological wellbeing and capability of the workforce
- c) understand laws and regulations relating to integrity issues in the custodial workplace, and can identify integrity risks associated with use of force, strip searching, restraints and other behaviour management techniques
- d) can identify the indicators of workplace harm in their workplace, the specific drivers and risk factors of harm, and understand and can support the success of mechanisms in place to mitigate harm from occurring
- e) understand reporting, complaints and investigations pathways, and can support complaints through these processes

hold themselves and other accountable for meeting high standards of behaviour that align with the values of the Victorian public sector.

### Setting clear expectations for the conduct of leaders

Our workforce survey indicated that a concerning high level of workplace harm is perpetrated by leaders, managers and supervisors in the custodial workplace. We have also heard multiple accounts from staff who told us that not all leaders consistently model the behaviour expected of the corrections workforce:

'I've been made aware of almost a posse of staff, male staff members, who are focusing on young, new recruits and making them feel very uncomfortable. It's borderline sexual harassment. It actually is sexual harassment. There's been very inappropriate comments.'

Staff member

The behaviour of these employees has a caustic and lasting impact on the workforce. Having perpetrators in leadership roles who are not held to account for their behaviour creates a permissive environment where harm is enabled, impacts the trust of employees in an organisation and silences both people impacted by the harm and those who witness to it.<sup>305</sup>

Irrespective of their position in the organisation, senior leaders who are alleged to have perpetrated harm must be subject to the same consistent, transparent and proportionate reporting and investigations as other employees:

'Our [senior] manager really needs to start setting an example. It's not appropriate to talk about things that are happening to people, their personal lives, with your [leadership team] cohort. Petty behaviour starts there. It's hard for a whole team to change when that's what a leader does. As a location, if the leadership team's bad, how are the rest of us – we just look up and go, "Well I have zero respect for you so I'm going to do what I want".'

Staff member

By reviewing the position descriptions of custodial staff in leadership positions, we identified that:

- ▶ positions that have significant oversight, control and responsibility for prison sites, such as the general manager, are silent on the need to build safe and respectful cultures
- ▶ behavioural expectations in position descriptions do not reflect the high standards required of leaders reflected in the VPS Capability Framework, such as promoting inclusion, holding staff accountable to public sector values and role-modelling ethical leadership.<sup>306</sup>

<sup>305</sup> Victorian Equal Opportunity and Human Rights Commission, *Independent Review into Workplace Equality in Ambulance Victoria* (Final Report, 2021) 292, 302, 447.

<sup>306</sup> Victorian Public Sector Commission, *Victorian Public Service Capability Framework* <https://vpssc.vic.gov.au/wp-content/uploads/2020/09/VPS-Capability-Framework.pdf>.



The behaviour, conduct and attitudes of leaders must be considered in any promotion processes to ensure that senior staff can provide a safe and respectful workplace for all staff who report to them, and to create a clear expectation that all staff with leadership responsibilities model the highest standards of behaviour and can genuinely drive a safe and respectful culture in their workplace.

Formalising the responsibilities of leaders to create safe and respectful workplace in position descriptions and ongoing performance monitoring processes is critical for ensuring that they both understand their roles and can be held to account for non-performance. It also ensures that the expectation that leaders model the highest standards of behaviour in the workplace is clearly articulated from the point they commence in a role.

**Recommendation 4.20**  
**Clear responsibilities for safe workplaces in leadership role requirements**

The Department of Justice and Community Safety should embed responsibility for preventing and responding to workplace harm in all position descriptions, role requirements and key performance indicators for corrections staff who have leadership functions, to support clear accountability for creating and maintaining safe and respectful workplaces.

Embedding accountability in this way should:

- a) require leaders to role model the highest standards of workplace conduct and drive a culturally safe, integrity-oriented and respectful workplace
- b) be attached to promotion and higher-duties opportunities, with expectations commensurate with the seniority and responsibility of roles.

## Creating messaging initiatives to set clear expectations for behaviour and reinforce available pathways for reporting

In this part of the report, we emphasise that significant reform needs to occur to ensure the workforce knows what conduct will not be tolerated in the workplace and have clear pathways to report harm with consistent support from leaders. Effective communications and messaging during change is critical to engage the support of employees and create an appetite for reform.<sup>307</sup>

At present, there is limited consistent messaging currently provided to the custodial workplace to set standards for conduct. Content setting out behavioural expectations exist in a range of policies and training modules that can be accessed on the DJCS intranet; however, there is lack of explicit messaging from DJCS to support safe and respectful workplace behaviour in the custodial workplace.

We note that Corrections Victoria created a 'Drawing the Line' campaign a part of its Cultural Reform Strategy, with the purpose of setting a clear standard for the behaviour of the custodial workforce.<sup>308</sup> The content of the 'Drawing the Line'

<sup>307</sup>Reza Malek and Rashad Yazdanifard, 'Communication as a Crucial Lever in Change Management' (2012) 2(1) *International Journal of Research in Management & Technology* 52, 54.

<sup>308</sup> Department of Justice and Community Safety (Corrections Victoria), 'Drawing the Line - Identifying and challenging negative behaviours', Data provided to the Cultural Review.

campaign contained helpful guidance and clear statements on behavioural expectations within the custodial workforce. However, we also heard multiple accounts from the corrections workforce that there was little visibility or resonance of this messaging at their locations. Some locations did not engage with or promote the campaign at all, while most others engaged as a one-off with little to no ongoing messaging on setting clear standards for behaviour.

Ongoing, dedicated messaging is needed to ensure that expectations for behaviour are clearly set. We consider that a critical part of this work should be the translation of the Victorian Public Sector Values into operational practice. This work should ensure that custodial staff can understand how values operate in action and see how standards for behaviour apply in the custodial workplace.

This work must be developed in coordinated efforts between DJCS and Corrections Victoria, and contain explicit and ongoing support from leadership toward creating a safer, more respectful custodial workplace. Effective communications to support the reform journey of the adult custodial corrections system should also:

- ▶ create a clear business case for reform to ensure that the corrections workforce understands the rationale for change
- ▶ set out the benefits of safe, respectful workplaces for all staff
- ▶ communicate that all impacted people and bystanders who call out unacceptable and unsafe workplace behaviours will be believed and supported by the organisation and its leaders
- ▶ convey an unequivocal articulation of the expectations of behaviour that are acceptable in the workplace – and the behaviours that will no longer be tolerated.

**Recommendation 4.21**  
**A messaging and communications strategy to create safer custodial workplaces**

The Department of Justice and Community Safety and Corrections Victoria should develop an ongoing messaging and communications strategy for the corrections workforce that:

- a) sets out a clear commitment to prevent unlawful and harmful conduct and support complainants and create safe and respectful workplace for all custodial employees
- b) articulates the expected standards for behaviour for the workforce, affirming that workplace harm is unlawful, inconsistent with Victorian Public Sector Values, may substantiate misconduct and will not be tolerated
- c) provides information on the processes for reporting harm, including information on how to access complaints and reporting pathways.

# Part 5

## Aboriginal cultural safety

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There are too many Aboriginal people in custody. Generations of racist laws, policies and practices have led to the criminalisation of Aboriginal men, women and children, with devastating effects on individuals, communities and families. Systems and processes within the adult custodial corrections system amplify the impacts of colonisation, intergenerational trauma and systemic racism and are perpetuating the over-incarceration of Aboriginal people.

The Cultural Review is being undertaken 30 years after the Royal Commission into Aboriginal Deaths in Custody made 339 recommendations to improve the safety of Aboriginal people in custody and prevent deaths of Aboriginal people in the custody of the state.

The Royal Commission into Aboriginal Deaths in Custody recommended that custody should be a last resort for Aboriginal people. Despite this, there has been a substantial increase in the number of Aboriginal people in custody in Victoria. Since 2011, the imprisonment rate for Aboriginal people in Victoria has almost doubled.<sup>1</sup>

As we write this report, there is an ongoing inquest into the passing of a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman at the Dame Phyllis Frost Centre (DPFC) in January 2020. In the 12 months since the Cultural Review commenced, another two Aboriginal men have died while in prison custody.

While it is not within scope for this Cultural Review to make recommendations that go to the over-incarceration of Aboriginal people nor can a report into the adult custodial corrections system ignore the persistent drivers that lead to the number of Aboriginal people in custody.

This includes the impact of bail laws on the increasing number of women spending short periods of time in custody on remand, the policing and enforcement of drug and substance use disorders and the low age of criminal responsibility that can set up a lifetime of cycling through the justice system and entry into a system that is not safe for Aboriginal people.

These factors and the circumstances leading to entry into the criminal justice system are also relevant to the experiences of safety within the adult custodial corrections system and the operation of the system as a whole. Based on what we have heard directly from Aboriginal staff and Aboriginal people in custody it is also directly relevant to the capacity of the system to provide an environment that is safe for Aboriginal people.

Aboriginal people may never be culturally safe living in custodial settings.

During the Cultural Review of the Adult Custodial Corrections System (Cultural Review), Aboriginal people told us that racism, controlled access to expressions of culture, safety and a lack of culturally appropriate healthcare and wellbeing support had led to terrible experiences within the adult custodial corrections system.

Much more should be done to ensure that the custodial environment does less harm.

### Warning

Aboriginal and/or Torres Strait Islander people should be aware that this part of the report contains names of deceased persons.

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<sup>1</sup> See *Part 2. Systems* for an outline of the profile of the custodial population.

Over many decades, Aboriginal people and organisations have advocated for changes to the criminal justice system to protect the lives and rights of Aboriginal people and communities. Many dedicated Aboriginal people working within the adult custodial corrections system continue to drive change.

The Aboriginal Justice Agreement (AJA) has been an important catalyst for developing a more culturally safe and responsive adult custodial corrections system.

Aboriginal people often carry a significant cultural and workload due to Aboriginal people being under-employed across the Department of Justice and Community Safety (DJCS). There has been a lack of shared accountability for creating a culturally safe adult custodial corrections system.

The government must not wait for more findings and recommendations of inquests to make urgent changes to create a more culturally responsive adult custodial corrections system that is safer for Aboriginal people. Urgent policy and legislative reform are required, alongside a community led process to embed accountability and monitor progress against community expectations.

## About our engagement with Aboriginal people

Engagement with Aboriginal people in custody, Aboriginal people working within corrections and Aboriginal stakeholders, advocates and experts was a central focus of the Cultural Review. Our engagement highlighted the strength, resilience and importance of ongoing connection to culture and community shared by many Aboriginal people. It also confirmed how much more needs to be done to reduce the harm of incarceration for Aboriginal people.

### Acknowledgement

We acknowledge the Traditional Owners of the lands throughout what is now Victoria, where this Cultural Review has been conducted and where Aboriginal people live and work within the custodial corrections system.

We pay our respects to their Elders, past, present and emerging. Aboriginal Victorian Traditional Owners maintain that their sovereignty has never been ceded. The strength, resilience and pride of Aboriginal Victorians, their cultures, communities and identities continue to grow and thrive today despite the impact of colonisation, overincarceration of Aboriginal people and ongoing experiences of racism and discrimination.

We acknowledge the dedication and strength of Aboriginal people who have worked and continue to work across the adult custodial corrections system and is grateful for their generous and open engagement with the Cultural Review. We are also grateful for the engagement of many Aboriginal people currently living in prisons across Victoria who shared their stories and experiences with the Cultural Review. We have been moved by their stories of survival, rehabilitation, and the practice of their culture while in custody.

# Engagement with Aboriginal people

214

Aboriginal people in custody

193

Yarning Circle participants

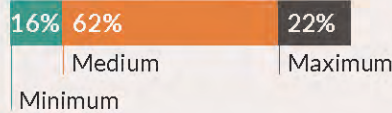
5

confidential interviews

41

submissions (written or oral)

By security level

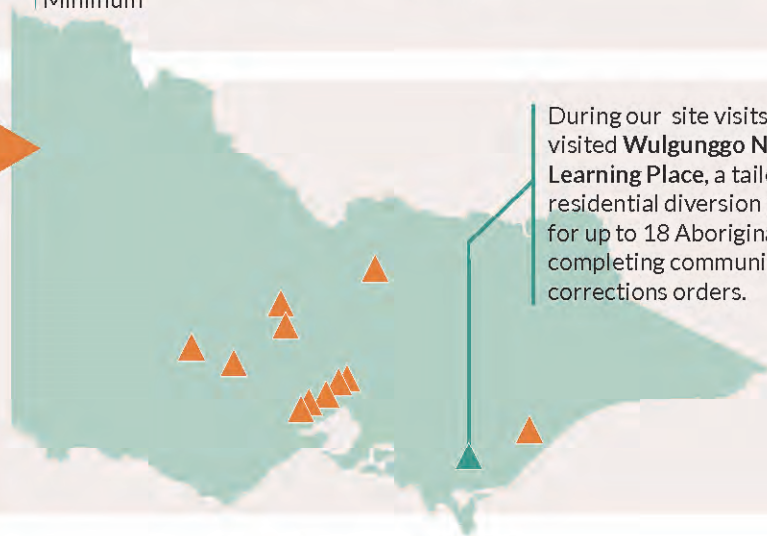


By gender



14

Yarning circles across 12 locations



During our site visits, we also visited **Wulgunggo Ngalu Learning Place**, a tailored residential diversion program for up to 18 Aboriginal men completing community corrections orders.

4

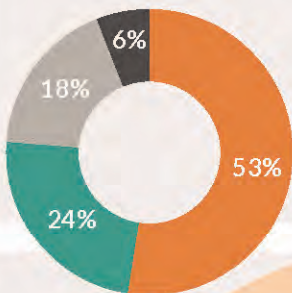
focus group participants

9

confidential interviews

4

submissions (written or oral)



By role

- Aboriginal wellbeing officer
- Aboriginal prison officer
- Aboriginal program manager, case manager or support officer
- Aboriginal independent prison visitor

17  
Aboriginal staff

Victorian Aboriginal Legal Service

First Peoples' Assembly

Justice Health (DJCS)

Aboriginal Justice Group (DJCS)

Aboriginal Independent Prison Visitors

Naalamba Ganbu and Nerrlinggu Yilam (DJCS)

Expert interviews

Aboriginal Healing Unit (DJCS) Community Reference Group

## Engagement with Aboriginal stakeholders, advocates and experts

- ▶ Regular meetings with the Aboriginal Justice Caucus
- ▶ Presentations to the Aboriginal Justice Forum
- ▶ Written submissions from Djirra, the First Peoples' Assembly of Victoria and the Victorian Aboriginal Legal Service

## Research and engagement methodology

Our research has been guided by Aboriginal expertise and a commitment to processes of engagement that are culturally responsive.

Aunty Jill Gallagher AO, a Gunditjmara woman from Western Victoria, is a member of the Expert Panel. Aunty Jill has worked within, led, and advocated for the Victorian Aboriginal community all her life including as Chief Executive Officer of the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) and formerly as the Victorian Treaty Advancement Commissioner. Aunty Jill led our engagement and yarning circles alongside other Aboriginal Cultural Review staff.

Other approaches within our engagement processes included:

- ▶ recruiting Aboriginal staff to lead all of our engagement and research with Aboriginal people in custody and the custodial workforce
- ▶ ensuring that the Cultural Review facilitated the use of existing cultural spaces where possible
- ▶ creating specific and culturally informed communications and information for Aboriginal people about the Cultural Review
- ▶ ensuring that Aboriginal people who chose to engage with the Cultural Review could define the parameters of their participation themselves – in practice, this meant taking notes instead of recording yarning circles and interviews and letting people tell their story in their own way, rather than using pre-drafted questions
- ▶ informal conversations with Aboriginal staff and Aboriginal people in custody that included walking together in outdoor spaces, spending time in conversation during smoking ceremonies and hearing about participation in cultural practices
- ▶ engagement with key Aboriginal stakeholders including the Aboriginal Justice Forum, Aboriginal Justice Caucus, Naalamba Ganbu and Nerrlinggu Yilam (the Yilam)<sup>2</sup>, Aboriginal Health (Justice Health), Aboriginal Justice, VACCHO, Djirra and the Victorian Aboriginal Legal Service.

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<sup>2</sup> The Yilam is responsible for leading the design, implementation and monitoring of Corrections Victoria's policies, programs and services aimed at reducing the overrepresentation of Aboriginal people within the adult custodial corrections system. The Yilam is within the Rehabilitation and Reintegration Branch of Corrections Victoria. The functions of the Yilam are aligned with the outcomes of Burra Lotjpa Dunguldja. Within DJCS's People and Workplace Services there is also an Aboriginal Employment Team.

## Key terminology

The term 'Aboriginal' is used throughout the report to refer to Victorian First Nations People. We acknowledge the diversity of Aboriginal and Torres Strait Islander peoples living in Victoria, their communities and culture.

### What is cultural safety for Aboriginal people?

The meaning of the term 'cultural safety' is still evolving. The term originated in the 1980s in Aotearoa/New Zealand in the work of Māori nurse and scholar Dr Irihapeti Ramsden,<sup>3</sup> who began exploring the influence of colonialism in nursing education, and showed how educational systems reinforced unsafe, prejudicial and demeaning attitudes toward Māori peoples accessing healthcare. At least 42 definitions of cultural safety now exist.<sup>4</sup>

While cultural safety will be context specific there is a general understanding that the central feature of a culturally safe environment is that it is free of racism – that is the precondition on which all others build.<sup>5</sup> Other essential features supporting cultural safety include:

- ▶ an understanding of and respect for one's culture
- ▶ an acknowledgement of difference, and a requirement that staff are actively mindful and respectful of difference(s)
- ▶ an understanding and acknowledgement of power relations
- ▶ an appreciation of the historical context of colonisation, the practices of racism at individual and institutional levels, and their impact on Aboriginal people's living and wellbeing, both in the present and past.<sup>6</sup>

Cultural safety can only be defined by Aboriginal people and can mean different things to different people. It can be influenced by gender and sexuality, by prior experiences at individual, family, and community levels, both within and outside of custody. We spoke to many Aboriginal people about what cultural safety means to them – one staff member told us:

'Cultural respect is cultural safety. To me, you respect my culture and my beliefs and the whole culture about it, then you're in a safe place. If you get support around that, then it's a safe place. When you get questioned about things and dismissed on things, that becomes unsafe. That's how I look at it.'

**Aboriginal staff member**

<sup>3</sup> Irihapeti Ramsden, 'Cultural Safety and Nursing Education in Aotearoa and Te Waipounamu', (1993) 8(3) *Nursing Praxis in New Zealand* 4, 4.

<sup>4</sup> See generally, Mark Lock et al. 'Are cultural safety definitions culturally safe? A review of 42 cultural safety definitions in an Australian cultural concept soup' (2021) *Research Square*.

<sup>5</sup> Australian Health Practitioner Regulation Agency, 'The National scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025' (n.d).

<sup>6</sup> Australian Health Minister's Advisory Council, *Cultural Respect Framework 2016 – 2026 for Aboriginal and Torres Strait Islander Health: A national approach to building a culturally respectful health system* (Report, 2016).



## What is cultural responsiveness?

Cultural responsiveness is related to cultural safety but is a different concept. It describes how a system or organisation, and to some extent an individual, responds to the person in front of them. According to Indigenous Allied Health Australia, cultural responsiveness:

- ▶ holds culture as central to Aboriginal and Torres Strait Islander health and wellbeing
- ▶ involves ongoing reflective practice and life-long learning
- ▶ is focused on relationships
- ▶ is centred on the person and community
- ▶ appreciates diversity between groups, families and communities
- ▶ requires access to knowledge about Aboriginal and Torres Strait Islander histories, peoples and cultures.<sup>7</sup>

Cultural responsiveness requires listening, self-reflection, partnership and meaningful consultation with community to respond to the distinct voices and expertise of Aboriginal people in Victoria. It is a pre-requisite to providing a culturally safe service. Many of our reforms are directed towards clarifying accountability and responsibility for creating a more culturally responsive system.

## What is systemic racism?

The terms 'systemic' or 'institutional' racism are generally used interchangeably to describe situations where laws, policies or practices, which on their face may appear to be neutral, discriminate against Aboriginal people.

Systemic racism is 'different from individual racism because it describes the outcomes of activities and processes rather than intentions and attitudes, and reflects organisational, rather than individual, failure to understand the impact of policies and procedures on Aboriginal people'.<sup>8</sup>

In the coronial inquest into the death of proud Yorta Yorta woman Aunty Tanya Day, who died in police custody in December 2017, the Day family's submission highlighted that systemic racism need not be intentional on the part of those who perpetuate it:

<sup>7</sup> Indigenous Allied Health Australia, *Cultural responsiveness in action: An IAHA framework*. (Report, 2019). [https://iaha.com.au/wp-content/uploads/2020/08/IAHA\\_Cultural-Responsiveness\\_2019\\_FINAL\\_V5.pdf](https://iaha.com.au/wp-content/uploads/2020/08/IAHA_Cultural-Responsiveness_2019_FINAL_V5.pdf).

<sup>8</sup> Harry Blagg, Neil Morgan, Chris Cunneen and Anna Ferrante, *Systemic Racism as a Factor in the Over-representation of Aboriginal People in the Criminal Justice System*, Equal Opportunity Commission, (Report, 2005) 165.

"Systemic racism" refers to a process that produces statistically discriminatory outcomes for particular racial or cultural groups. It may involve unconscious bias, or laws, policies, and practices, that operate to produce such outcomes. That outcome may occur without conscious racist intent, and despite individuals believing they are simply "doing their job". Critically, systemic racism can operate without any individual displaying expressly racist or discriminatory behaviour and without institutional policies or practices that are expressly or openly racist.<sup>9</sup>

**Family of Tanya Day**

As such, approaches to addressing racism that focus attention only on individual 'bad apples' in the system do not go far enough.

'Cultural awareness and anti-racist training are crucial, but the issue of systemic racism is deep-rooted, complex and is ultimately not about individuals within a system that otherwise operates well. What is required is a strategy that addresses racism at both the individual and the systemic level.'<sup>10</sup>

**Victorian Aboriginal Legal Service**

Recognising systemic racism in the custodial corrections system requires an understanding and acknowledgment of numerous and deep-seated historical and social factors that have impacted the development of contemporary criminal justice policy and practice.

*Burra Lotjpa Dunguludja*, AJA Phase 4, recognises that systemic racism persists in the Victorian justice system, with Principle 10 being 'Address unconscious bias: Identify and respond to systemic racism and discrimination that persists in the justice system'.<sup>11</sup>

## What is self-determination?

Self-determination is a foundational principle for Aboriginal communities. It includes the right to be considered as equal to, but separate from, other people in Australia. It includes the right for Aboriginal people and communities to make decisions about issues that affect Aboriginal people and communities.<sup>12</sup> It is a principle that existed before colonisation as part of sovereignty and self-government and was not interrupted by it. The right to self-determination is protected under international law by the United Nations Declaration on the Rights of Indigenous Peoples.<sup>13</sup>

The Treaty process in Victoria is an example of Aboriginal people asserting their right to self-determination – 'Treaty provides a path to negotiate the transfer of power and resources for First Peoples to control matters which impact their lives'.<sup>14</sup>

<sup>9</sup> Day Family Submission dated 29 March 2019, quoted in Coroners Court of Victoria, *Inquest into the death of Tanya Day* (9 April 2020) 19-20.

<sup>10</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 27.

<sup>11</sup> Victorian Government, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, (August, 2018) 28.

<sup>12</sup> First Peoples' Assembly of Victoria, Submission to the Cultural Review, (March 2022) 1

<sup>13</sup> United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, Agenda item 68 (13 September 2007).

<sup>14</sup> First Peoples - State Relations, 'Treaty for Victoria' (Web Page, 2022) [Treaty in Victoria | First Peoples - State Relations](https://www.firstpeoplesrelations.vic.gov.au/treaty-in-victoria) (firstpeoplesrelations.vic.gov.au).

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 14. Strengthening accountability for cultural safety** provides an overview of key laws, standards, policies and commitments that already apply to the delivery of services to Aboriginal people within adult custodial corrections system. It identifies an opportunity for a longer-term system reform process that is led by the expertise of Aboriginal people to create a more culturally responsive system and key governance, monitoring and accountability mechanisms to increase physical and cultural safety for Aboriginal people in custody in Victoria.
- ▶ **Chapter 15. Essential foundations for a more culturally responsive adult custodial corrections system** outlines options for strengthening the essential foundations for cultural safety at a system level, including measures to address the existing gaps in accountability and monitoring.
- ▶ **Chapter 16. The experiences of Aboriginal people in custody** sets out key issues and recommendation for the delivery of culturally responsive services to Aboriginal people in custody, based on our direct engagement with Aboriginal people in custody. This includes the delivery of primary healthcare by Aboriginal service providers.
- ▶ **Chapter 17. Creating a safer workplace for Aboriginal staff** provides an overview of the need to create a safer workplace for Aboriginal staff, including the development of a specific Aboriginal Workforce Plan for Aboriginal people working with the adult custodial corrections system.

## Acronyms and abbreviations

ACCO	Aboriginal community-controlled organisation
ACCHO	Aboriginal community-controlled health organisation
AJA	Aboriginal Justice Agreement
AJC	Aboriginal Justice Caucus
AJF	Aboriginal Justice Forum
AEA	Aboriginal engagement adviser
AOD	Alcohol and other drugs
ALO	Aboriginal liaison officer
ASO	Aboriginal services officer
AWO	Aboriginal wellbeing officer
CCO	community correction order

Charter	Charter of Human Rights and Responsibilities
Equal Opportunity Act	<i>Equal Opportunity Act 2010</i>
DPFC	Dame Phyllis Frost Centre
LJW	Local Justice Workers
Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
NACCHO	National Aboriginal Community Controlled Health Organisation
RAJAC	Regional Aboriginal Justice Advisory Committee
SDRF	Self-Determination Reform Framework
SIAPC	State-wide Indigenous Art in Prisons and Community
VAAF	Victorian Aboriginal Affairs Framework
VACCA	Victorian Aboriginal Child Care Agency
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
VALS	Victorian Aboriginal Legal Services
VPS	Victorian Public Service
Winnunga AHCS	Winnunga Nimmityjah Aboriginal Health and Community Services
Yilam	Naalamba Ganbu and Nerrlinggu Yilam

## 14 Strengthening accountability for cultural safety

Despite various commitments and legal obligations to uphold and give effect to the rights of Aboriginal people, there has been a failure of accountability. A different approach is needed to create a system and workforce that supports and is accountable to community for the safety of Aboriginal people in custody.

There is a broader awareness about the importance of cultural safety within the workplace and in the delivery of government services. There are existing laws, requirements and commitments that are intended to support cultural rights, more responsive services and a culturally safer workplace for Aboriginal staff.

Within the adult custodial corrections system, this has included the translation of international laws and government commitments into a range of programs and policies. As noted above, there are also existing commitments developed in partnership with the Aboriginal community through the AJA.

However, the experiences of Aboriginal staff and Aboriginal people in custody demonstrate a significant gap between intention and actual experience.

We support immediate action to ensure that accountability for existing standards and commitments is a feature of performance measurement at an individual, service and system level.

In addition, we recommend initiating a community-led process to identify a vision for a culturally responsive adult custodial corrections system. This will include the sharing of knowledge and expertise about what works for Aboriginal people and the identification of clear outcomes and measures by the Aboriginal community. This set of outcomes and measures should then shape all efforts and activities to support a more accountable and culturally responsive adult custodial correction system.

Importantly, we do not intend for Aboriginal people to be responsible for cultural safety within the adult custodial corrections system, but it does shift power to the Aboriginal community to define what outcomes in a more culturally responsive system look like, and how government will be held accountable for delivering these outcomes.

## Key points – Strengthening accountability for cultural safety

- ▶ There are many existing laws, policies and standards that set out requirements to protect cultural rights and deliver culturally responsive services within the adult custodial corrections system. However, the lived experience of staff and people in custody indicate that these laws, policies and standards are not being implemented effectively across the system.
- ▶ The *Corrections Act 1986* does not specifically recognise the rights, needs and experiences of Aboriginal people.
- ▶ More leadership opportunities for Aboriginal people across the adult custodial corrections system, through a new Assistant Commissioner, Aboriginal Services, will amplify the efforts of the Aboriginal workforce and support the delivery of services to Aboriginal people in custody.
- ▶ Despite attempted change through cultural programs and initiatives over multiple decades, the custodial environment continues to be unsafe for Aboriginal people.
- ▶ Current health services are not safe for Aboriginal people. Aboriginal people in custody should be able to access culturally appropriate primary health care delivered through Aboriginal community-controlled health organisations.
- ▶ Aboriginal people working in the custodial environment, experience distinct challenges including racism, discrimination, high workloads, cultural load, and burnout. Despite the specialised and challenging role played by the Aboriginal workforce, they do not receive enough support for their social, cultural and emotional wellbeing.
- ▶ There is a high level of attrition among Aboriginal staff due to lack of support, high workload and discriminatory experiences, resulting in persistent vacancies in key Aboriginal roles across the system.

## Existing obligations and commitments

Under *Burra Lotjpa Dunguludja*, there are specific domains and outcomes that are directed toward the operation of the adult custodial corrections system.<sup>15</sup> These include:

- ▶ people build resilience whilst in contact with the justice system
- ▶ drivers of people's offending behaviour are addressed while in contact with the justice system
- ▶ people are supported to transition from the justice system and reintegrate into their communities
- ▶ justice programs and services are more culturally safe, responsive, inclusive and effective
- ▶ more people are able to access justice programs and services that are trauma informed, restorative and therapeutic
- ▶ a stronger, skilled and supported Aboriginal justice workforce.

These outcomes and commitments are aligned with those initially made under the 2020 National Agreement on Closing the Gap and operationalised in the Victorian Closing the Gap Implementation Plan 2021–2023<sup>16</sup>

### The commitment to reduce the overincarceration of Aboriginal people

Over many decades Aboriginal community have advocated for action to address the over-representation of Aboriginal people in the criminal justice system and prevent Aboriginal people from entering and returning to custody at higher rates than non-Aboriginal people. Reducing the significant growth in the number of Aboriginal people in custody, particularly Aboriginal women, is a whole-of-government and DJCS priority.

Reducing the number of Aboriginal people in the criminal justice system is recognised in goal 15 of the Victorian Aboriginal Affairs Framework<sup>17</sup> as well as the AJA, which is currently in its fourth phase, *Burra Lotjpa Dunguludja – Senior Leaders Talking Strong*:

<sup>15</sup> Victorian Government, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, (August 2018) 28.

<sup>16</sup> Victorian Government, *Closing the Gap Implementation Plan 2021-2023* (August, 2021) 22.

<sup>17</sup> The *Victorian Aboriginal Affairs Framework 2018–2023 (VAAF)* is the overarching Aboriginal policy framework for the Victorian Government and seeks to shape how government works with Aboriginal Victorians, organisations and the community to drive action that improves outcomes for Aboriginal Victorians. The VAAF seeks to shift the focus of government reporting on Aboriginal affairs from 'how Aboriginal people are faring... to a new approach that enables community to hold government to account'.

'Increasing Aboriginal over-representation in Victoria's criminal justice institutions has the potential, in the absence of more appropriate responses, to further perpetuate social and economic exclusion, and compound losses of culture, family and purpose, for a growing number of Aboriginal people.'<sup>18</sup>

The second domain requires the Victorian Government to reduce the number of Aboriginal people in the criminal justice system including by taking action to reduce the number of people who return to the criminal justice system.

This commitment requires changes to laws and policies that disproportionately impact Aboriginal people, as well as improving the experiences and support for people in the adult custodial corrections system.

Addressing the number of Aboriginal people entering the system, particularly, Aboriginal women who spend short periods of time in custody on remand and people with health issues, including alcohol and substance use disorders, will also alleviate pressure on the Aboriginal workforce, and system more broadly.

## The commitment to recognising the right of Aboriginal people to self-determination

The right of Aboriginal people to self-determination has been acknowledged by the Victorian Government in, for example, the development of the Victorian Aboriginal Affairs Framework (VAAF),<sup>19</sup> the overarching Aboriginal policy framework for the Victorian Government and *Burra Lotjpa Dunguludja: Victorian AJA Phase 4*, which embeds the principle in the Victorian justice system. Both the AJA and the VAAF recognise that Aboriginal self-determination is the key to improving outcomes for Aboriginal people and that enabling and embedding self-determination requires whole-of-government structural reform.

Embedding self-determination within the adult custodial corrections system involves listening and responding to the expertise and lived experience of Aboriginal staff and people in custody, day to day, and through formal engagement and governance processes. It involves partnering with Aboriginal organisations and community in a way that acknowledges Aboriginal people and communities as the experts and recognises the unique status, rights, cultures and histories of Aboriginal people.

Self-determination should inform the development of all custodial policies, frameworks and practices, providing Aboriginal people with a genuine opportunity to shape the adult custodial corrections system.

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<sup>18</sup> Victorian Government, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, (August 2018) 18.

<sup>19</sup> The *Victorian Aboriginal Affairs Framework 2018–2023 (VAAF)* is the overarching Aboriginal policy framework for the Victorian Government and seeks to shape how government works with Aboriginal Victorians, organisations and the community to drive action that improves outcomes for Aboriginal Victorians. The VAAF seeks to shift the focus of government reporting on Aboriginal affairs from 'how Aboriginal people are faring... to a new approach that enables community to hold government to account'. See Goal 15 'stating that Aboriginal overrepresentation in the justice system is eliminated.



## The obligations to protect the rights of Aboriginal people in law and policy

International law recognises and protects the human rights of Aboriginal people in custody, including cultural rights. The United Nations Declaration on the Rights of Indigenous Peoples sets out the right of Indigenous peoples to be free from discrimination, the right to self-determination, and the right of Indigenous peoples to maintain and strengthen their spiritual relationship with traditionally owned lands and waters.<sup>20</sup>

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) requires that cultural activities be provided in all prisons for the benefit of the mental and physical health of prisoners.<sup>21</sup>

In Victoria, the human rights of Aboriginal people in custody are also protected by the Charter of Human Rights and Responsibilities (the Charter), including their specific cultural rights.

### How Victoria's Charter of Human Rights and Responsibilities protects cultural rights

The Charter requires public authorities such as DJCS (which includes Corrections Victoria) to act compatibly with human rights in the development and implementation of policies and when making decisions and taking action.

As well as a number of other rights that are relevant to all people in custody,<sup>22</sup> the Charter sets out specific rights relevant to some cohorts of people in custody, including Aboriginal people. This includes:

- ▶ cultural rights, including the right of a person to enjoy their culture, to declare and practise their religion and to use their language, and for Aboriginal people to maintain kinship ties, as well as their relationship with the land, waters and other resources to which they have a connection under traditional laws and customs<sup>23</sup>
- ▶ freedom of thought, conscience religion and belief, including the freedom to demonstrate one's religion or belief in worship, observance, practice and teaching, either individually or as part of a community, in public or in private, and the right not to be coerced or restrained in a way that limits the freedom to have or adopt a religion or belief in worship, observance, practice or teaching<sup>24</sup>
- ▶ recognition and equality before the law, including the right to enjoy one's human rights without discrimination and the right to equal and effective protection against discrimination.<sup>25</sup>

<sup>20</sup> United Nations General Assembly, United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN GAOR, 61st sess, Agenda item 68 (13 September 2007).

<sup>21</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Mandela Rules') rule 105.

<sup>22</sup> Charter of Human Rights and Responsibilities (*Vic*) s 10 and 22.

<sup>23</sup> *Charter of Human Rights and Responsibilities (Vic)* s 19.

<sup>24</sup> *Charter of Human Rights and Responsibilities (Vic)*, s14.

<sup>25</sup> *Charter of Human Rights and Responsibilities (Vic)* s 8.

## Existing corrections policy framework

Rights and requirements have also been specifically adopted in policies and standards that apply directly to the adult custodial corrections system. This includes a responsibility to:

- ▶ place Aboriginal people in custody on Country where possible, and/or near family and community where possible, to support health and wellbeing
- ▶ accommodate Aboriginal people in custody together, when possible and appropriate
- ▶ provide health care in a way that is meaningful to Aboriginal people, which means taking into account spirituality, connection to culture and Country, and more
- ▶ form meaningful place-based relations with Elders and provide people in custody with access to those Elders
- ▶ ensure people in custody have regular access to family, and support family visits where required
- ▶ with each and every decision, consider whether it has the potential to increase the risk of another Aboriginal person dying in custody
- ▶ maintain the cultural rights of Aboriginal people in custody.

The Correctional Management Standards,<sup>26</sup> Commissioner's Requirements<sup>27</sup> and the Deputy Commissioner's Instruction for Aboriginal and Torres Strait Islander Prisoners<sup>28</sup> provide clear and significant recognition that the safety of Aboriginal people in custody requires consideration and action in a number of domains, including supporting connections to family, community and Elders and ensuring that staff have the capability to understand and deliver culturally responsive services to Aboriginal people in custody.

## Meeting existing commitments

As described above, the obligations of the Victorian Government to upholding the rights of Aboriginal people and their cultural safety is clearly set out in law, policy and reflected in the AJA and other agreements.

However, the Cultural Review has observed an accountability gap between the commitments on the page, how they are implemented and who held is accountable for them across the adult custodial corrections system. As it currently stands,

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<sup>26</sup> Department of Justice and Community Safety (Corrections Victoria), *Correctional Management Standards for Men's Prisons in Victoria* (2014); Department of Justice and Community Safety (Corrections Victoria), *Standards for the Management of Women Prisoners in Victoria* (2014).

<sup>27</sup> Corrections Victoria, *Commissioner's Requirement 2.7.1 - Aboriginal and Torres Strait Islander Prisoner* (May, 2021).

<sup>28</sup> Corrections Victoria, *Deputy Commissioner's Instruction 2.07 - Aboriginal and Torres Strait Islander Prisoners* (October, 2020).

responsibility for Aboriginal cultural safety in practice is largely held by the Aboriginal workforce which constitutes only 2 per cent of the total corrections workforce.

We recommend a number of measures to ensure that accountability for improving cultural safety and delivering culturally responsive services sit clearly with the DJCS leadership and become a key priority for all people and services that work within the adult custodial corrections system or deliver custodial services. These measures include ensuring that responsibility for cultural responsiveness is a feature of all custodial contractual arrangements, position descriptions, decision making frameworks, performance measures and funding decisions.

**Recommendation 5.1**  
**Clear accountability for delivering a more culturally safe environment and more culturally responsive services**

The Department of Justice and Community Safety should embed individual responsibility for creating a more culturally safe environment through the delivery of more culturally responsive services in key documents, policies and processes, to support clear accountability consistent with existing laws, standards and policies.

Accountability for the delivery of culturally responsive services should be articulated in all:

- a) position descriptions
- b) contracts
- c) departmental performance measurements.

The performance measures should be developed in conjunction with the Aboriginal Justice Caucus and others as part of the development of a community-led framework for a more culturally safe custodial system.

## Developing a new outcomes framework for a culturally responsive system

It is unrealistic to expect that custodial environments can ever be completely culturally safe for all Aboriginal people. As the Victorian Aboriginal Legal Service explained:

‘For families who have had their previous generations incarcerated, for people who are incarcerated when they’ve had family die in custody, the trauma and fear of going into custody in that context is very real and very palpable and really devastating to witness.’

**Victorian Aboriginal Legal Service**

Within this context, cultural safety can only be determined by Aboriginal people – it cannot be declared by a service provider.<sup>29</sup>

<sup>29</sup> VACCHO, Learn about cultural safety to create inclusive, safe and welcoming service delivery and spaces, 19 August, 2022 <https://www.vaccho.org.au/cultural-safety-services/aboriginal-cultural-safety-training/>; Australian Health Practitioner Regulation Agency, The National scheme’s Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025. (n.d.).

This means that while the accountability for creating a more culturally safe custodial system sits squarely with government, the specific vision for cultural safety and the way in which that vision is monitored should be led by Aboriginal community. Based on engagement with Aboriginal community we suggest that this vision is translated into a framework that has clear outcomes, timeframes and accountabilities.

Other Victorian Government departments have adopted an institutional strategy for increasing cultural safety and respect for Aboriginal people in close consultation with the Aboriginal community. For example, in 2019 the then Department of Health and Human Services<sup>30</sup> launched a Cultural Safety Framework that applies across the health and community services systems as part of the whole-of-Victorian Government commitment to 'Closing the Gap'.

### **Aboriginal and Torres Strait Islander Cultural Safety Framework for the Victorian health, human and community services sector**

The Cultural Safety Framework<sup>31</sup> developed by Victoria's former Department of Health and Human Services provides a model to strengthen the cultural responsiveness of the department and organisations. It is designed to improve cultural safety for both Aboriginal staff working within the Victorian health, human services and community services sector, and Aboriginal clients accessing services within the sector.

The framework was developed in collaboration with Aboriginal staff, communities and organisations, including the department's Aboriginal Strategic Governance Forum and its Koorie Caucus.

The framework's vision is for the health, human services and community services sector to provide culturally safe practices and services that enables optimal health, wellbeing and safety outcomes for Aboriginal people.

To achieve this vision the framework has three key domains:

- ▶ Creating culturally safe workplaces and organisations
- ▶ Aboriginal self-determination
- ▶ Leadership and accountability.

Part 2 of the framework is a cultural safety continuum reflective tool,<sup>32</sup> which aims to support continuous quality and practice improvements in cultural safety by allowing individuals to reflect on their cultural safety competence.

This work also included the release of Aboriginal and Torres Strait Islander Cultural Safety Guidelines, which set out the expectations for culturally responsive services and how to apply the framework in the service sector.<sup>33</sup>

<sup>30</sup> This framework has now been adopted by the Department of Health and the Department of Families, Fairness and Housing which has replaced the Department of Health and Human Services.

<sup>31</sup> Department of Health and Human Services, *Aboriginal and Torres Strait Islander cultural safety framework: For the Victorian health, human and community services sector* (2019) <https://www.health.vic.gov.au/publications/aboriginal-and-torres-strait-islander-cultural-safety-framework-part-1>.

<sup>32</sup> Ibid.

<sup>33</sup> Department of Health and Human Services, *Aboriginal and Torres Strait Islander Cultural Safety Framework guidelines* (January, 2020) <https://www.health.vic.gov.au/publications/aboriginal-and-torres-strait-islander-cultural-safety-framework-guidelines>.

Developing a specific approach to support a more culturally responsive system will forge closer alignment between the government commitment to self-determination, culturally responsive workplaces, culturally responsive justice institutions and the lived experiences of Aboriginal staff and Aboriginal people in custody. We acknowledge that the development of an outcomes framework will take time, space and resourcing for the Aboriginal community.

**Recommendation 5.2**

**An outcomes framework to create a more culturally safe adult custodial corrections system in a process led by Aboriginal people**

The Department of Justice and Community Safety should work with Victoria's Aboriginal community to develop an outcomes framework for a more culturally safe adult custodial corrections system. The development of the framework should involve the Aboriginal Justice Caucus, Aboriginal community-controlled organisations, Aboriginal staff and Aboriginal people in custody and their families.

This process should be adequately funded. The outcomes framework should:

- a) identify principles and approaches to ensure programs and services support the health and wellbeing of Aboriginal people and help reduce reoffending by Aboriginal people
- b) identify the quantitative and qualitative data that the Department of Justice and Community Safety should collect and report on to demonstrate its accountability for delivering a more culturally responsive adult custodial corrections system, including identifying culturally appropriate processes for collecting, maintaining and using this data consistent with data sovereignty principles
- c) identify clear outcomes and measures for assessing and monitoring the level of cultural responsiveness and experiences of cultural safety within the adult custodial corrections system
- d) specify a clear and ongoing commitment from the Department of Justice and Community Safety to adequately resource partnerships with Aboriginal organisations that can support the delivery of a more culturally responsive custodial services.



## 15 Essential foundations for a more culturally responsive adult custodial corrections system

Through our engagement with Aboriginal staff, Aboriginal people in custody and organisations working within the adult custodial corrections system and broader social services system, we have identified a number of essential foundations for a more culturally safe and responsive system. We anticipate that the community-led processes for developing an outcomes framework will be critical to supporting and advancing the development and implementation of these priority actions and changes.

In particular, we heard that government should act urgently and comprehensively to:

- ▶ Prevent and respond to systemic and individual racism across the adult custodial corrections system
- ▶ strengthen legal and policy frameworks to focus attention on the needs and experiences of Aboriginal people and create clear standards, expectations and accountability to protect cultural rights
- ▶ strengthen governance arrangements and identify and enforce clear accountabilities across operational leadership to improve cultural safety for Aboriginal people
- ▶ strengthen external oversight and preventive mechanisms through a new Aboriginal Inspector of Adult Custodial Services and the Koori Independent Prison Visitor Scheme
- ▶ embed more Aboriginal expertise into strategic and operational leadership and ensure that career pathways for Aboriginal staff are created
- ▶ build stronger partnerships and increase involvement of ACCOs in the direct delivery of services and support to Aboriginal people in custody, including primary health services
- ▶ provide ongoing cultural responsiveness training that is developed for the custodial environment, including specific training on the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody.

## Strengthening the protection of cultural rights

### Stronger legislative protections to give effect to the cultural rights of Aboriginal people

In Part 2, we have recommended the development of a new Corrections Act to support lasting reform to the adult custodial corrections system. This includes specific recognition of the human rights of Aboriginal people. Specifically, we recommend that the new legislative framework:

- ▶ expressly adopt the United Nations Declaration on the Rights of Indigenous Peoples, including the right to self-determination
- ▶ expressly adopt the Mandela Rules
- ▶ recognise the strength and resilience of Aboriginal communities
- ▶ acknowledge the historical legacy of colonisation as set out in the AJA
- ▶ identify the factors contributing to the overrepresentation of Aboriginal people in custody, including colonisation, dispossession, intergenerational trauma, structural and systemic racism, and social and economic disadvantage
- ▶ recognise cultural rights and the importance of cultural safety for Aboriginal people including the protective role of culture and the importance of family, community and connections to culture to support health, wellbeing and rehabilitation for Aboriginal people
- ▶ include minimum standards for cultural spaces and facilities to support cultural practice
- ▶ set out principles and values to support the development of a specific decision-making framework that support the cultural safety of Aboriginal people through more culturally responsive decision-making within the system
- ▶ be flexible enough to support the key aspirations and outcomes of the Victorian treaty process.

This new legislation should be developed in partnership with the Aboriginal community and reflect the vision for cultural safety developed by the Aboriginal community.

As part of the implementation of new legislation, all policies and operational guidance must be updated to ensure that there is close alignment between policy and practice, and clear accountability for achieving outcomes.



## A new positive duty to consider cultural rights and increase cultural safety

The responsibility to ensure that the custodial environment is culturally safer and free from racism and discrimination should be reflected in legislation, policies, and operational procedures, and should empower all staff to make appropriate decisions at the custodial level.

To help strengthen this focus and commitment, we recommend the creation of a new statutory positive duty in the corrections legislative framework to require the explicit consideration of cultural rights and cultural safety. The positive duty will supplement the cultural rights in the Charter and the proposed recognition of human rights with the corrections legislation and should inform all strategic and operational decision-making associated with the operation of the adult custodial corrections system and the rights of people in custody.

There are already positive duties in some existing Victorian legislative schemes that aim to strengthen existing legal protections. The *Equal Opportunity Act 2010* (Equal Opportunity Act) includes a positive duty to take all reasonable steps to prevent sexual harassment, discrimination, and victimisation as far as possible. This positive duty applies to everyone who has responsibilities under the Equal Opportunity Act, which includes employers. The *Occupational Health and Safety Act 2004* also includes a duty to provide a safe workplace.

As part of the implementation of a positive duty, an appropriate enforcement mechanism and minimum standards for meeting the duty will need to be developed. The Victorian Equal Opportunity and Human Rights Commission's recent *Guideline: Preventing and responding to workplace sexual harassment – Complying with the Equal Opportunity Act 2010*<sup>34</sup> is a useful case study for how minimum standards can help organisations fulfil a legislated positive duty.

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<sup>34</sup> Victorian Equal Opportunity and Human Rights Commission, 'Preventing and responding to workplace sexual harassment: *Complying with the Equal Opportunity Act 2010*' (Guideline, August 2020) [3.1].

We consider a positive duty within the new principal Act to require people to take proactive steps to ensure cultural rights and cultural safety will make a difference to the experience of Aboriginal people in custody. For example:

- ▶ the legislated right to culturally appropriate healthcare will support decisions to bring in Aboriginal people's expertise through ACCHOs, other ACCOs or Elders' groups, which may lead to better health and wellbeing outcomes and fewer deaths in custody
- ▶ decisions about classification and placement within the system will be informed by a person's family, community, and Country
- ▶ requests for smoking ceremonies will be considered as part of a legislated responsibility
- ▶ access to art supplies and cultural materials will no longer be able to be denied without good reason.

While there is an expectation that many of these things are already happening across the system through existing policy and operational frameworks, including these requirements within legislation will elevate the significance of these cultural requirements and address any residual perceptions that cultural rights are privileges or discretionary requests.

It is worth noting, that we heard that some parts of the workforce feel ill-equipped to support Aboriginal people. A number of staff spoke to us about feeling like they may inadvertently 'get it wrong' or 'offend' an Aboriginal person. This reluctance to support Aboriginal people in custody is partly demonstrated by the over-reliance on Aboriginal wellbeing officers (AWOs), outlined in Chapter 17. This can result in non-Aboriginal staff engaging less with Aboriginal people and referring concerns unnecessarily to AWOs.

In Part 3 we recommended that the processes for knowledge and self-reflection on cultural competency must form part of a fresh approach to professional supervision across the corrections workforce. This approach is intended to build the capability and understanding of all corrections staff to provide a more culturally responsive, respectful and safe environment.

**Recommendation 5.3****A new statutory positive duty to increase cultural safety for Aboriginal people in custody**

The Department of Justice and Community Safety should develop a positive duty to consider cultural rights and provide a culturally safe environment, in consultation with the Aboriginal community, as part of proposed reforms to the *Corrections Act 1986*.

The positive duty will require corrections leaders, staff and service providers to proactively ensure their services consider and respond to the cultural needs of Aboriginal people and uphold cultural rights through action in the following domains:

- a) **Knowledge** – Ensuring that staff understand the importance of cultural safety, responsiveness and rights within the workplace and the adult custodial corrections system through comprehensive training and education on cultural awareness, unconscious bias, and systemic discrimination.
- b) **Prevention** – Ensuring all relevant legislation, policies and programs within the adult custodial corrections system support cultural responsiveness and contain guidance on preventing and responding to discrimination and racism.
- c) **Capability** – Ensuring that staff, managers, and leaders have opportunities to build their own cultural awareness and competence over time, and ensuring that staff, managers, and leaders consistently demonstrate culturally appropriate and respectful behaviour.

This positive duty should apply to, and be considered explicitly in, all strategic and operational decision-making associated with the operation of the adult custodial corrections system.

The positive duty should be supported by dedicated guidance material and mandatory training for all people working within the adult custodial corrections system, which all staff should complete within 12 months of its implementation. Mandatory refresher training should also be required.

Compliance with the positive duty will need to be measured regularly. Measurements should be developed in consultation with the Victorian Aboriginal community, including the Aboriginal Justice Caucus, the Victorian Aboriginal Community-Controlled Health Organisation, the Victorian Aboriginal Legal Service, and others.

An appropriate review and enforcement mechanism should be developed as part of the statutory development process. We consider that the proposed Aboriginal Inspector of Adult Custodial Services could have a role in monitoring and enforcing the positive duty.

## Improving oversight and accountability arrangements

### An Aboriginal Inspector of Adult Custodial Services and inspection standards for Aboriginal people in custody

In Part 2, we recommend the creation of an Aboriginal Inspector of Adult Custodial Services to oversee inspections of custodial sites and the conditions in custody for Aboriginal people. This will support increased accountability for the specific experiences and outcomes for Aboriginal people in custody. This should include the outcomes identified by the Aboriginal community through the proposed community-led process in Chapter 14.

The Aboriginal Inspector of Adult Custodial Services will work with a non-identified Inspector of Adult Custodial Services who will have more general responsibilities across the adult custodial corrections system. The Aboriginal Inspector of Adult Custodial Services will have the following proposed functions:

- ▶ inspection and monitoring of adult custodial corrections locations (public and private)
- ▶ the discretion to review certain critical incidents (including Aboriginal deaths in custody)
- ▶ responsibility for the administration and coordination of the Aboriginal Independent Prison Visitors
- ▶ development of specific custodial inspection standards for Aboriginal people in custody (equivalent to the Aboriginal inspection standards that operate in Western Australia)

The Aboriginal Inspector of Adult Custodial Services would not have complaints-handling functions but could draw on complaints to other integrity agencies to support thematic or systemic review processes.

Ensuring that the expertise and leadership of Aboriginal people is part of the independent oversight of the adult custodial corrections system will support the identification of systemic issues associated with the experience of Aboriginal people in custody.

## Aboriginal expertise in system governance and service delivery

### System leadership that includes Aboriginal expertise

Ensuring that Aboriginal people have greater influence in leadership, governance and decision-making is one of the outcomes supporting greater self-determination in the justice sector within the AJA.<sup>35</sup>

There are many ways that Aboriginal people have influenced significant change within the justice system. We recognise the significant role of Aboriginal people working within DJCS, the work of the Yilam and the leadership and expertise they have provided to other staff, the commitment of the Aboriginal Justice Caucus and those supporting the ongoing implementation of the AJA.

We also recognise the role of Aboriginal Elders and Respected Persons working directly with people in custody, the Aboriginal Independent Prison Visitors who work within the adult custodial corrections system and the many Aboriginal people working in community-based organisations to make changes and deliver services to support better outcomes for Aboriginal people.

While there are Aboriginal people in leadership roles within DJCS and across the justice system more broadly,<sup>36</sup> there are no Aboriginal people in operational leadership roles with a dedicated focus on the adult custodial corrections system or a specific focus on the experience of Aboriginal people in the adult custodial corrections system. Most of the identified roles for Aboriginal people at an operational level are at a Victorian Public Service (VPS) 3 and VPS4 level, with a single identified VPS5 role at Ravenhall.<sup>37</sup>

We consider that extending and supporting the leadership and influence of Aboriginal people in the system through the creation of a dedicated senior operational leadership role for an Aboriginal person will contribute to a more culturally safe and responsive system for Aboriginal people.

The value of Aboriginal expertise working directly to support Aboriginal people involved in the justice system is clearly demonstrated by the operation and leadership of the Wulgunggo Ngalu Learning Place (discussed in Chapter 16) and the culturally informed services delivered to Aboriginal men on community corrections orders.<sup>38</sup>

<sup>35</sup> Victorian Government, *Burra Lotjpa Dungaludja: Victorian Aboriginal Justice Agreement Phase 4*, (August, 2018).

<sup>36</sup> For example, the Aboriginal Justice Group is led by the Deputy Secretary, Aboriginal Justice and includes a number of Aboriginal people in leadership roles. However, these roles do not have direct responsibilities for the operation of the adult custodial corrections system.

<sup>37</sup> As at November 2022, the VPS5 role at Ravenhall is vacant.

<sup>38</sup> The Cultural Review notes that the Wulgunggo Ngalu Learning Place has an Aboriginal identified position at VPS6 level. This position is within community corrections so is not part of the adult custodial corrections system.

The need to increase the number of Aboriginal people in leadership roles within the adult custodial corrections system was highlighted by an Aboriginal leader in Victoria Legal Aid:

'The system is developed/built in such a way that it excludes our mob continuously, and from the top down. So there are no Aboriginal commissioners, male or female, and we need both. Because the reality for our mob is... if we're going to talk seriously about changing it for our people and making a real difference so we are included, then start at the top.'

Victoria Legal Aid

We consider that a new role of Assistant Commissioner to be filled by an Aboriginal and/or Torres Strait Islander person must be created within the DJCS Executive. This role should support the safety and wellbeing of Aboriginal people in custody and staff as well as give more attention to the specific needs of Aboriginal people in system policy and planning processes. This role should report directly to the Commissioner for Corrections. This role will encourage collective responsibility and accountability for cultural safety across the executive leadership of the system.

We emphasise that the adult custodial corrections system needs Aboriginal leadership and governance because of all the benefits that brings across the entire system, rather than because Aboriginal leaders should be made responsible for cultural safety and ensuring cultural responsiveness. The responsibility for cultural safety must sit in every leadership position, in the way that workplace safety or security and other considerations that contribute to the safe operation of the adult custodial corrections system do.

**Recommendation 5.4**

**More Aboriginal people in leadership roles across the system**

The Department of Justice and Community Safety should create a new role of Assistant Commissioner, Custodial Operations, to be filled by an Aboriginal and/or Torres Strait Islander person.

## Eliminate racism and discrimination in the adult custodial corrections system

Cultural safety requires services to create an environment where Aboriginal people feel physically, emotionally, and spiritually safe, and where their cultural identity is respected. It requires ongoing critical reflection by staff and leadership of knowledge, skills, attitudes, practising behaviours and power differentials.<sup>39</sup>

In other words, comprehensive action to eliminate racism and discrimination toward Aboriginal people must be a priority within the adult custodial corrections system.

<sup>39</sup> Australian Health Practitioner Regulation Agency, *The National scheme's Aboriginal and Torres Strait Islander Health and Cultural Safety Strategy 2020-2025*, 18.

We note that racial discrimination is already unlawful under the Equal Opportunity Act and the *Racial Discrimination Act 1975*. All necessary steps should be taken to ensure the harmful impacts of interpersonal racism are eliminated from the custodial environment. If it is not, DJCS may be held vicariously liable for the conduct of employees.

## Experiences of staff

Racism has a significant wellbeing impact for Aboriginal people. Research indicates that 'racism, discrimination, and other forms of social exclusion negatively impact on the sense of control, self-esteem, and wellbeing of individuals, and contributes to stress, anxiety, disempowerment, and poor physical and mental health outcomes.'<sup>40</sup> Racism is associated with poor physical and mental health outcomes for Aboriginal people.<sup>41</sup>

We spoke to many people, staff and people in custody, about their experiences of racism and discrimination within the adult custodial corrections system.

'[Custodial staff] behaviour towards us is beyond racist ... They are excusing, validating, and wiping away Aboriginal people's rights, in workplaces, and within the prison, as a prisoner, and it's not right. They're getting away with it and dismissing it, by a blanket, "Oh, they're culturally aware, they're culturally trained". However, it doesn't excuse you from being a racist. It doesn't excuse you.'

**Aboriginal staff member**

There is significant evidence that racism has been normalised within the culture of the adult custodial corrections system. We heard many examples of racism toward Aboriginal people including:

- ▶ prison officers insulting Aboriginal people in custody with a suggestion they are 'using the Koori card'
- ▶ prison officers asking Aboriginal people for confirmation of their Aboriginal identity
- ▶ lack of respect for cultural spaces and people not respecting the lowering of the flag during Sorry Business
- ▶ racist remarks from prison officers toward Aboriginal people in custody.

<sup>40</sup> David Cooper 'Closing the Gap in Cultural Understanding: Social Determinants of Health in Indigenous Policy in Australia' (2011) *Aboriginal Medical Services Alliance Northern Territory* 12.

<sup>41</sup> Yin Paradies, Ricci Harris and Ian Anderson, 'The impact of Racism on Indigenous Health in Australia and Aotearoa: Toward a Research Agenda: Discussion Paper No. 4', *Cooperative Research Centre for Aboriginal Health and Flinders University* (March, 2008) 9.

We heard that racism and discrimination, verbal abuse and exclusion are common experiences for Aboriginal staff. We heard examples of non-Aboriginal staff not respecting an Aboriginal person's cultural identity or respecting cultural celebrations, such as NAIDOC week.

'The Secretary of the Department sent an email on Australia Day and what the day can mean for Aboriginal people. The day after that email I walked into work wearing my Aboriginal flag t-shirt ... I overheard a [senior manager] saying "how fucking ridiculous" as he looked at me... There were a lot of staff there at the time as it was a busy part of the day ... it was loud, and I could hear it clearly.'

**Former Aboriginal staff member**

We heard that the regular experience of racism and the lack of support or effective action to challenge racism within the workplace shaped how Aboriginal people might respond to racism and discrimination within their workplace.

'You get pretty thick skin after a while. Usually, you've got thick skin to start with, but after working in Corrections with so many people so close, you get a lot thicker skin and then you just learn to let things go. I'm the only Aboriginal staff member there, so I cop the lot, but it'd be different if there was others there. If there were some Aboriginal females working there, if there was some more Koori fellas working there it'd be a different story, because we'd all be copping it. But it's just me, and I know not reporting inappropriate behaviour is not the right thing to do, but sometimes I just go it's not worth it, just let it go ... I mean, if there was more there, we'd be able to talk about it together and there might be a bit more show of force that things might change.'

**Aboriginal staff member**

We heard about the direct connection between these experiences, lack of cultural safety and people deciding to leave the custodial workforce. The wellbeing impacts and the departure of committed Aboriginal staff from the system has an impact on the capacity of the system to meet the needs of Aboriginal people in custody.

'I will bring up [my experiences] after I leave ... about the racism I experienced... so I don't get anything come back on me as a staff member while I'm still there. And I am leaving, I want to leave as soon as possible because of the experience that I've had in the short time that I've been there. I'm on my way out as soon as I can. As soon as something else pops up, I'm gone.'

**Aboriginal staff member**



We heard that systemic bias and racist attitudes from non-Aboriginal staff increase the workload and cultural load for Aboriginal staff. The consequence is that Aboriginal people in custody do not feel comfortable raising everyday issues with non-Aboriginal staff, which can further contribute to the excessive workload of the AWO.

'The men understand, but at the time of their need, they don't. It just goes over their head because it's all about me now and I need this resolved. And they come to me for everything. I've had them come to me, "My bedroom was too hot last night." Stuff like that. It's because they can't go to the staff because they just feel too uncomfortable. Because some of them will push them over the edge, make them get to that stage where they do lash out at them and next thing you know they're being done.'

**Aboriginal staff member**

## Challenging racism

Some people provided more detailed accounts of their negative experiences challenging racism within their workplace.

When reporting racism, many Aboriginal staff have indicated that their experience has not been dealt with satisfactorily by their work location and they have felt isolated and unsupported as a result. In most cases, Aboriginal people do not report racism as they do not believe it will benefit them and could lead to retribution. There is a need to ensure that complaint processes are culturally safe for Aboriginal people in custody.

We asked participants about reporting racist behaviour perpetrated by colleagues and were told:

'I had a [staff member] do a referral to me, saying that the prisoner, "Wanted to speak to the Abo officer." I raised this straight away with a [manager], and they did nothing about it – they actually swept it under the rug. In my exit interview when I left, I was obviously brutally honest about how culturally unsafe it is, how poor his attitude is towards the AWO, the lack of understanding, and the lack of wanting to understand.'

**Aboriginal staff member**

We also heard that reporting such racism did not often lead to action.

'I overheard a staff member making Aboriginal jokes... I brought it up with my supervisor, my managers. Instead of a [senior manager] coming down or writing a report, I had a [senior manager] come down, who's also a part of the staff support team at [a maximum-security location] and tell me I basically need to be more resilient, and basically got to suck it up and get used to that sort of thing. I wasn't told that it would be dealt with, I wasn't told that that person would be spoken to or anything like that. It was basically, "this is this type of environment, and you need to be more resilient".'

**Former Aboriginal staff member**

The experiences we heard are supported by Australia's largest survey of Aboriginal and Torres Strait Islander people at work.<sup>42</sup>

Racism may be experienced more commonly at work than outside it. Racism at work is a factor in career change and it impairs recruitment. Yet many Indigenous employment strategies and policies focus on education and recruitment, while remaining quiet about racism.

## Experiences of people in custody

Aboriginal people in custody have also shared their multiple and repeated experiences of racism from non-Aboriginal people in custody and corrections staff. They reported the use of racist slurs and damaging racial stereotypes, questions regarding their Aboriginal identity and suggestions that Aboriginal people receive more favourable treatment in custody.

Victoria Legal Aid reflected the endemic nature of racism and discrimination for Aboriginal people in their contribution to the Review:

'Our Aboriginal clients tell us that they do experience racism and discrimination while in custody. This discrimination (individual and systemic) is perpetrated by other people in custody, staff and the prison system itself. The discrimination does not start and end with their time in prison – it starts long before and continues long afterwards, with the experience in custody another link in a long chain of discriminatory and damaging experiences.'<sup>43</sup>

**Victoria Legal Aid**

<sup>42</sup> Diversity Council Australia/Jumbunna Institute for Indigenous Education and research, *Gari Yala (Speak the truth): Centring the work experiences of Aboriginal and/or Torres Strait Islander Australians* (2020) <https://www.dca.org.au/research/project/gari-yala-speak-truth-centring-experiences-aboriginal-and-or-torres-strait-islander>. This survey found: 38 per cent of the Aboriginal and Torres Strait Islander workforce reported unfair treatment because of their Indigenous background sometimes, often or all the time; 44 per cent of the Aboriginal and Torres Strait Islander workforce reported hearing racial slurs sometimes, often or all the time; 59 per cent of the Aboriginal and Torres Strait Islander workforce reported appearance racism, in which they receive comments about how they look or 'should look' as an Aboriginal and Torres Strait Islander person; 28 per cent of the Aboriginal and Torres Strait Islander workforce say they work in unsafe workplaces. Only one in three respondents said they had the workplace support required when they experienced racism. Only one in five worked in organisations with both a racism complaint procedure and anti-discrimination compliance training that included reference to discrimination and harassment of Aboriginal and Torres Strait Islander people.

<sup>43</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 6.

We heard that damaging stereotypes and prejudice were experienced by Aboriginal staff and Aboriginal people within custody.

'A [member of staff] described an Aboriginal prisoner as a "coon" I challenged him on this offensive word. They said "not you mate, you're Aboriginal. I'm talking about the ones that live on the streets and don't work." This person even though challenged did not seem to think this was offensive.'

**Aboriginal staff member**

'I have seen an officer refer to Koori's as "boongs" and "black bastards".'

**Person in custody**

Examples of racism, disrespect and systemic bias and disrespect directed toward Aboriginal women in custody were witnessed and reported by non-Aboriginal people in custody.

'I am not [an Aboriginal person] but I see these girls get squeezed by a system that sees their colour and don't bother trying to rehabilitate them. They are seen as not being worth the effort and they are treated as though prison/drugs/crime is all they will ever be.'

**Person in custody**

There were also concerning examples where racist attitudes and behaviour toward Aboriginal people in custody did not result in visible accountability and consequences. We heard that incident reports involving racism are written up by AWOs but there is perception that these reports are not taken seriously and there is not enough independence from the prison when assessing incident reports. Some staff expressed the view that repetitive reports of racist conduct should result in a more serious consequence for staff.

'...there needs to be some cultural record in regards to how many times [prison officers] are written up with racial incite, or racial abuse, or racial attacks on AWOs. And that should be independently reviewed by that panel, on how many times these [prison officers] have been written up. If you've been written up more than three times, you shouldn't be in the job, get out.'

**Aboriginal staff member**

The elimination of racism and discrimination in the custodial environment must be a priority system goal and an essential foundation for any further workplace initiatives or effort to deliver more culturally responsive system. While increasing the number of Aboriginal people working within DJCS and within the adult custodial corrections system will support a more culturally responsive system, the health, safety and wellbeing of people working within the system must be a priority consideration.

Across this report, we support a range of measures to ensure that racist attitudes and conduct are eliminated from the adult custodial corrections system. These elements include:

- ▶ strengthening the articulation of human rights within the legislative framework
- ▶ screening for racism and unconscious bias in recruitment and selection processes
- ▶ improving workforce capability and understanding of Aboriginal culture and identity to support development of cultural competency within the custodial workforce
- ▶ creating improved understanding of the particular vulnerability of Aboriginal people through increased focus on the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody in pre-service and ongoing training for corrections staff
- ▶ educating the workforce on the impact of racism and discrimination
- ▶ creating a positive duty to support cultural safety, supported by measures to support self-reflection and the building of workforce capability
- ▶ changes to complaints processes to support accountability for unlawful behaviour in the workplace, including racism and discrimination
- ▶ ensuring that alleged racism and discrimination is separately identified and reported through complaints and data systems
- ▶ strengthening consequences for staff who act in a racist manner
- ▶ strengthening consequences for managers who overlook or minimise racist behaviour.

We have made recommendations to increase cultural competency and awareness for corrections staff as part of a package of recommendations that aim to reduce the experience of racism within the custodial environment. This is explored further below.

## Building the capability and cultural responsiveness of the non-Aboriginal workforce

A new training approach is required to increase the cultural responsiveness of corrections staff and support cultural safety within the custodial environment. Increased understanding of culture and improved awareness about the nature and impact of racism experienced by Aboriginal people will also be critical to reducing racism within the system.

Staff working within the adult custodial corrections system currently receive cultural awareness training as part of their mandatory pre-service training. However, we heard that many people felt that the training was inadequate and that the program might not be sufficiently adapted to equip staff with the necessary understanding to support cultural rights and increased cultural safety. Non-Aboriginal corrections staff told us that they did not feel adequately trained on Aboriginal cultural safety, with only 32 per cent of respondents saying that they had been mostly or fully trained in meeting the needs of people in custody relating to Aboriginal cultural safety.<sup>44</sup>

Support for improvements to cultural safety training and cultural competency was also identified in a number of stakeholder submissions.

'Cultural awareness, competency and safety training is an ongoing process for prison staff. Non-Indigenous people must recognise their inherent biases, and the fact that colonisation has been of benefit to them, to the detriment of Aboriginal people.'<sup>45</sup>

Djirra

The general need to invest in improving the capability and responsiveness of the corrections workforce has been a strong theme across all areas of our engagement. We make wide ranging recommendations about increasing staff capability in Part 3 of this report.

Cultural training should support ongoing reflection, building of knowledge or movement toward cultural competency as set out in the Cultural Competence Continuum diagram published by the Victorian Aboriginal Child Care Agency below.<sup>46</sup> A new approach must continue to build competency and provide an important context to better understand and appreciate Aboriginal culture, identity, the history of colonisation and its impacts including generational trauma and the overincarceration of Aboriginal people in Australia.

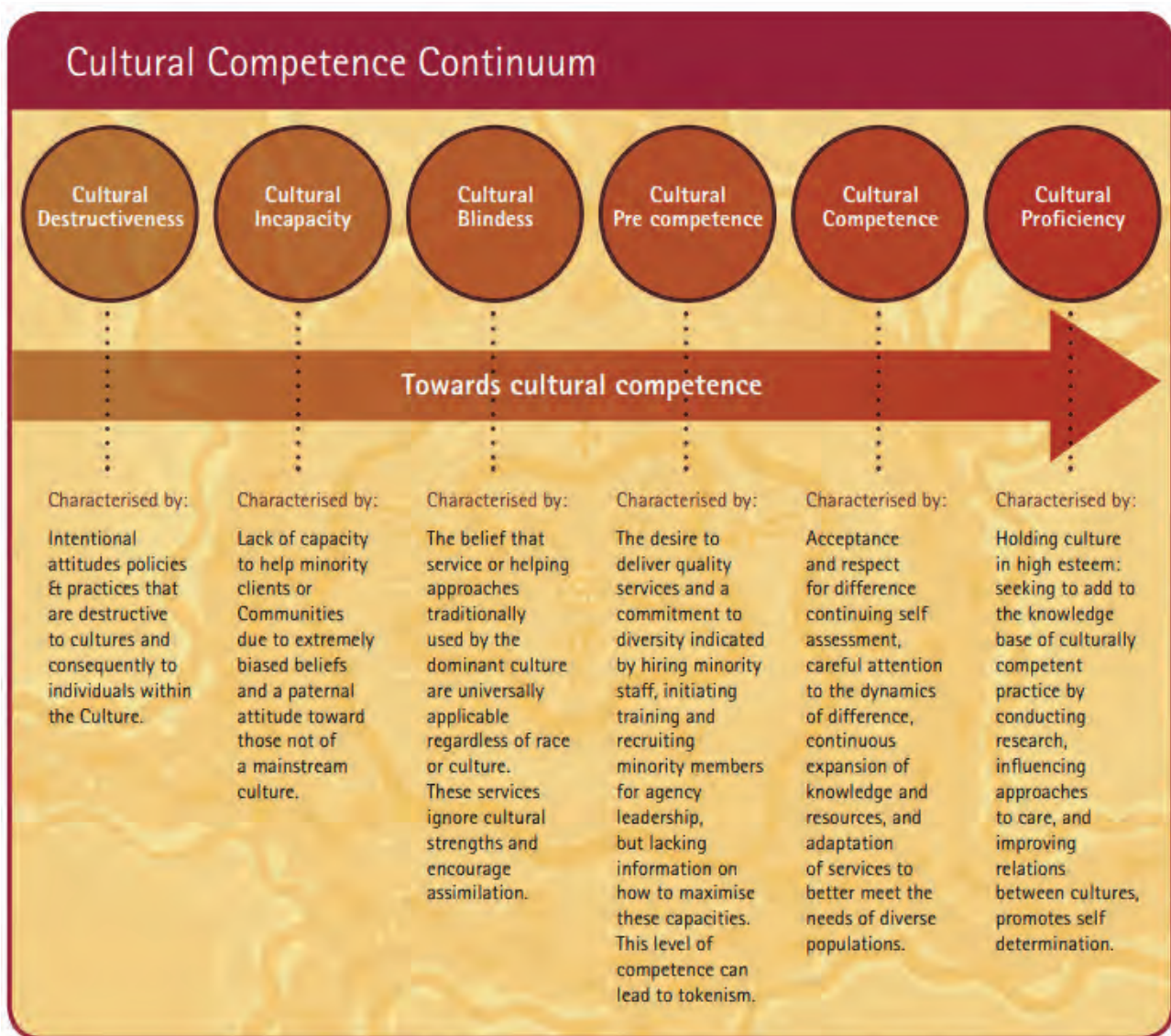
<sup>44</sup> Cultural Review, Corrections workforce survey (2021).

<sup>45</sup> Djirra, Submission to the Cultural Review (December 2021) 2.

<sup>46</sup> Victorian Aboriginal Child Care Agency, *Building respectful partnerships: the commitment to Aboriginal cultural competence in child and family services* (2010) 23.

It should also focus on the strengths, risks, and considerations for Aboriginal people in custody and be led by a relevant ACCO. We note that the current delivery of pre-service training already includes valuable partnerships with ACCOs.<sup>47</sup>

This workforce training could be supported by specialist training delivered by other agencies, such as the human rights training delivered by the Victorian Equal Opportunity and Human Rights Commission who have expertise on the rights and obligations set out in the Charter and how to apply human rights frameworks to operational decision-making.



<sup>47</sup> The pre-service training is currently delivered by the Victorian Aboriginal Child Care Agency and has previously been delivered by the Koori Heritage Trust.

The current expectation that corrections staff will undertake ongoing refresher training to continue to build their competency and understanding of issues relevant to the experiences of Aboriginal people in custody is not currently reflected in the workforce training patterns.

'The custodial staff ... had lack of cultural understanding. They actually have no cultural training whatsoever after their squad. They only do ... a day or two of cultural awareness training while they're in squad, and then nothing after that. So, they have lack of cultural understanding, lack of cultural beliefs of Aboriginal people, and just respect for Aboriginal culture in general ... they don't support the AWOs or the ALOs to even run cultural programs, or to even initiate things like NAIDOC or Survival Day.'

**Aboriginal staff member**

Ongoing cultural safety education should be specifically developed for the custodial setting so that correctional staff understand how the experiences and cultural rights of Aboriginal people must be considered in the performance of custodial duties. For example, through our research we did not identify any detailed training on the recommendations of the Royal Commission into Aboriginal Deaths in Custody within the current training packages and what these recommendations mean for custodial practice and providing services to Aboriginal people in custody. This is a significant gap.

The building of capability should be approached as ongoing 'education' to build and deepen understanding of Aboriginal identity and community and the issues that affect Aboriginal people in custody. This should extend to all people working within the adult custodial corrections system and ensure that this updated approach to education is mandatory for all people working within the system develop and strengthen cultural understanding and responsiveness.

We have also made recommendations for embedding cultural reflection in regular supervision and professional development processes as part of an ongoing process of building knowledge and cultural understanding.

Our recommendations across this Part will require increased accountability for the realisation of cultural rights and supporting increased cultural safety for Aboriginal people. A capable and skilled non-Aboriginal workforce with clear understanding of how to support cultural rights and cultural safety in decision-making and service responses will support the realisation of these intended outcomes.

**Recommendation 5.5**  
**Ongoing cultural safety education that is tailored for the custodial environment**

The Department of Justice and Community Safety should work with the Aboriginal Justice Caucus, Aboriginal community-controlled health organisations, other Aboriginal community-controlled organisations (including the Victorian Aboriginal Legal Service and Djirra) and people with lived experience of custody to develop new training to support a more culturally safe custodial environment.

This training should be provided to all Departmental executives, operational leaders and managers and corrections staff.

It should be a contractual requirement for private prisons that all executives, staff, and management undertake equivalent training.

The training should be specifically developed for the adult custodial corrections system and focus on developing knowledge, capability and skills to provide a culturally responsive environment for Aboriginal people.

The new training program should:

- a) be mandatory for all existing corrections staff to complete within 12 months of the training being implemented; and for new staff to complete within one month of beginning their role
- b) require mandatory ongoing training every two years – completion of refresher training should be considered as part of ongoing performance development and professional supervision
- c) include tailored sessions for people in leadership roles across the corrections workforce
- d) include self-reflection and consideration of unconscious bias
- e) include specific attention to the impact of interpersonal and structural racism and discrimination on Aboriginal people and communities
- f) include specific attention to:
  - Victoria's Charter of Human Rights and Responsibilities
  - the United Nations Convention on the Rights of Indigenous Peoples
  - key recommendations of the Royal Commission into Aboriginal Deaths in Custody
  - the proposed outcomes framework developed through the community-led process
  - the proposed custodial standards for Aboriginal people in custody.



## Learning from Elders

Elders are the bedrock of Aboriginal communities. They provide leadership, wisdom, and strength. The critical role of Elders and Respected Persons is already valued within the adult custodial corrections system as Aboriginal Independent Prison Visitors and as part of the response to Aboriginal people in custody through the Yawal Mugadjina Program.<sup>48</sup>

### Case study – Working with Elders

The Yawal Mugadjina - Cultural Mentoring Program was introduced in 2018. In this program, twelve Elders and Respected Persons provide mentoring and transitional support to Aboriginal men and women in prisons.

The program is structured in three core stages.

Stage one provides participants the opportunity to develop a cultural journey plan with a focus on culture and community connectedness and identifying available cultural programs and services.

Stage two involves Elders and Respected Persons who provide pre-release cultural mentoring and support in prisons.

Stage three provides referrals to the Local Justice Workers (LJW) program providing post-release cultural support to build cultural and community connections when returning to the community.

Reflecting the importance of this initiative and programs involving Elders in other jurisdictions, we support further involvement of Elders and Respected Persons in building the capability of the system leadership, operational leadership and custodial workforce.

In addition to contributing expertise at a systems level, there are other opportunities for Elders and Respected Persons to be more directly involved in decision-making processes relating to Aboriginal people in custody. We have made recommendations about an expanded role for Elders and Respected Persons in providing cultural support and guidance through other custodial processes, including disciplinary processes.

<sup>48</sup> This program has been operating since 2018 in Victoria and engages 12 Elders and Respected Persons who provide mentoring and transitional support to Aboriginal men and women in custody. This program is discussed in *Chapter 16. The experiences of Aboriginal people in custody*.

**Recommendation 5.6**  
**Enhanced role for**  
**Aboriginal Elders to**  
**create an adult**  
**custodial corrections**  
**system that better**  
**responds to the needs**  
**of Aboriginal people**

The Department of Justice and Community Safety should provide resourcing to appropriately engage a network of local Elders and Respected Persons to provide advice and share local cultural information with custodial leadership teams, and support connections to community for staff and Aboriginal people in custody.

There should be opportunities for Elders and Respected Persons who are working with local prison leadership to share their knowledge and experiences with department executive leadership, to support knowledge transfer and improve cultural safety for Aboriginal people across the adult custodial corrections system.

## 16 The experiences of Aboriginal people in custody

For as long as there have been prisons in Australia, Aboriginal people have been in custody. Their families and advocates have felt and described the particular trauma that comes from incarceration. This has included removal from family, identity and Country, experiences of racism and abuse, lack of access to culturally appropriate health services and death. We acknowledge these experiences and have been committed to ensuring the stories of Aboriginal people – of harm but also resilience – are heard through this report.

The Cultural Review heard directly from 171 Aboriginal people in custody through individual confidential interviews and group-based yarning circles. We also received oral submissions from 12 Aboriginal people in custody and received a further 29 written submissions from Aboriginal people in custody.

## Key points – Experiences of Aboriginal People in Custody

- ▶ There are different and individual experiences of cultural safety across prison locations, with some people reporting that they felt culturally safe at their prison location and others reporting that they did not feel safe.
- ▶ Many Aboriginal people continue to experience the harmful effects of racism and discrimination in custodial environments which impact their safety, access to healthcare, mental health support, and programs to support their rehabilitation and transition into the community.
- ▶ There are negative impacts for Aboriginal people in custody associated with the availability and inadequate resourcing of AWOs across the system.
- ▶ The health and wellbeing support provided to Aboriginal people in custody must be improved, including culturally safe services and programs to support culture and identity through partnership with ACCOs.
- ▶ There are specific and difficult intersectional experiences for Aboriginal people who identify as LGBTIQ+ and significant gaps in the level of cultural, health and transition support provided to Aboriginal women.
- ▶ There are specific risks and a lack of support for Aboriginal people on remand
- ▶ More attention is needed to ensure processes and decisions relating to Aboriginal people in custody, including sentence planning and case management processes, are informed by cultural rights and that Aboriginal people have access to cultural support.

# What Aboriginal people told us about **CULTURAL SAFETY IN CUSTODY**

**There are inconsistencies with access to cultural spaces for people in custody.**

It's really hard to get access to cultural space ... They give you a little bit then they pull it back, it's too confusing. May as well do it the white fella way than do anything with culture because it's easier than putting up and being treated like that.'

It's really hard with culture here. We do artwork, we put it in our room and all that sort of stuff; the staff will come in and have negative comments and hassle us so much then some of the boys just chucked all their artwork out.'

The space provided for the Aboriginal people in custody is just a shed and it's too small to fit all the fellas in. We have to try and source a place all the time. Apparently they have ordered another shed ... Won't happen in my lifetime.'

**Aboriginal people in custody experience racism and discrimination.**

I have seen an officer refer to Kooris as "boongs" and "black bastards"'

The racism that I observed, the treatment and mental health [issues] and deterioration was impacted by that incarceration. Let's not even go into the stolen generation and other incarcerations."

They are very racist in here.'

**Aboriginal people in custody experience barriers to accessing culturally safe healthcare.**

The cultural men's group is good but there's not safe medical care. Aboriginal people have massive issues with their teeth, and you just can't access dental on remand - you have to wait until you're sentenced.'

One of my mates who needs his knees done - an Aboriginal fella - he had to travel and get transferred to a maximum-security prison for treatment. A white fella busted his knee here, he gets treated at the local hospital and got it fixed. This happens all the time. We're all starting to think now it's racial related, because we're just fighting an uphill battle.'

## Specific risks for Aboriginal people who enter in custody

There are particular risks for Aboriginal people in custody.

'The immediate harm caused by detaining an Aboriginal person on remand is significant and far reaching. Detention separates an individual from their family, community, country and culture, and jeopardises their health, wellbeing and safety.'<sup>49</sup>

**Victorian Aboriginal Legal Service**

Many people told us about the additional risks for Aboriginal women entering custody, and the high prevalence of trauma, family violence and substance use disorders that are part of the experiences of many Aboriginal women in the community, and within custody.

'The detrimental effect that confinement and separation from family can have on Aboriginal and Torres Strait Islander people is significant. We consider that increased efforts to develop and implement culturally safe and appropriate practices are crucial to improving the custodial experience of Aboriginal people. However, the reality for many Aboriginal people within the criminal justice system is that custody is inherently culturally unsafe, with violence, trauma, and death possible outcomes.'<sup>50</sup>

**Victoria Legal Aid**

We also heard about the damaging cycle associated with arrest and remand for Aboriginal people, including the impact of short periods of custody on their families and their lives, including their access to community-based health and wellbeing supports. Staff identified the impact of churn through the system as particularly challenging to delivering cultural programs and supports.

The Victorian Aboriginal Legal Service also highlighted the specific risks associated with people being sentenced to 'time served' after experiencing periods on remand. They noted the risks associated with people being released from custody with no opportunity to connect with or receive holistic support to address their offending.

There is also evidence that Aboriginal people are more likely to return to custody than non-Aboriginal people within two years. According to analysis from the Australian Institute of Criminology:

'Indigenous prisoners ... were more likely (55%) than non-Indigenous prisoners (31%) to have been readmitted to prison within two years of release. As well as returning to prison at a higher rate, Indigenous prisoners tended to return sooner.'<sup>51</sup>

**Australian Institute of Criminology**

<sup>49</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 35.

<sup>50</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 7.

<sup>51</sup> Matthew Willis, 'Reintegration of Indigenous prisoners: key findings' (Trends & Issues in Crime and Criminal Justice No. 364 Australian Institute of Criminology, August 2008).

The factors that contribute to offending are also linked to the supports that people need while in custody to assist to reduce the risk of returning to the criminal justice system.

Analysis from the Australian Law Reform Commission has identified some of the factors that may contribute to Aboriginal people entering the criminal justice system.

### **Social determinants of incarceration**

The Australian Law Reform Commission's 2018 *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*<sup>52</sup> sets out the social drivers of incarceration that contribute to the over-representation of Aboriginal people in custody:

- ▶ **Education and employment** – lower educational attainment, lack of employment opportunity and barriers to employment, including discrimination based on previous arrest and conviction, are disproportionately experienced by Aboriginal people.
- ▶ **Health and disability** – Aboriginal people experience higher rates of mental ill-health, physical and cognitive disability or impairment, including Fetal Alcohol Spectrum Disorder, than the general population.
- ▶ **Harmful use of alcohol** – alcohol and other drugs are often involved in offences committed by Aboriginal people that lead to their being placed in custody. Alcohol related violence and chronic illness also contributes to the ill-health of Aboriginal people.
- ▶ **Housing** – homelessness, inadequate housing, and overcrowding disproportionately affect Aboriginal people and may contribute to health issues and alcohol misuse. Housing issues may also contribute to Aboriginal people being denied bail and are a risk factor for reoffending.
- ▶ **Child protection and youth justice** – Aboriginal children and young people are disproportionately represented in the child protection, out-of-home care and youth justice systems, all of which are risk factors for adult incarceration.
- ▶ **Family violence** – Aboriginal people, particularly women and children, experience family violence at a much higher rate than the rest of the community.
- ▶ **Intergenerational trauma** – Aboriginal peoples' experience of intergenerational trauma is seen to heighten many of the other risk factors for incarceration.
- ▶ **Cycle of incarceration** – incarceration itself has a compounding effect each of the other drivers for incarceration described above and can lead to a cycle of incarceration.

<sup>52</sup> Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, (Final Report No 133, 2017) 61-81. [https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf).

Despite detailed understanding of the factors that drive contact with the criminal justice system as well as what Aboriginal people need to support health and wellness and address the social determinants of incarceration, we heard that many Aboriginal people do not have access to support matched to their needs.

## What we heard from Aboriginal people in custody

Aboriginal people in custody told us about a number of concerns including:

- ▶ limited access to cultural practice, cultural spaces, and cultural programs, with little or no access to cultural supports reported at some locations<sup>53</sup>
- ▶ barriers to meeting cultural obligations, including Sorry Business, limiting opportunities to connect with family and community and meet cultural obligations
- ▶ access to timely safe healthcare, and limited understanding of Aboriginal health and wellbeing in the delivery of healthcare services.
- ▶ limited access to culturally informed programs and supports, contributing to poor connections with community, impacts on mental health and rehabilitation outcomes
- ▶ the collective trauma experienced when learning of an Aboriginal death in custody.

Aboriginal people also identified key element that contribute to better experiences within the adult custodial corrections system including:

- ▶ access to the support of an AWO
- ▶ access to cultural spaces and opportunities to practice culture
- ▶ access to cultural programs and culturally informed supports, including culturally informed rehabilitation programs
- ▶ opportunities to connect with family, culture, and spend time on country and in the community
- ▶ support with health and wellbeing that is culturally informed and safe.

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<sup>53</sup> The range of cultural programs and supports available within the adult custodial corrections system is discussed later in this part.



Strengthening these elements of the system will create increased opportunities for Aboriginal people in custody to access cultural spaces, practice culture, access programs that provide culturally informed support and connect with community.

## Regular cultural support from an AWO

We heard that access to dedicated and culturally safe support from an AWO was the single most important factor that helped Aboriginal people feel culturally safer in custody.

‘On cultural safety, the cultural centre here is great. They've added more classes on culture too which is great. The men's group play a big role in safety. Aboriginal culture bonds people together well and gives people a chance to share their voices. Being able to speak in a safe space is good – the AWO is great and has enough time to provide support. Some people don't know what they can get from him. I'm proud of the AWO. I'd like to do a job like that one day, outside of prison but supporting Aboriginal men.’

**Aboriginal person in custody**

Others reflected that it is often difficult to access support from the AWO as there are too few roles given the number of people in custody that need support.

‘I get nothing - no support from the AWO. I've seen [them] twice since I've got here. I seen [them] the other day and explained to [them] that the [people in custody] want to see you turn up and when you don't it's bad for us.’

**Aboriginal person in custody**

There is clear commitment and recognition that these roles are essential for the operation of the adult custodial corrections system. However, at a practical level we heard that Aboriginal people in custody experience limited access to support. As a result of under-resourcing, we heard that AWOs are not always able to provide cultural support and contribute to the case management and sentence planning processes that are contemplated by their role.

In Chapter 17, we make recommendations relating to supporting and valuing AWOs to increase the consistency and availability of this support across the system.

## Connection to identity, culture, country and community

Practising culture and maintaining connections to culture and community is essential for the social and emotional wellbeing of Aboriginal people in custody. Recognition that there needs to be different approaches to safety, reintegration and rehabilitation for Aboriginal people in custody is fundamental to a more culturally responsive custodial system. The importance of this connection to culture was described by Djirra:

'Culture is not an "add on". It is not a "nice to have" luxury. It is a continuing process of inclusion that validates a person's identity. It is recognition that despite the theft of our land, our culture sustains us. It is the opportunity and ability to learn and speak in language. It may be the ability to engage in cultural practices such as birthing and naming practices, and Sorry Business. It is recognition that visits from family or Elders is a direct lifeline to culture.'<sup>54</sup>

**Djirra**

We heard about the critical importance of connection to culture and the significant positive impact of participation in cultural practice for Aboriginal people in custody, particularly when they have received bad news, experienced a traumatic event or a member of the Aboriginal community has passed.

'The support you get from having Elders on the outside coming in, it will change the boys phenomenally, like their attitude and everything will change. The Elders set them straight. You listen to your Elders, you listen to your Aunties, you listen to your Uncles. Not having that in here, I think it's killing them, in a sense. Some just need a hug. Some people watch a funeral, they just need a hug.'

**Aboriginal staff member**

We also heard that some people may enter prison without strong connections to culture and community and that access to culture while in custody may support them to build their cultural identity.

'There's no real programs that get run there. I'm passionate about teaching these – some of these boys don't know anything about culture and they want to learn, and they want to know.'

**Aboriginal staff member**

People also told us about the importance for informal opportunities for connection and support from other Aboriginal people in custody.

'I would like to see us being able to have Men's business more and have smoking's. They don't do it. Sometimes I want to see the uncles and I get in trouble because you are not allowed in the other yards. So, it would be good to have Men's business for support. I do like being able to paint it calms me.'

**Aboriginal person in custody**

<sup>54</sup> Djirra, Submission to the Cultural Review (December 2021) 2.

People pointed to the model operating at Ravenhall as offering a more culturally responsive approach for Aboriginal people in custody, including the connection with Elders from the community to provide cultural support. We also heard about the importance of weekly corroborees at Hopkins Corrections Centre that are led by people in custody and supported by a non-Aboriginal ALO.<sup>55</sup>

'So, I wish there was area for change, because it's needed in here ... you'll see a difference, and you'll see – if they see how someone's very touched with a culture, and they see how it was at Ravenhall. We've had mobs outside, we've had Elders come in, they did a yarning circle, they come in from externally, they talked to the boys. It came down to the Indigenous staff members who ran the cultural centre, that were the managers, and that were part of the team, it was them who organised the Elders and Uncles and Aunties to come in and have a chat with the boys.'

**Aboriginal staff member**

### **Supporting self-determination: Corroborees at Hopkins led by people in custody**

In addition to providing culturally safe support, AWOs and Aboriginal liaison officers (ALOs) can also advocate for cultural initiatives led by people in custody.

At Hopkins, the non-Aboriginal ALO supports a weekly corroboree each Friday. The sessions are led by the Aboriginal men in custody at the site – they take turns teaching and learning cultural dances and the history, meaning and cultural significance behind each dance. Regular participation in these sessions also means there is a group ready to perform during site-based events, such as Anzac Day or NAIDOC Week.

Participating in the corroboree builds men's confidence and pride and enhances their ability to connect with each other and culture. The collaborative nature of the program also helps build their leadership skills. The self-led format of the program also demonstrates how locations can support the self-determination for Aboriginal people in custody.

## **Access to effective cultural programs**

There have been substantial improvements to the cultural programs and supports provided to help Aboriginal people in custody to maintain connection to culture. These have been prioritised through the development of the Aboriginal Social and Emotional Wellbeing Plan (ASEWP) and funding for partnerships with Aboriginal organisations to deliver services to Aboriginal people in custody. These initiatives recognise the importance of connection to culture and support a holistic approach to Aboriginal health and wellbeing.

A recent evaluation of the ASEWP found the core design of program was informed by best practice approaches and had resulted in a number of positive impacts for

<sup>55</sup> While we heard positive feedback about the model operating at Ravenhall and the benefits of a number of roles working together to provide cultural support to Aboriginal people in custody, we understand that as at November 2022 three of the identified Aboriginal roles at Ravenhall are vacant.

Aboriginal people in custody, including relating to arts and cultural programs for people in custody and specialised training for health services staff.<sup>56</sup>

However, the evaluation also found that the impacts on the wellbeing of Aboriginal people in custody of many initiatives under the ASEWP, including those focused on staff, systems and processes, were unable to be quantified and any gains made through cultural awareness training for staff were not reflected in the experiences of people in custody interacting with the prison workforce.<sup>57</sup> The evaluation also found gaps and underutilisation of data which hinder the effective monitoring of system performance.<sup>58</sup>

The evaluation made a number of recommendations to improve the overall approach toward cultural safety and the social and emotional wellbeing support available to people in custody, including that Justice Health and Corrections Victoria develop a next phase of the ASEWP that includes a clear implementation strategy. We understand this has not yet commenced but recommend that the next phase of the ASEWP is informed by the reflection and recommendations in this report.

A number of the programs included as part of the ASEWP are set out in the box below. There are other programs that are available within the system in partnership with the Aboriginal community. For example, this list does not include local prison initiatives or post-release supports provided to Aboriginal people.<sup>59</sup> Cultural programs designed for Aboriginal women in custody are set out later in this chapter.

### **Cultural programs for Aboriginal people in custody<sup>60</sup>**

#### **Wadamba Prison to Work Program**

The Wadamba Prison to Work program is a one day program that aims to provide a supported pathway to employment for Aboriginal men and women aged 18 to 25 on remand. The program, which operates at DPFC and the Metropolitan Remand Centre, provides both pre and post release support, access to employment services, career guidance and cultural support.

#### **Marumali Healing Program**

The Marumali Healing Program is a group-based healing program, founded on a trauma-informed model of healing for members of the Stolen Generation, their families and community. The four-day program delivered by Connecting Home and is available to all Aboriginal men and women in custody at all prison sites in Victoria. The program is based on seven stages of healing, and participants are supported to identify and understand common symptoms of longstanding trauma, understand the stages and changes involved in the healing journey, and access relevant supports.

<sup>56</sup> Urbis, Evaluation of the Aboriginal Social and Emotional Wellbeing Plan, (Final Report, 2020) vi-ix.

<sup>57</sup> Ibid. vii-ix.

<sup>58</sup> Ibid. x.

<sup>59</sup> The Cultural Review recognises the range of programs that have been delivered to people in custody through partnerships with Aboriginal community-controlled organisations and other forms of support that are provided by Aboriginal organisations to Aboriginal people in custody and Aboriginal people who have transitioned from custody to the community.

<sup>60</sup> Department of Justice and Community Safety (Corrections Victoria), 'Aboriginal cultural programs summary - excluding local prison initiatives', Data provided to the Cultural Review (June 2021).

**Men's Healing Program**

The Men's Healing Program is a group-based cultural strengthening and healing program for Aboriginal men in custody delivered by the Victorian Aboriginal Child Care Agency (VACCA). The program is supported by Aboriginal Elders and leaders who spend time with participants and identify individual support networks for reconnection back into the community. It aims to strengthen and rebuild cultural identity, reduce the impacts of family violence and promote effective behaviour change, provide healing from grief and loss, build and strengthen kinship ties, and identify individual support networks to enhance reintegration back into the community through providing warm referrals and linkages to appropriate services.

**Men's Healing and Behaviour Change Program**

The Men's Healing and Behaviour Change Program is run by Dardi Munwurro, a specialist Aboriginal family violence service and delivered by two facilitators and an Elder. It aims to build capacity in participants by providing support, guidance and tools that assists them to understand and change their behaviour, develop greater resilience and foster positive relationships with their peers, families, communities and culture.

**Wayapa Wuurrk – Holistic Yarning Circles Program**

The Aboriginal Holistic Yarning Circle Program is an Aboriginal-specific mindfulness modality similar to yoga or tai chi. The program is offered to Aboriginal men in custody at Marngoneet, Langi Kal Kal, Karrenga and Hopkins Correctional Centres and is delivered by a certified and accredited practitioner that has completed the Wayapa Wuurrk Diploma Course.

**Yawal Mugadjina - Cultural Mentoring Program**

The Cultural Mentoring Program is structured in three core stages, providing a continuity of care in the transition from prison to the community to help reduce the risk of reoffending through effective reintegration. Stage one provides participants the opportunity to develop a cultural journey plan with a focus on culture and community connectedness and identifying available cultural programs and services. Stage two involves Elders and Respected Persons who provide pre-release cultural mentoring and support in prisons. Stage three provides referrals to the LJW program providing post-release cultural support to build cultural and community connections.

Despite continuing work to improve access to cultural programs, we heard from Aboriginal people in custody, Aboriginal staff and organisations that a more comprehensive, system-wide approach is required. We also heard that there is inconsistency across the system – including across public and private prisons – and that a person's access to cultural spaces and programs may be interrupted due to movement around the system.

### **Mick's\* story: Practising culture in custody**

The Review spoke with Mick, an Aboriginal man in custody about his difficult experiences connecting to culture within custody.

“I want to have self-determination but it's so hard in prison. You're trying to push forward, you're fighting an uphill battle. I love my culture and I want to connect with my culture even in here and outside, but it's so hard. It's hard, it's really hard because that's sort of out of our control.”

He detailed a particular incident where his access to cultural practice was not supported by a staff member:

“The officer that runs the hobbies will take the item off you, won't allow you to use the tools. He just takes them – even if you've got approval, he'll just take it off you and destroy it. And then you have to try and do it in a way without getting him - if he's not at work somebody else is on, so you go up there and do it then. It just seems to be just that person, and somebody said to me that it sounds like he's racist against Aboriginals. That's the way it's coming across to me as well because I wasn't doing any harm, I had approval for everything that I did, but some of the items he tried to take off me and tried to destroy it and then he had to give them back.”

*An Aboriginal person in custody*

We urge better monitoring and evaluation of all cultural programs and initiatives, including access criteria and participation rates. By using program and evaluation data DJCS can build a greater understanding of what works to support Aboriginal social and emotional wellbeing and reconnection with community life.

As part of the development of the framework for a more culturally safe adult custodial corrections system, we have suggested that DJCS partner with Aboriginal community and organisations to develop and implement a monitoring and evaluation framework to assess all Aboriginal cultural programs based on their effectiveness and impact on Aboriginal people in custody. This would require engagement of Aboriginal researchers to develop a research methodology that is culturally safe and enables DJCS to track a person's experience after they leave custody.

## Connection to Country

Every Aboriginal and Torres Strait Islander Nation has its own language, cultural protocols, identity and processes for engaging with death and dying. Knowing which Aboriginal Nation a person identifies as belonging to upon reception, is essential to providing culturally responsive care while a person is in custody.<sup>61</sup>

Most Aboriginal people are able to make some connection to family or Country, even where Aboriginal people's cultural identity has been disrupted by government's forcible removal of children, separation from homelands and other colonisation processes. If not, they might identify as part of the Stolen Generations.<sup>62</sup>

There are existing requirements that recognise the significance of a person's connection to Country. The Guiding Principles for Corrections in Australia recognise the connection between placement, a person's health, wellbeing and rehabilitation, stating:

'Where practicable, prisoners are placed in a location proximate to their family and community with particular consideration given to the needs of Aboriginal and Torres Strait Islander prisoners.'<sup>63</sup>

### Guiding Principles for Corrections in Australia

The current collection and recording of information about Aboriginal people in custody at system level does not include specific information about a person's Aboriginal Nation. However, we understand that information about an Aboriginal person's connection to family and culture is collected by the AWO and recorded in a person's Cultural Journey Plan and made available to other staff working within the system to support planning processes.

In *Part 2. Systems*, we support additional information being recorded and collected about all people in custody in a culturally appropriate way to ensure that person-centered approaches can be supported. This should include information to ensure that placement decisions are supported by deeper understanding and active consideration of a person's connections to Country and their connections and supports within the community.

<sup>61</sup> Darren C Garvey, *Indigenous identity in Contemporary Psychology*. (Thomson Learning, 2007).

<sup>62</sup> Ibid.

<sup>63</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018).

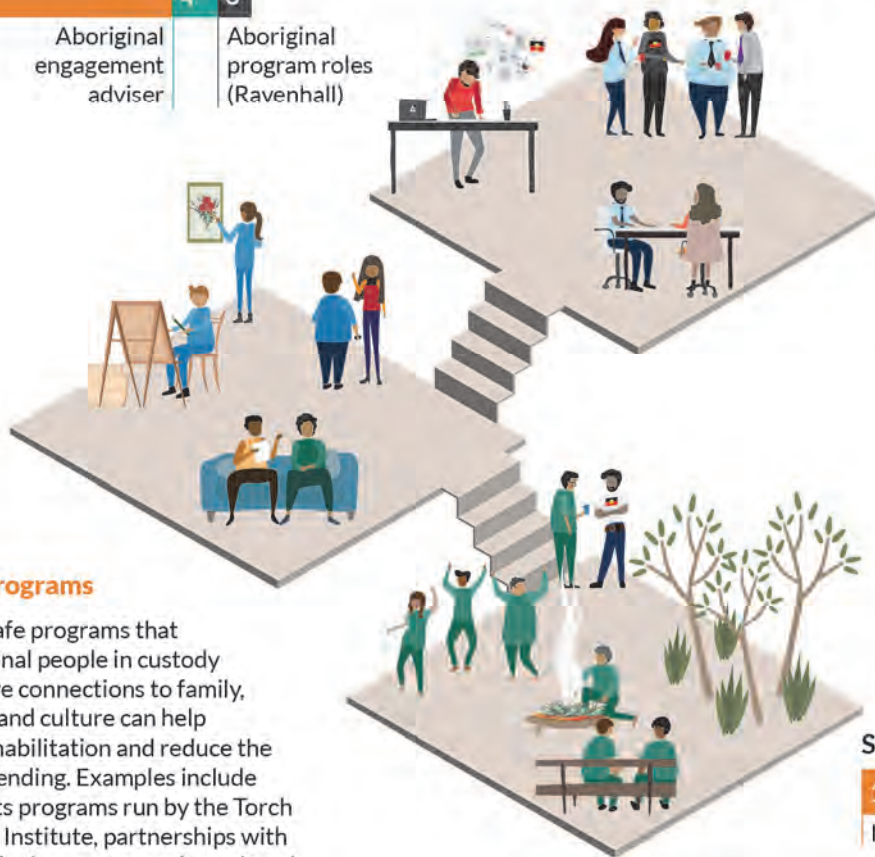
# Aboriginal staff, facilities and programs

## Aboriginal wellbeing officers and Aboriginal liaison officers

Each location should have an Aboriginal wellbeing officer (AWO) to provide culturally appropriate welfare, advocacy and support for Aboriginal people in custody. AWOs are VPS roles and Aboriginal Designated Positions. Where a site does not have AWO, a non-Aboriginal staff member may perform some of these duties as an Aboriginal liaison officer (ALO).

### Across the system

27	4	3
AWO	Aboriginal engagement adviser	Aboriginal program roles (Ravenhall)



## Cultural programs

Culturally safe programs that help Aboriginal people in custody build positive connections to family, community and culture can help promote rehabilitation and reduce the risk of reoffending. Examples include in-prison arts programs run by the Torch and Box Hill Institute, partnerships with local Aboriginal co-ops, mapping cultural journeys, health-focused Yarning Circles, and visits from local Elders.

### Site by site

10	5
Cultural programs available	No programs or none running currently

## Aboriginal staff

There are fewer than 100 Aboriginal staff working across the adult custodial corrections system. They fulfil a range of roles, from designated positions through to prison officer roles. The presence of Aboriginal staff is an important protective factor for Aboriginal people in custody – they can help provide culturally safe custodial care.

### Site by site

10	2	3
Aboriginal staff	No data supplied	No Aboriginal staff

## Aboriginal independent prison visitors

Each location should have an Aboriginal independent prison visitor (IPV). Aboriginal IPVs play an important oversight role – they visit their assigned site(s) regularly, observe operations, and provide independent advice to the Minister for Corrections. IPVs may speak with people in custody, staff and management, but their role is not to act as advocates for any group.

### Site by site

10	5
IPV	No IPV

## Cultural spaces and gardens

Locations should offer appropriate places for people in custody to practise their culture. Some locations have a dedicated cultural space that can be used for art and other programs, while others have dedicated gardens and fire pits for Yarning Circles, dance and other cultural practices.

### Site by site

3	5	5	2
	Both	Neither	
	Koori garden		
	Cultural space		



## Consistent access to appropriate cultural spaces

Each custodial location must have spaces that allow Aboriginal people in custody to be on Country and for Aboriginal staff to facilitate cultural programs and yarning circles. These spaces create opportunities for shared connection and cultural practice. Access to culture and community are also essential for Aboriginal health and wellbeing, and by extension, the safety of Aboriginal people.

At some locations the Review were able to use these spaces for yarning circles.

'If you look at the hall and you go in, then you look at their cultural centre, you've got paintings by the boys in there that won the Torch. They've got the NAIDOC paintings all through there. They've got didgeridoos, boomerangs, they've got everything in there. But it's a welcoming space for anyone...They held Waitangi Day. They would decorate the place crazy for Waitangi Day, they would dance, they will do everything. It's a multicultural place, but it's also a place for the Indigenous boys to feel safe...It's a free, open space to talk about anything.'

**Aboriginal staff member**

These spaces are valued by both staff and Aboriginal people in custody. However, we heard multiple examples of issues affecting the availability of spaces for cultural practice. During site visits we observed that spaces were not available at all prison locations and significant differences in the quality of cultural spaces provided across the prison system.

'It's really hard to get access to cultural space... They give you a little bit then they pull it back its too confusing. May as well do it the white fella way than do anything with culture because it's easier than putting up and being treated like that.'

**Aboriginal person in custody**

We also heard multiple examples of staff advocating over months – and years – to provide bare minimum cultural spaces and programs for Aboriginal people in custody. This feedback is consistent with the perception shared with the Review that the importance of cultural practice was not understood by prison management and that self-determination is not embedded in practice.

'We haven't had an art room for over six years. We had a good art room and they wanted to turn that into offices for programs department and we were promised another art room that was going to get built. So, they shut the art room down. They then bought a shed, just a tin shed, there's no water, there's no power, there's no lighting. It's just a dark, dingy shed and they expect us to try to do art. It has a concrete floor, no insulation, things like that.'

**Aboriginal staff member**

At other locations, we observed a more developed approach to the provision of spaces for cultural practice. We visited the Beechworth Correctional Centre Garden which featured a space for Aboriginal people to practice culture and connect with Country. This location adopted process of co-design to develop the shared space and gardens to ensure the spaces were culturally appropriate and safe.

### **Co-designing space for cultural practices – Beechworth Correctional Centre Garden**

Connection to Country is recognised as a powerful influence on the wellbeing and identity of Aboriginal people.

At Beechworth Correctional Centre, Aboriginal men in custody were consulted on the design of shared spaces and gardens. Acknowledgement of and respect for Country underpinned the design concept, and the garden includes native trees, flora, and a small watering hole. The Aboriginal men in custody at Beechworth are involved in the garden's upkeep and daily maintenance as an important part of their rehabilitation. It is one of the designated spaces they use to create artworks, which are displayed around the site, including in the gatehouse at the correctional centre's entry.

During our site visit, staff described their collective pride in the co-designed space, while Aboriginal men in custody talked about the importance of being able to conduct smoking ceremonies, cooking, and yarning circles in a culturally safe environment.

Improving the way that Aboriginal people in custody access cultural spaces and facilities was one of the actions identified in the Aboriginal Social and Emotional Wellbeing Plan. This recognises that security considerations sometimes operate to limit access to these spaces and facilities. Based on our engagement and the experiences shared with us, it is clear that Aboriginal people still do not have consistent access to cultural spaces across the system.

While place-based and local based solutions should continue to be part of the overall approach to cultural support, there is a role for increased consistency and stronger standards to ensure the system overall is supporting improvements to cultural safety.

To ensure these standards and expectations are clearly communicated and met with adequate and sustained investment, we recommend that the proposed new legislative framework should include a statutory requirement that all custodial facilities include adequate and accessible cultural spaces to support connection to culture and community for Aboriginal people in custody.

#### **Recommendation 5.7 Facilities provide adequate and accessible cultural spaces**

Within two years of receipt of this report, all existing prisons must include a dedicated, permanent and accessible cultural space that is designated for cultural practices by Aboriginal people.

## Increasing the accessibility of art programs and materials

The connection between cultural practice and wellbeing was described by one of our participants in the following terms.

'[Art for the men here] is about the therapeutic side of it. When they're having a hard time, whether it's through grief and loss...art is a form of – a way out of their head. They're able to just focus on their art and get through the night.... I see a calmness in these men. I also see a cultural identity. I've got men coming to me and asking if I can look into where their people are from, and if I can get them a totem, or get them some kind of information [to put in a painting].'

**Aboriginal staff member**

The establishment of the Statewide Indigenous Arts in Prisons and Community ("the Torch") program and the opportunities it provides for Aboriginal people in custody has been widely supported in many contributions to the Cultural Review. It is clear that there are many positive experiences and vibrant engagement with this program.

Aboriginal people in custody told the Review of the significant positive impact that participation in The Torch program had on their connection to culture, self-development and wellbeing. Participants emphasised the importance of access to resources, such as paint and canvases, for their ongoing connection to culture. We also heard of the significant benefit of the financial independence and opportunity facilitated by The Torch, with some people in custody telling us they intended to pursue careers as artists on release.

The Torch Program was evaluated in 2019. The evaluation found that most people who completed the program in prison reported increased connections with culture and could see a future beyond prison. They also identified a range of opportunities to build on the successful elements on the Torch, including:

- ▶ having more visits to prisons by the Arts Officers
- ▶ increasing the number of Arts Officers, including a female Arts Officer
- ▶ increasing the duration of visits to enable people in custody to have longer with the Arts Officers.

There was also support for more opportunities to participate in exhibitions and an expansion of the range of art practice delivered through the Torch.

While the evaluation identified further opportunities to enhance the program, found:

‘Program participants in both programs overwhelmingly indicated that the program helps them relax, helps them feel better about themselves and helps with their mental health and social and emotional wellbeing. Some spoke about art taking them to another place where they could forget about being in prison, that it filled the time in a positive way and stopped them thinking negative thoughts.’<sup>64</sup>

### **Using art to connect with culture, self-development and wellbeing – The Torch**

The Torch has been providing art and cultural support to Aboriginal people in custody through the Statewide Indigenous Art in Prisons and Community (SIAPC) program since 2011. The program aims to reduce the high recidivism rate for Aboriginal people in custody through enhancing cultural and community connectedness and increasing employment and financial opportunities following release from prison.<sup>65</sup>

‘The program focuses on reconnecting prisoners with their culture and assisting them to develop sustainable post-release pathways, with a particular focus on arts based vocational avenues to increase their levels of legitimate and self-generated income.’<sup>66</sup>

The SIAPC program has three main components:

- ▶ In prison: On-site art sessions aim to connect Aboriginal people in custody with their culture, including by assisting them to learn about the language group, culture and Country of their mob, and provide guidance for emerging artists to develop their artistic capabilities in culturally safe spaces.
- ▶ Post release: Aboriginal participants who have been released from prison are supported to reintegrate back into the community through network building, professional development activities, and supporting employment opportunities in the Aboriginal arts economy.
- ▶ Economic development: Participants are provided with opportunities to earn income through the promotion, licensing and sale of artworks. In 2016, the Victorian Government introduced reforms that allow Aboriginal people in custody to sell their artwork while they are still in prison. All proceeds from the sale of artwork goes directly to the artist when they are released, providing an income source as they transition back into the community.<sup>67</sup>

In 2021 The Torch worked with 390 people in custody across Victoria and 220 former prisoners in the community. In June 2022, The Torch presented *Confined 13*, a public exhibition showing 394 artworks by 351 Aboriginal artists who were either currently in custody or had recently been released. Every exhibiting artist sold an artwork through the exhibition, with many selling their first piece of art.<sup>68</sup>

<sup>64</sup> EMS Consultants, *Evaluation of the Torch Indigenous Arts in Prisons & Community Programs*. (Final Report, 2019) 41.

<sup>65</sup> Department of Justice and Community Safety (Corrections Victoria), *Aboriginal Art Policy Model* (January 2016) 9.

<sup>66</sup> *Ibid.* 7.

<sup>67</sup> EMS Consultants, *Evaluation of the Torch Indigenous Arts in Prisons & Community Programs*. (Final Report, 2019) 9

<sup>68</sup> The Torch, *‘Every artist in Confined 13 sells an artwork!’* (Web page, June 2021) <https://thetorch.org.au/news/every-artist-sells-an-artwork/>.

The in-prison component of the program is funded by DJCS and is run by The Torch at all public and private adult custodial locations by The Torch, with oversight from the Yilam.<sup>69</sup> The community part of the program is funded by the City of Port Phillip, Corrections Victoria, Creative Victoria and number of philanthropic organisations.<sup>70</sup>

In 2018, \$40.3million was provided to support initiatives under the AJA 4, including \$2.2 million to support the expansion of The Torch workforce to provide better state-wide coverage.<sup>71</sup> In January 2022, The Torch received \$0.8million over four years in additional funding through Creative Victoria's Creative Enterprises Program.<sup>72</sup>

Despite the many positive experiences for participants in the Torch Program and the system support for this program, we heard that at the site level Aboriginal people in custody still experience barriers and frustrations when access to supplies to support their cultural practice were not facilitated by custodial officers or by their prison location more generally. In some cases, we heard that a staff member's judgement that practicing culture was a privilege that had not been earned meant that the Aboriginal person was unable to practice culture.

### Impact of lack of access to art supplies

An Aboriginal man in custody told us about his difficulty accessing art supplies and the significant impact it has had on his mental health:

'I had done an application to purchase a 10 metre roll of canvas and paint. This application took three and a half months to lodge. I was then refused to get the roll of canvas but made to purchase only eight pieces of canvass and forced to buy nine litres of paint, I was then unable to purchase any more art supplies the following month but at the time I was told I would be able to.

With no valid reason this now means I have nine litres of paint with no canvas to paint on and no valid reason why I can't. At no time within the month had someone come to tell me that I was not going to be able to buy any more [canvas].

Why was I forced to buy those items outright when it's in the [art policy] that I repay the prison for items I have used and not that I have to buy it myself, but I am meant to reimburse the prison for it only?

This is deliberate treatment and a premeditated use of power to only cause hardship... this degrading treatment made me feel emotionally unstable thinking of how this happens to me, and why...

How degrading is this treatment towards me that plays on my vulnerabilities, mental health... forced to spend my saved funds to keep contact with my Mob causing continued feelings of worthlessness...

<sup>69</sup> Department of Justice and Community Safety (Corrections Victoria), Aboriginal Art Policy Model (January 2016) 2.

<sup>70</sup> The Torch, *What we do: In community*. (Web page, 2022) <https://thetorch.org.au/what-we-do/in-community/>.

<sup>71</sup> Department of Justice and Community Safety, *Annual Report 2018-2019* (Report, 2019) 12

<sup>72</sup> Creative Victoria, *Creative Enterprises Program* (Web page, 2022) <https://creative.vic.gov.au/grants-and-support/programs/multiyear-investment/creative-enterprises-program>.

Painting was my only way to deal with all these emotions, anxieties, depression, loneliness and fears of abandonment and fear of continued misinterpretation that causes the mistreatment.

Not allowing this is making life all that more unbearable. Forcing me to remove my art off my walls when others can express theirs on the wall but I'm not only because it's the decision of the officer that they can and I can't.'

*An Aboriginal person in custody*

## Sorry Business

One of the issues raised across our engagement and in conversations with stakeholders was the arrangements for attending funerals and participation in Sorry Business.

We heard that the refusal of most applications to attend funerals during the COVID-19 pandemic had a significant detrimental impact on the health and wellbeing of Aboriginal people in custody and their access to culture and community.<sup>73</sup>

Others have pointed to the disconnect between the intention of the existing policies and operational practice. For example, there is a clear process and support for Aboriginal people to apply to attend funerals and a central process for the provision of cultural advice by the Yilam to support the consideration of funeral applications by the Assistant Commissioner, Sentence Management Division.<sup>74</sup> Despite this, some Aboriginal people in custody told us they could not complete the written form to apply to attend a funeral. This meant that they needed to ask for assistance and could only attend Sorry Business if there was a member of corrections staff willing to assist them to complete the paperwork and make an application.

We heard that even where a person in custody receives support to make an application, the paperwork is often not prioritised by non- Aboriginal operational and leadership staff at their location to enable their application to be considered. The effect is that the paperwork may not be finalised in time for a person to attend the funeral.

DJCS has advised that where an application to attend a funeral is not supported alternative arrangements are made such as attendance by video link from within the prison. They also advised that sometimes an application may be refused due to the preferences and needs of the family or because there are legal barriers to attendance, such as for compliance with an intervention order where the protected person may also be attending the funeral. DJCS also noted that a regular report is provided to the Aboriginal Justice Forum about funeral applications and whether or not they were supported.

Victoria Legal Aid recommended strengthening Aboriginal people in custody's cultural obligation and right to participate in Sorry Business, including removing the

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<sup>73</sup> Ibid. 7

<sup>74</sup> See Corrections Victoria, *Commissioner's Requirement 1.2.8 Funeral Attendance of Aboriginal Prisoners* (June 2021) 2.

number limits for attendance to family funerals and the inclusion of an Aboriginal person in the review of decisions to refuse attendance.<sup>75</sup>

Even where people were not leaving custody for Sorry Business, we heard that there were barriers to related cultural practices, including smoking ceremonies. Some Aboriginal people said they were locked down after being told they could not attend Sorry Business, with no reason given as to why.

‘Following the death of an Aboriginal person in the community, the men wanted to have a smoking ceremony, but it wasn’t approved because there had already been a smoking ceremony earlier in the week ... And I was crying, I was actually in tears – because management don’t understand the cultural significance of a smoking ceremony following the death of an Aboriginal person.’

**Aboriginal staff member**

In Part 2 (also referenced in Chapter 15), as part of the development of legislation to support change within the adult custodial corrections system, we have recommended specific recognition of the protective role of culture, the realisation of cultural rights within the system and the role of family and community in supporting health, wellbeing and rehabilitation for Aboriginal people in custody. We also recommend a positive duty to provide culturally responsive services. The recognition of these elements in the legislation will shape system planning and program delivery and assist to achieve greater consistency in access to programs and decision-making to support the realisation of cultural rights.

## Culturally appropriate and quality health and wellbeing care

Without exception, every Aboriginal person in custody that we spoke to reported serious challenges in accessing medical treatment including an overwhelming sense that they had no control over their health needs. We heard many stories of people living in custody with chronic pain that was poorly treated, under recognised, dismissed and which over time, in addition to the physical pain, resulted in anxiety, depression and emotional instability.

Aboriginal people in custody are more likely to experience health issues and chronic disease. Aboriginal people are also likely to experience further barriers to accessing healthcare given the impact of trauma, dispossession, family separation, systemic racism, and stigma.

<sup>75</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 7.

### Aboriginal people with disability

According to recently updated data from the Australian Bureau of Statistics, one-third of First Nations peoples have disability.<sup>76</sup> Almost half of all First Nations peoples (48 per cent) aged 18 years and over, have disability.<sup>77</sup> The most common disability type among First Nations adults is physical disability, where around 30 per cent, or 150,000, First Nations adults have a physical disability.<sup>78</sup>

Disability can remain undiagnosed or undetected for First Nations peoples. This can be linked to challenges with data and identification as people may experience shame and stigma.<sup>79</sup> The Disability Royal Commission heard that these factors "can further marginalise First Nations people with disability and place them at increased risk of neglect at individual and systemic levels."<sup>80</sup>

Health inequality increases the need to ensure that the standard of healthcare provided to people in custody can achieve equivalent outcomes to care provided in the community, and that Aboriginal people have access to health and wellbeing care that can support these outcomes.

The Victorian Aboriginal Legal Service emphasised the importance of equivalent healthcare for people in custody given the complexity of health needs within the custodial population.

'Equivalence of care is particularly important because people in prison are disproportionately likely to have pre-existing health conditions and vulnerabilities which exacerbate their healthcare needs.'

**Victorian Aboriginal Legal Service**

In *Part 6. People in custody*, we recommend that a right to equivalent health outcomes for people in custody is included within the legislative framework for the adult custodial corrections system. We also recommend a new community led model of health for Aboriginal people in custody.

<sup>76</sup> Australian Bureau of Statistics, *Census of Population and Housing: Census Dictionary*, 2021, 15 October 2021.

<sup>77</sup> Australian Bureau of Statistics, *Census of Population and Housing*, 28 June 2022

<sup>78</sup> Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Health Survey, 2018-19*, 11 December 2019.

<sup>79</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Interim Report, 2020), 473.

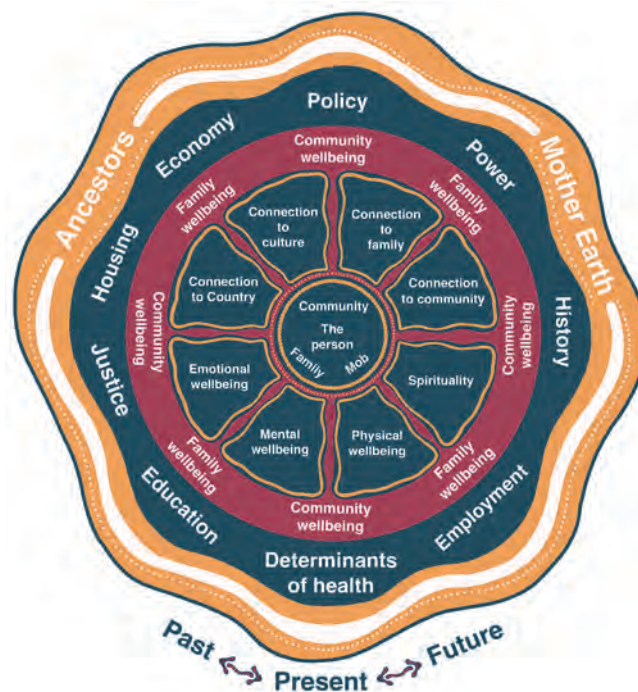
<sup>80</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* (Interim Report, 2020), 473.



## Aboriginal health and wellbeing

Aboriginal people see health more broadly than many non-Indigenous people do.<sup>81</sup> Research shows that Aboriginal people's health is better when closely connected to family, to community and to mob, with a sense of strong identity as an Aboriginal person. It is also influenced by spirituality and by physical, mental, and emotional wellbeing. Underpinning this are strong ties between ancestors, creation spirits and the environment.

We note respectfully that meanings of health among Aboriginal people vary between different nations and locations, and at different stages of the life cycle.<sup>82</sup> The figure broadly illustrates how an Aboriginal person experiences health.<sup>83</sup>



<sup>81</sup> National Aboriginal Community Controlled Health Organisation, *Aboriginal Community Controlled Health Organisations (ACCOs)*, (Web page) <https://www.naccho.org.au/acchos/>.

<sup>82</sup> Aboriginal Health Council of Western Australia, *ACCHS Social & Emotional Wellbeing Service Model*, (Web page, 2021) [.AHCWA - ACCHS Social & Emotional Wellbeing Service Model - Transforming Indigenous Mental Health and Wellbeing \(timhwb.org.au\)](https://www.ahcwa.org.au/ACCHS-Social-Emotional-Wellbeing-Service-Model).

<sup>83</sup> Megan Williams, Mark Ragg and Jack Bulman 'Aboriginal mental health and wellbeing model of care: Report to community' (2022, in press). Artwork by Jessie Waratah. This draws on the work of Patricia Dudgeon, Helen Milroy and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, (Commonwealth of Australia, 2<sup>nd</sup> ed, 2014); Graham Gee et al. 'Aboriginal and Torres Strait Islander Social and Emotional Wellbeing' in Patricia Dudgeon et al (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, (Commonwealth of Australia, 2<sup>nd</sup> ed, 2014) 55-58; the leadership of the Lowitja Institute on cultural determinants of health; various work on social determinants of health, for example, Pranee Liamputtong (ed), 'Social Determinants of Health' (Oxford University Press, 2019 and the Uluru Statement from the Heart (First Nations Constitutional Convention). It was developed in an iterative process by Yulang Indigenous Evaluation, a NSW-based consultancy led by Professor Megan Williams, who is Wiradjuri. This visual cannot be adopted without thought. It needs to be reviewed by Victorian Aboriginal health organisations such as Victorian Aboriginal Community Controlled Health Organisation (VACCHO), and accepted, rejected or adapted for the local context.

The health and wellbeing of Aboriginal people cannot be considered without understanding the continuing devastation brought by colonisation, the ongoing impact of systemic and interpersonal racism, the impact of forced removals of children from families on connections to identity, kinship and Country, and the ongoing failure to address all these issues adequately.

Understanding health from the perspective of Aboriginal people helps explain the importance of access to culture, community, Country and family to the mental health and wellbeing of Aboriginal people. It also explains clearly why incarceration, which demands separation from family, community and usually Country, is so damaging to the health of many Aboriginal people.

For this reason, the delivery of healthcare to Aboriginal people in custody cannot be a variation or a more “culturally safe” version of mainstream health services. It should be designed to support a holistic conception, as shown in the diagram above.

## Experiences of mainstream healthcare shared by Aboriginal people in custody

Across all locations, Aboriginal people stated that they did not feel culturally safe when trying to access mainstream prison healthcare. Some Aboriginal people we spoke to were very explicit about their safety concerns and told us about being frightened to access healthcare because of fears of dying in custody:

‘And my experience in [prison] was pretty full-on. Especially with my heart condition, I saw someone die in there. All because their medical treatment in there, they took about five to 10 minutes, and a bloke died because they took too long to get there. And then it had me thinking, “What if I have a lot of episodes? Am I going to make it?” And that took a toll on me a little bit.’

**Former person in custody**

We heard about the impact of trauma and how these experiences shaped help-seeking behaviour and perceptions of risk. Some Aboriginal people identified the impact of intergenerational trauma and the related fear of medical intervention or sharing information that might result in separation from other Aboriginal people, their families and communities.

Some Aboriginal people also told us that they were reluctant to use health services because they had been subjected to racism and discrimination. We heard about the impact of bias and racist stigmas that minimised the role of health conditions or undermined people’s healthcare needs and experiences. These issues are well understood as barriers to access to healthcare in the community and are exacerbated for people in custody due to power dynamics and the lack of choice and autonomy inherent in the custodial health system.

Aboriginal people also told the Review that the requirement to make written requests to access healthcare and communicate with non-Aboriginal staff about their healthcare needs can create additional barriers. The cultural protocols relating to sharing of personal information, may contribute to Aboriginal people not receiving

culturally appropriate support to make requests or communicate freely about their health requirements or concerns.

In particular, we heard that lack of culturally appropriate care limits the information that Aboriginal women may feel able to share when they enter custody. This can present a significant risk, particularly if a person has health issues that need to be actively managed.

‘When Aboriginal women go through reception, quite often the first point of call will be a male doctor and that can raise some issues around what they disclose and what issues are going on for them, because they’re not comfortable talking to a male practitioner about health issues.’

**Naalamba Ganbu and Nerrlinggu Yilam**

Delays in accessing routine health checks and getting appointments were also an issue raised by Aboriginal people across all locations. We heard that issues accessing healthcare made a difference to how people interacted with staff and other people in custody. People told us about the impact of pain, distress and confusion, including on their behaviour, resulting in disciplinary consequences.

‘It’s hard to get onto medication, in particular to support mental health or manage pain. In an ideal world, we’d have better access to counselling and medical care.’

**Person in custody**

Aboriginal people in custody told the Review at many locations that they felt that appropriate alcohol and other drug (AOD) programs were not available to them, and that these programs are often provided by staff and in locations that were not conducive to recovery in a culturally safe space.

Many of our stakeholder participants identified the opportunity to adopt a more proactive and gender-sensitive approach to health care. Rather than responding to health concerns when they arise, we support a culturally safe, proactive approach that addresses the unmet health needs of a person who enters custody and ensures that the person remains healthy during their time in custody through appropriate physical and psychological support. Such an approach is consistent with rehabilitation and reducing the risk of reoffending and re-entry into the criminal justice system.

‘In relation to improving access to health services [in prison] What would I do about it? I’d probably make it compulsory for all of our men and women to have health checks while they’re in there. I think it’s a great opportunity to engage them and get that on track, but also be supported by Aboriginal practitioners through the process.’

**Naalamba Ganbu and Nerrlinggu Yilam**

## Developing a new model of healthcare for Aboriginal people in custody

The development of a new model of healthcare for Aboriginal people in custody must be an urgent priority. This is further discussed in Part 6, as part of recommendations for comprehensive reform of the delivery of healthcare services in prisons. As part of these reforms, we recommend a greater role for the direct delivery or supported delivery of primary health care services by Aboriginal community-controlled health organisations (ACCHOs). This should be delivered through a relational and supportive partnership between the Department of Health, DJCS and the Aboriginal community, rather than a transfer of responsibility and risk to the Aboriginal community.

ACCHOs provide place-based health services based on the needs of the community. ACCHOs are rooted in the community – the term ‘community-controlled’ is very real, with board members and staff drawn from local communities. In that way, ACCHOs can be more responsive to needs of Aboriginal people than mainstream health services.

Facilitating improved access to culturally safe healthcare through partnership and direct service delivery by ACCHOs has been demonstrated to improve health outcomes for Aboriginal people in custody in the Australian Capital Territory. In the ACT, the Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga AHCS) delivers standalone health care services to Aboriginal people in custody in the Alexander Maconochie Centre in the Australian Capital Territory. This includes providing Aboriginal people in custody with health checks, comprehensive mental and health care plans, social and emotional wellbeing services, medication management, referrals to specialists and allied health, women and men's health and drug and alcohol rehabilitation.

The Winnunga AHCS has also developed the Winnunga Holistic Health Care Prison Model which provides a model for increased integration of health, wellbeing, case management and throughcare services to support Aboriginal people while they are in custody and provide continuity of care for Aboriginal people when they return to the community. The success of this model has been evaluated. The benefits of the approach are set out in the case study below.

## Case Study – Winnunga Holistic Health Care Prison Model

Winnunga AHCS is an Aboriginal community-controlled primary health care service operated by and for Aboriginal people in the ACT and surrounding areas. The Winnunga Holistic Care Prison Model draws on the lived experience of Aboriginal people in contact with the criminal justice system to provide a culturally appropriate, holistic health care service delivery approach with different but interconnected strategies to improve the health and wellbeing of Aboriginal people during their time in custody, after their release and in managing the cycle of incarceration through early intervention and prevention.

Central to the model and its development are the broader social, economic and cultural inequalities that disadvantage Aboriginal people and negatively impact their perception, access and experience of healthcare service provision and delivery. Research supporting holistic Aboriginal healthcare places equal importance on the individual, family and the community and promotes the provision of culturally sensitive programs and interventions that use Aboriginal concepts where appropriate and prioritise the fair and equitable treatment of Aboriginal people.<sup>84</sup>

The model includes culturally sensitive health programs that target early detection of chronic diseases and health promotion activities that specifically focus on physical, social and emotional wellbeing.

Identity and culture are key determinants of Aboriginal perceptions of health and ill health and sit at the centre of the Winnunga model. Research supporting the model outlines that an Aboriginal person in custody's sense of identity can be protected by providing effective throughcare that prioritises post-release accommodation arrangements, reintegration into community and employment opportunities.<sup>85</sup> Access to culture and spirituality are equally important to throughcare and the model promotes Aboriginal healing programs, Elder support, education that focuses on Aboriginal history including the impacts of colonisation and Aboriginal life coaching or future planning.

Importantly, the model recommends that ACCOs and their healthcare workers, Elders and mentors have continuity of involvement in an Aboriginal person's custodial experience (commencing on entry), thus ensuring that practical community assistance is coordinated through various organisations and supports.

In 2018, the ACT Government provided funding to pilot the Winnunga Holistic Health Care Model in the ACT's Alexander Maconochie Centre adult prison.<sup>86</sup> A 2020 evaluation of patient satisfaction indicated that Aboriginal people were highly satisfied with the quality, timeliness and cultural safety of the healthcare services provided under the new model.<sup>87</sup> All 16 patients reported that Winnunga AMCHWS staff always treated them with dignity and respect. Of 14 patients who identified as Aboriginal, nine felt that they were treated better by staff because of their Aboriginal identity, while the other five felt their Aboriginal identity made no difference to their treatment by the staff.<sup>88</sup> The evaluation contributes to the precedent for other jurisdictions, including Victoria, to introduce holistic models of prison healthcare operated by Aboriginal Controlled Community Organisations.

<sup>84</sup> Chris Cunneen, 'NSW Aboriginal Justice Plan: Discussion Paper' (Aboriginal Justice Advisory Council, 26 August 2002) 38, cited in Nerelle Poroch, *Winnunga Nimmityjah Aboriginal Health Service, You do the Crime, You do the time: Best Practice Model of Holistic Health Service Delivery for Aboriginal and Torres Strait Islander Inmates of the ACT Prison* (Report, June 2007) 16.

The value of the Winnunga Holistic Health Care Prison Model has also been recognised by the ACT Inspector of Custodial Services when inspecting custodial facilities in the ACT.<sup>89</sup> Notwithstanding the different system configurations in Victoria and the ACT, the Winnunga AHCS contains many elements of best practice and should be carefully considered in a new model of community led Aboriginal custodial health care in Victoria.

To support the development of this model of primary health care, and as part of broader improvements to the delivery and oversight of custodial healthcare recommended in Part 6, DJCS should invite funding proposals from the Aboriginal community to develop and provide a specific health service and model of primary healthcare for Aboriginal people in custody at all locations.

Before the commencement of direct or supported delivery of primary healthcare by ACCOs, there should be a partnership process to develop an appropriate model of care that is built on understanding of Aboriginal health and in consultation with Aboriginal organisation and Aboriginal people in custody and their families.

Where appropriate, the model of care should also build on recommendations of inquiry and reform processes, including recommendations of the Coroners Court of Victoria.

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<sup>85</sup> Chris Cunneen, 'NSW Aboriginal Justice Plan: Discussion Paper' (Aboriginal Justice Advisory Council, 26 August 2002) 38, cited in Nerelle Poroch, *Winnunga Nimmityjah Aboriginal Health Service, You do the Crime, You do the time: Best Practice Model of Holistic Health Service Delivery for Aboriginal and Torres Strait Islander Inmates of the ACT Prison* (Report, June 2007) 16.

<sup>86</sup> Shane Rattenbury, ACT Government, 'Improved health model of care at the Alexander Maconochie Centre' (Media release, 7 February 2018) [https://www.cmtedd.act.gov.au/open\\_government/inform/act\\_government\\_media\\_releases/rattenbury/2018/improved-health-model-of-care-at-the-alexander-maconochie-centre](https://www.cmtedd.act.gov.au/open_government/inform/act_government_media_releases/rattenbury/2018/improved-health-model-of-care-at-the-alexander-maconochie-centre).

<sup>87</sup> Lachlan Arthur et al, 'Evaluating Patient Experience at a Novel Health Service for Aboriginal and Torres Strait Islander Prisoners: A Pilot Study' (2022) 3(1) *Journal of the Australian Indigenous HealthInfoNet* 1, 7-9.

<sup>88</sup> Lachlan Arthur et al, 'Evaluating Patient Experience at a Novel Health Service for Aboriginal and Torres Strait Islander Prisoners: A Pilot Study' (2022) 3(1) *Journal of the Australian Indigenous HealthInfoNet* 1, 8.

<sup>89</sup> ACT Inspector of Correctional Services, *Healthy Prison Review of the Alexander Maconochie Centre 2019* (Report, 2019) 20, 103-4.

**Recommendation 5.8**  
**Safer health services**  
**and continuity of care**  
**for Aboriginal people**

The Department of Justice and Community Safety should commission a Victorian Aboriginal community-controlled health organisation, peak body or Aboriginal consultancy service to develop a model of care for Aboriginal people in custody. The model of care should:

- a) be developed via a funded process in consultation with Aboriginal people in custody and their families, service providers, and stakeholder organisations with understanding of the needs of Aboriginal people in custody
- b) take into account intersectional issues that may affect Aboriginal people in custody
- c) recognise the diverse roles and supports that might contribute to holistic health and wellbeing support for Aboriginal people
- d) support equivalent healthcare outcomes and continuity of care for Aboriginal people
- e) be clear enough to provide guidance across the state, but flexible enough to account for the local adaptations that will be required to suit particular facilities and communities.

## Access to regular health checks

Aboriginal people in custody should have access to the regular health checks that are available to them in the community. Aboriginal people have entitlement to an additional regular health check, introduced in recognition of the particular health risks for Aboriginal people. This health check is known as 'MBS Item 715' and is usually funded by Medicare and provides for a health check at regular intervals with specific requirements about what health assessments must be done.<sup>90</sup>

Approximately 27 per cent of Aboriginal people received this health check in 2020–21,<sup>91</sup> and the numbers were rising consistently until the COVID-19 pandemic.<sup>92</sup>

<sup>90</sup> See further Australian Government, Department of Health and Aged Care, 'Medicare Benefits Schedule - Item 175' *MBS Online - Medicare Benefits Schedule* (Web page) <http://www9.health.gov.au/mbs/fullDisplay.cfm?type=item&q=715>.

<sup>91</sup> Australian Institute of Health and Welfare, 'National rates by age and sex' *Indigenous health checks and follow-ups* (Web page, August 2022) <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-health-checks-follow-ups/contents/rate-of-health-checks/national-rates-by-age-and-sex>.

<sup>92</sup> Australian Institute of Health and Welfare, 'Trends in annual rate of health checks' *Indigenous health checks and follow-ups* (Web page, August 2022) <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-health-checks-follow-ups/contents/rate-of-health-checks/trends-in-annual-rate-of-health-checks>.

If that health check raises issues, Aboriginal people are referred to a care coordination team, or for follow-up to a nurse or allied health practitioner. About 18 per cent of the Aboriginal population had such a follow-up – two-thirds of those who had an item 715 health check.<sup>93</sup> This health check is commonly carried out by ACCOs and should continue to be available to people in custody and carried out in a culturally appropriate way.

We recognise that the health check may be the starting point for the development of more comprehensive health care management plans which are essential to manage the many chronic health conditions experienced by Aboriginal people involved in the justice system.

**Recommendation 5.9**  
**Access to regular**  
**Aboriginal health**  
**checks**

The Department of Justice and Community Safety should provide more comprehensive, regular and culturally safe access to health assessments and health checks by:

- a) offering Aboriginal people in custody the regular MBS Item 715 health check that they would be entitled to in the community in recognition of particular health risks for Aboriginal people. This check is to be provided in addition to other standard health checks and assessments available to people in custody
- b) ensuring that health assessment and screenings of Aboriginal people are conducted by an Aboriginal health provider or professional or where that is not possible by a non-Indigenous health professional supported by an Aboriginal person.

## Access to culturally appropriate mental health care

The Review also considers that much more needs to be done to provide Aboriginal people in custody with culturally appropriate mental health care.

‘We need to have more Aboriginal Elders, or maybe – we need to actually have a counselling service ...one-on-one for the men. [At the moment] they have a psychiatrist [they need to put in a form to see] then there is a long waiting list. It’s not good enough.’

**Aboriginal staff member**

<sup>93</sup> Australian Institute of Health and Welfare, 'Number of follow-ups' *Indigenous health checks and follow-ups* (Web page, August 2022) <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-health-checks-follow-ups/contents/number-of-follow-ups>.



We heard that access to culturally informed programs that support mental health support is inconsistent and the impact of people moving around the system to different locations can affect their completion of mental health support programs.

The challenges associated with the delivery of mental health support to people in custody are also increased by the stigma associated with mental health issues within the Aboriginal community. There are also different ways of understanding and talking about wellbeing challenges within the Aboriginal community, connected to the holistic understanding of health and wellbeing outlined above. This can influence whether a person identifies and discloses a mental health issue.

Accordingly, there is evidence that the number of Aboriginal people in custody with mental health issues is underreported.<sup>94</sup> The 2021 Royal Commission into Victoria's Mental Health System found that poor mental health and substance use disorders may account for as much as 14 per cent of the health gap between Aboriginal and non-Aboriginal people. One study found that Aboriginal adolescents (aged 18–24 years) experience psychological distress at twice the rate of non-Aboriginal adolescents. Finally, the national suicide rate for Aboriginal people is estimated to be twice the rate of the general population.<sup>95</sup>

During our site visits, Aboriginal people in custody described some of the barriers to accessing mental health services they had experienced, including a lack of cultural safety in the available services.

More needs to be done to help identify and respond to mental health issues for Aboriginal people in custody. Importantly any screening tools that are developed for identifying mental health issues for people in custody must be culturally informed and careful attention should be given to how screening processes are administered. Aboriginal people working in mental health argue that it is more important to have assessments made by Aboriginal people than it is to have assessment tools, culturally validated or not, used by non-Indigenous people.<sup>96</sup>

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<sup>94</sup> James Ogloff et al., *Koori Prisoner Mental Health and Cognitive Function Study* (Final report, 2013) 32-5 [https://files.corrections.vic.gov.au/2021-06/koori\\_prisoner\\_mental\\_health\\_0.pdf](https://files.corrections.vic.gov.au/2021-06/koori_prisoner_mental_health_0.pdf).

<sup>95</sup>

Royal Commission into Victoria's Mental Health System, 'Aboriginal social and emotional wellbeing' (Fact sheet, 2021) 1 <https://finalreport.rcvmhs.vic.gov.au/wp-content/uploads/2021/01/Fact-Sheet-%E2%80%93-Aboriginal-social-and-emotional-wellbeing.pdf>.

<sup>96</sup> Megan Williams, Mark Ragg and Jack Bulman 'Aboriginal mental health and wellbeing model of care: Report to community' (2022, in press).

### **Developing a culturally safe screening tool for depression in Aboriginal patients – South Australia’s ‘Getting it Right’ study**

There is a growing awareness of the contribution that poor mental health can make to the health gap between Aboriginal and non-Aboriginal people.

To address this gap, the South Australian Health and Medical Research Institute (SAHMRI) and the George Institute for Global Health recently collaborated on the Getting it Right study, which adapted an existing screening tool for depression – the internationally recognised Patient Health Questionnaire (PHQ-9) – for Aboriginal people.

In the standard PHQ-9, patients are asked to answer nine questions, scoring each from zero (‘not at all’) to three (‘nearly every day’). Questions ask about the patient’s mood, appetite, sleep patterns, energy and concentration levels. The patient’s total score can help clinicians make an initial diagnosis of depression minimal (1–4), mild (5–9), moderate (10–14), moderately severe (15–19) or severe (20–27).<sup>97</sup>

For the Getting it Right study, SAHMRI and the George Institute for Global Health worked with Aboriginal and Torres Strait Islander primary care providers to develop an adapted Patient Health Questionnaire (aPHQ-9), which includes culturally specific language to ask about mood, appetite, sleep patterns, energy, and concentration levels. The aPHQ-9 incorporates features of depression that may be experienced by Aboriginal people: anger, weakened spirit, homesickness, irritability, excessive worry, rumination, and drug or alcohol use.<sup>98</sup> These terms were not previously used in the questionnaire, likely resulting in missed diagnoses among Aboriginal patients. A valuation study conducted in 10 health services across Australia validated the aPHQ-9’s suitability as a tool for screening depression for depression in Aboriginal patients, when it is administered by trained professionals.<sup>99</sup>

This example shows how validated screening tools can more effectively and more safely identify and diagnose mental health conditions in Aboriginal patients,<sup>100</sup> particularly important in custodial settings.

#### **Recommendation 5.10 Culturally appropriate mental health screening tool for Aboriginal people**

The Department of Justice and Community Safety should work with Aboriginal community-controlled health organisations and peak bodies to identify and validate a culturally appropriate screening tool to assess any mental health issues for Aboriginal people entering the adult custodial corrections system. The screening tool should be administered as part of ongoing mental health care for Aboriginal people in custody.

<sup>97</sup> Pfizer, *Patient Health Questionnaire (PHQ-9)* (1999) <https://www.stanfordmedicalcentre.co.uk/phq9.aspx>.

<sup>98</sup> Marie L Hackett et al, Getting it Right Collaborative Group, ‘Getting it Right: validating a culturally specific screening tool for depression (aPHQ-9) in Aboriginal and Torres Strait Islander Australians’ (2019) 211(2) *The Medical Journal of Australia* 24, 24.

<sup>99</sup> See generally Marie L Hackett et al, Getting it Right Collaborative Group, ‘Getting it Right: validating a culturally specific screening tool for depression (aPHQ-9) in Aboriginal and Torres Strait Islander Australians’ (2019) 211(2) *The Medical Journal of Australia* 24.

<sup>100</sup> South Australian Health and Medical Research Institute (SAHMRI) ‘New screening tool to help Aboriginal and Torres Strait Islander people combat depression’ (Web page, 1 July 2019) <https://sahmri.org.au/news/new-screening-tool-to-help-aboriginal-and-torres-strait-islander-people-combat-depression>.

## Responding to the distinct health and wellbeing needs of Aboriginal women

### Recognising the distinct needs of Aboriginal women

'Our position is that no woman belongs in prison. Prisons are designed to dehumanise and punish people. They are inherently unsafe places for Aboriginal women and cannot be made culturally safe. Our women belong in communities, growing and nurturing family and connected to culture.'<sup>101</sup>

**Djirra**

Many Aboriginal women carry trauma in their lives and into the custodial environment. In particular, Aboriginal women who were removed from their families as children of the Stolen Generations are significantly more likely to have experienced trauma, abuse (including sexual abuse) and been sexually assaulted, to have attempted suicide and be imprisoned on more than five previous occasions.<sup>102</sup>

There is an urgent requirement for the adult custodial corrections system to better recognise the distinct needs of Aboriginal women in custody and ensure that systems and processes support trauma-informed, gender-sensitive and culturally-informed care for Aboriginal women in custody. The Victorian Aboriginal Legal Service (VALS) described the situation for many Aboriginal women in custody in the following terms:

'Women in prison should be given particular attention in the design and implementation of programs to rehabilitate and reduce reoffending. This is essential because incarcerated women are, on the one hand, less likely to have committed serious offences, and on the other, more likely to enter prison with past experiences that make them susceptible to re-traumatisation and cycles of offending without special care.'<sup>103</sup>

**Victorian Aboriginal Legal Service**

<sup>101</sup> Djirra, Submission to the Cultural Review (December 2021).

<sup>102</sup> Ed Heffernan et al, 'The Family Business: Improving the understanding and treatment of post traumatic stress disorder among incarcerated Aboriginal and Torres Strait Islander women' (Report, 2015) *BeyondBlue*.

<sup>103</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 114.

During our site visits, we heard that there were limited culturally safe programs, spaces, and rehabilitative opportunities for Aboriginal women in custody in Victoria. We heard that Aboriginal women in custody do not feel safe. We heard from stakeholders that more needs to be done to meet the distinct needs of Aboriginal women, with a focus on delivering culturally informed programs and supports to women on remand and those with experience of substance use, trauma and experiencing family separation.<sup>104</sup>

‘Any time in prison is severely disruptive for Aboriginal women, impacting on their families. Many receive ‘time served’ as punishment for offending that would never attract a custodial sentence. Having a criminal record with a term of imprisonment is an often insurmountable barrier for Aboriginal women to get their lives on track after they are released.’<sup>105</sup>

**Djirra**

We heard that the system is operating to separate people from their communities and the cultural supports they need at a time of acute need.

‘One observation would be that this use of imprisonment as a first resort seems to be impacting Aboriginal women more than any other group of women. Even though Aboriginal women might be experiencing things like problems with child protection and so forth in a similar way to others, it has more of an impact because there’s more families affected, and their families are already vulnerable. It doubles that impact.

It’s very difficult to establish cultural and meaningful ties with programs in prison when you’re in there for such a short period of time and segregated for all of that time. It actually seems to be operating to just separate people out from their communities, not put them in touch with the kind of supports that might be available from Elders and others in prison – because of not being able to attend cultural programs and groups and those sorts of things because they’re in such a churn of short terms.’

**Expert interview**

We welcome the recognition of the need to adopt healing responses for Aboriginal women and the recent commitment to increase the healing and culturally informed approaches to meeting the distinct needs of Aboriginal women in custody at DPFC.

<sup>104</sup> Djirra, Submission to the Cultural Review (December 2021) 1; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 67.

<sup>105</sup> Djirra, Submission to the Cultural Review (December 2021) 1.

### Aboriginal Healing Unit at DPFC

Funding was provided for in the 2021–22 State Budget to establish Victoria's first Aboriginal Healing Unit at DPFC.<sup>106</sup>

The development and implementation of the Healing Unit is being led by the Yilam. The Yilam is responsible for leading the design, development, implementation and monitoring of Corrections Victoria policies, programs and services aimed at reducing the over-representation of Aboriginal people in custody.

The project aligns with Goal 2.4 of the fourth phase of the AJA: Fewer Aboriginal people return to the criminal justice system and was initiated by the Yilam and Corrections Victoria in response to ongoing interest from the Aboriginal Justice Caucus and broader community in relation to the need to establish a residential facility for Aboriginal women in custody.

The aim of the Healing Unit will be to reduce recidivism by addressing the underlying factors of offending, using cultural strengthening as a protective factor. The focus of the unit will be on cultural immersion and tailored case management and support developed specifically for Aboriginal women in prison. It will operate as a therapeutic community, providing the necessary supports to women to build essential life skills required to maintain pro-social connections following release from prison.

The Healing Unit project is still in planning stages, however it is expected to service up to 20 participants, and will include a program space and shared accommodation for ten to 12 Aboriginal women.<sup>107</sup> The Healing Unit will be operated by an ACCO.<sup>108</sup>

The Yilam has also advised that Aboriginal women in custody, or who have recently left custody, will be consulted on the design of the Healing Unit.

The Healing Unit is anticipated to commence operations in 2023.<sup>109</sup>

There are other recent examples of DJCS working with ACCOs to improve the cultural support provided to Aboriginal women in custody. We identify some of these examples in the following section.

<sup>106</sup> Natalie Hutchins MP, Victorian Government, 'Better Outcomes for Victims and Young People' (Media release, 20 May 2021) <https://www.premier.vic.gov.au/sites/default/files/2021-05/11a%20-%20Better%20Outcomes%20For%20Victims%20And%20Young%20People.pdf>.

<sup>107</sup> Staff member – Expert interview with the Cultural Review; Natalie Hutchins MP, Victorian Government, 'Better Outcomes for Victims and Young People' (Media release, 20 May 2021) <https://www.premier.vic.gov.au/sites/default/files/2021-05/11a%20-%20Better%20Outcomes%20For%20Victims%20And%20Young%20People.pdf>.

<sup>108</sup> Aboriginal Justice, 'Goal 2.4: Fewer Aboriginal people return to the criminal justice system – Culturally appropriate, holistic health care in prisons' *Aboriginal Justice Outcomes Framework*. <https://www.aboriginaljustice.vic.gov.au/the-agreement/aboriginal-justice-outcomes-framework/goal-24-fewer-aboriginal-people-return-to-the-4>>.

<sup>109</sup> Evidence to Legal and Social Issues Committee, Legislative Council, Victoria, 21 October 2021 (Chris Harrison) [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Victorias\\_Justice\\_System/Transcripts/2021.10.21/QONs/QONs\\_-\\_Aboriginal\\_Justice\\_Caucus\\_response\\_redacted.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System/Transcripts/2021.10.21/QONs/QONs_-_Aboriginal_Justice_Caucus_response_redacted.pdf).

## **Cultural programs for Aboriginal women in custody**

### **Dilly Bag**

Dilly Bag is a three-day women's cultural-strengthening program, delivered by Djirra at both Tarrengower Prison and DPFC.<sup>110</sup> The program aims to assist Aboriginal women to recover from trauma experienced in their lives, by building their cultural strength and self-esteem and encouraging personal healing. Participants consider ways to reduce women's vulnerability to family violence, the important roles Aboriginal women play in their communities, and opportunities to enhance community connection and personal wellbeing. Djirra also offers Dilly Bag program for Aboriginal women in the community.

### **Sisters Day Out**

Sisters Day Out<sup>111</sup> is a one-day program for Aboriginal women focused on preventing family violence. Delivered by Djirra, the program aims to address the causes of Aboriginal women's vulnerability to family violence, such as social isolation, barriers to accessing services, lack of knowledge of women's legal rights and a reluctance to engage in mainstream services. Participants can join a range of relaxation, pampering and wellbeing activities paired with family violence information, legal assistance, and counselling.

### **Women's Healing Program**

The Women's Healing Program is a three-day group-based program that focuses on healing and strengthening cultural and community connections for Aboriginal women in custody. It is delivered by the VACCA at both women's prisons. The program seeks to help participants rebuild cultural identity, reduce the impacts of family violence, heal from grief and loss, and strengthen kinship ties. Participants are supported by Aboriginal Elders and leaders who help to identify individual support networks for reconnection back into the community.<sup>112</sup>

There are a number of other culturally safe programs delivered to Aboriginal women in custody including the Yawal Mugadjina Cultural Mentoring Program, the Wadamba Prison to Work Program and the Torch.<sup>113</sup>

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<sup>110</sup> Djirra, 'Prevention of Family Violence', *What we do* (Web page, 2020) <https://djirra.org.au/what-we-do/#prevention>.

<sup>111</sup> Djirra, 'Prevention of Family Violence', *What we do* (Web page, 2020) <https://djirra.org.au/what-we-do/#prevention>.

<sup>112</sup> Department of Justice and Community Safety (Corrections Victoria), 'Aboriginal cultural programs summary - June 2021 (excluding local prison initiatives)', Data provided to the Cultural Review.

<sup>113</sup> Department of Justice and Community Safety (Corrections Victoria), 'Aboriginal cultural programs summary - June 2021 (excluding local prison initiatives)', Data provided to the Cultural Review.

These programs prioritise cultural safety and address key issues that impact Aboriginal women and contribute to women's systemic engagement with the adult custodial corrections system. However, during our site visits, Aboriginal women in custody told us that access to these programs was often limited, particularly during the COVID-19 pandemic.

We support focused effort to continue to expand access to holistic, gender-based cultural practice to support Aboriginal women's rehabilitation and connections with culture and community. As outlined in the case study above, there is work already underway to create a Healing Unit at DPFC to provide a holistic approach to health and wellbeing for Aboriginal women.

We support evaluation of the implementation and operation of the Healing Unit in accordance with the proposed outcomes framework. It is critical that the system is accountable for the delivery of a more holistic, integrated and culturally-responsive service for Aboriginal women based on standards set by the Aboriginal community.

### **Providing Aboriginal women with access to appropriate health care and wellbeing support**

A high number of Aboriginal women in custody have received a lifetime diagnosis of mental illness and almost half meet the criteria for PTSD.<sup>114</sup> Many Aboriginal women in prison have a substance use disorder.<sup>115</sup> Many of the health and wellbeing issues experienced by Aboriginal women in custody are connected to experiences of violence, trauma and abuse.<sup>116</sup>

Many Aboriginal women told us they were fearful and felt unsafe when accessing health services in custody. When we met with one group of Aboriginal women, we listened to their experiences of how being in custody when members of their community had passed has deeply affected their wellbeing. We heard about the distress and significant impact experienced when an Aboriginal person passes in custody – and the strong belief that Aboriginal deaths in custody were a consequence of an unsafe custodial healthcare system.

Research shows that Aboriginal women experience institutional racism and discrimination in prison healthcare in the form of not being listened to or taken seriously by staff, in stereotyping (e.g. as being 'drug seekers'), and not being offered the same healthcare options as non-Aboriginal women.<sup>117</sup>

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<sup>114</sup> Australian Law Reform Commission Pathways To Justice–Inquiry Into The Incarceration Rate Of Aboriginal And Torres Strait Islander Peoples (ALRC Report 133) (2018) [11.28-11.32].

<sup>115</sup> Ibid.

<sup>116</sup> See generally Corrections Victoria Koori Prisoner Mental Health and Cognitive Function Study (2013) Available at [https://files.corrections.vic.gov.au/2021-06/koori\\_prisoner\\_mental\\_health\\_0.pdf](https://files.corrections.vic.gov.au/2021-06/koori_prisoner_mental_health_0.pdf)

<sup>117</sup> See generally Sacha Kendall et al, 'Incarcerated Aboriginal women's experiences of accessing healthcare and the limitations of the "equal treatment" principle' (2020) 19(48) *International Journal for Equity in Health* 1.

In yarning circles and confidential interviews, Aboriginal women told us that their requests for healthcare were often minimalised or ignored. Some Aboriginal women told us that they were frightened to complain about delayed, inappropriate or insufficient healthcare for fear that further requests would be ignored as a consequence for speaking up.

'Other women [taken off the methadone program] ended up really, really, really unwell. Some of those women couldn't read, couldn't write, didn't know what to do in that situation. I watched a woman get sent back to maximum security prison for complaining about a nurse. What I saw was not right. She was getting unfairly treated.'

**Person in custody**

In Part 6, we set out some of the other cultural and structural barriers to healthcare that are experienced across the adult custodial corrections system. From our engagement it is clear that Aboriginal people in custody experience many of these barriers more acutely than non-Aboriginal people given the lack of cultural safety in the delivery of medical care.

**Recommendation 5.11**  
**A holistic approach to health, wellbeing and rehabilitation for Aboriginal women**

The Department of Justice and Community Safety must engage specific expertise to develop and embed a holistic approach to meeting the health, social and wellbeing needs of Aboriginal women. This approach should:

- a) recognise Aboriginal women are more likely to experience PTSD and other forms of trauma
- b) provide a culturally safe environment to support healing and engage in cultural practices
- c) include access to healing centres as part of a holistic approach to health and wellbeing.
- d) ensure comprehensive and culturally safe assessment that includes examination of the health and wellbeing needs of Aboriginal women in custody, including her health, antenatal and postnatal care, housing requirements, placement of children, access to alcohol and other drug services, and thorough medical assessments and follow up plans.
- e) sustain and develop connections with family, community, Country and culture to help them rehabilitate and transition back into the general community upon their release.



## Culturally appropriate rehabilitation programs and supports

Rehabilitation should be a core statutory purpose that drives decision-making and service responses within the adult custodial corrections system. We have recommended that this purpose be reflected in a new legislative framework that should also articulate specific cultural rights for Aboriginal people and ensures that programs and services are culturally safe.

In their submission to the Cultural Review, the Victorian Aboriginal Legal Service noted the connection between access to culturally appropriate rehabilitation programs and a person's movement through the system, including eligibility for parole. They noted:

'Positive models for rehabilitation and reintegration are too often kept at a very small scale and not made accessible to enough people in prison, particularly Aboriginal people.'<sup>118</sup>

**Victorian Aboriginal Legal Service**

We also heard that the design and delivery of many rehabilitation programs is not responsive to cultural needs. For example, we heard that the use of group-based programs are not always culturally safe places for Aboriginal men to speak about their experiences and the reason for their involvement in the criminal justice system. This can be connected to cultural norms about disclosing personal information and the prominent role of shame within the Aboriginal community.

'The current approach to counselling, support and programs is built on a methodology which may not be consistent to Aboriginal cultural health principles, practices, wellbeing and cultural safety. They therefore risk creating more trauma if the person has to mandatorily participate in it as a condition of pre-release and access to programs.'<sup>119</sup>

**Victoria Legal Aid**

The Australian Law Reform Commission supported action to develop the programs available to Aboriginal people in prison to ensure they had access to culturally informed support to address any issues that may have contributed to their offending.<sup>120</sup>

<sup>118</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 80.

<sup>119</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 7.

<sup>120</sup> In their *Pathways to Justice* report, the Australian Law Reform Commission recommended that governments work with Aboriginal community-controlled organisations to develop offending-related programs for Aboriginal people in custody and that these programs be made available to people on remand, people under sentence and Aboriginal women: Australian Law Reform Commission, *Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) recommendation 9.1.

'Prison programs that address known causes of offending – such as poor literacy, lack of vocational skill, drug and alcohol abuse, poor mental health, poor social and family ties – may provide some of the supports needed to reduce the rates of repeat offending by Aboriginal and Torres Strait Islander people.'<sup>121</sup>

**Australian Law Reform Commission**

The connection between access to appropriate rehabilitation programs that are adapted to need and successful transition to the community has also been explored through research. A study that considered the experiences of Aboriginal people returning to custody identified a connection between the programs available and experiences when leaving prison.<sup>122</sup> Aboriginal people that contributed to the study also identified the importance of family and community involvement in programs and services.

Across our engagement, Aboriginal staff and Aboriginal people in custody told us that increasing opportunities for Aboriginal people in custody to build connections with identity, culture, country and community is critical for safety, community reintegration and reducing reoffending.

People told us that programs such as the Cultural Journey Program can be more effective for some Aboriginal people than programs that are designed to specifically target offending behaviour. There is an opportunity for the system to provide additional support for Aboriginal people by expanding these programs. One member of staff told us:

'When the men engage in the Cultural Journey program, they can see who their mob is. I see big changes. Self-esteem changes. Pride, they actually have pride in themselves.'

**Aboriginal staff member**

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<sup>121</sup> Australian Law Reform Commission, *Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 30.

<sup>122</sup> The Australian Institute of Criminology identified some improvements that could be made to offence-related programs to increase the relevance of programs to Aboriginal people. This included incorporating an understanding of the collectivist approach within Aboriginal community and the resistance of many Aboriginal people to disclose information about themselves, rather than relying on programs developed from a Western perspective that emphasises self-disclosure self-awareness and individual responsibility; applying holistic methods that address the mind, body and spirit; involving elders and facilitators in the development and delivery of programs: Matthew Willis, 'Reintegration of Indigenous prisoners: key findings' (Trends & Issues in Crime and Criminal Justice No. 364 Australian Institute of Criminology, August 2008) 55, 101.

## Culturally responsive throughcare, case management and transition planning

Supporting Aboriginal people to prepare for release and ensuring they are supported through their transition back into the community is essential to support rehabilitation and reduce the risk of reoffending.

The ALRC has recognised the role of throughcare and culturally-informed support to assist Aboriginal people to transition from custody and reintegrate into the community.<sup>123</sup>

'Incarceration leads to disruption in a person's life, including loss of employment and potentially a loss of housing, relationships and social supports. Release from prison without support to transition into the community can lead to a cycle of reoffending.'<sup>124</sup>

**Australian Law Reform Commission**

Integrated approaches that incorporate cultural expertise in custodial management and transition processes will ensure that the decisions relating to Aboriginal people are culturally informed and draw on the social and community capital that will support a person's transition from custody to the community. We consider there is a role for AWOs and Aboriginal case managers to facilitate these conversations and provide that support to Aboriginal people in custody – but better resourcing and support is required.

We also see value in ensuring that Aboriginal people are supported with more opportunities to connect with Elders to support their rehabilitation and transition back to the community. The limited contact with Elders and Respected Persons due to COVID-19 related restrictions on people entering prisons has had an impact on people in custody. This was reflected strongly in feedback to the Review.

It is clear that the support provided by Elders and Respected Persons through Yawal Mugadjina Program is highly valued by Aboriginal people that have received this support. This includes the specific support provided by LJWs to support Aboriginal people transitioning from custody to the community.

<sup>123</sup> See generally, Australian Law Reform Commission, *Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 314.

<sup>124</sup> Australian Law Reform Commission, *Pathways to Justice - An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Final Report No 133, December 2017) 314 [9.124].

Stakeholders have also recommended that specific support be provided to Aboriginal people on remand given the need to ensure that people are connected to services and supports at a time of increased risk and vulnerability.<sup>125</sup> This should include a health and wellbeing check and access to cultural support provided by an Aboriginal-community organisation that is specifically and appropriately funded to provide these services.

**Recommendation 5.12**  
**Culturally responsive**  
**throughcare, case**  
**management and**  
**transition planning**

The Department of Justice and Community Safety should increase the cultural support available for Aboriginal people to support rehabilitation, reintegration and an integrated and person-centred approach to case management.

This cultural support should include:

- a) specific health and wellbeing supports for Aboriginal people entering custody on remand
- b) increased involvement of Aboriginal people in case management planning, review and transition processes for Aboriginal people in custody, including Aboriginal Elders, family members and community supports
- c) continued access for Aboriginal people to culturally informed transition programs and facilities
- d) ensuring that all decision-makers give effect to the cultural rights when making decisions relating to an Aboriginal person in custody.

## Access to transitional housing and supports

Ensuring people have access to cultural support, stable housing, and access to social, health and community services to support their transition back into community life will improve safety and reduce the risk of reoffending.

Elsewhere in this report we have supported a focus on throughcare and transition planning from the time a person enters custody and embedded in the management of their sentence.

In Part 6, we discuss the need for access to transition support for women, with expanded access to culturally responsive transitional support for Aboriginal women. Baggarook is an example of a community-based approach that is responsive to the needs of Aboriginal women.

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<sup>125</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 6; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 79-80, 100, 115.

### **Safe, secure housing support for Aboriginal women leaving custody – Baggarrook Program**

Baggarrook is a holistic and culturally safe transitional housing program that supports vulnerable Aboriginal women at risk of homelessness as they transition back into the community from prison. The program is delivered by the Victorian Aboriginal Legal Service (VALS) in partnership with Aboriginal Housing Victoria, Corrections Victoria, the Department of Health and several allied organisations.<sup>126</sup>

The program's integrated support model involves housing support, provision of care packages, and ongoing support from justice workers and other allied health professionals. The Baggarrook facility (built with funding from the Victorian Government)<sup>127</sup> includes six one-bedroom units that provide safe and secure housing. Participants in the program also have access to Aboriginal support workers and individual support.

The program model enables co-designed culturally safe support and programs to help women identify and address causes of offending and barriers to reengaging with the community. Since the program's inception, VALS has continued to refine the service delivery model for Baggarrook in consultation with community and key partners to further embed culturally safety.<sup>128</sup> VALS has also worked to expand the program 'to welcome trans and gender diverse, non-binary, sistergirls, brotherboys, intersex and two spirit queer folk who identify as women and feel comfortable access a women's housing service'.<sup>129</sup>

At 30 June 2021, VALS reported that all women who had participated in the program had moved into, or were in process of moving into, suitable long-term housing, enabling a new group of women to enter the program in December 2021. Other highlights include a previous tenant being employed full time at the Torch and others being able to celebrate Christmas with family and children. The Review understands the program is being evaluated to measure effectiveness, following its first year of operation.<sup>130</sup>

While the provision of community-based support is outside the scope of the Cultural Review, ensuring there are close connections between custodial services and the supports available to people in the community is essential for safety and improved outcomes upon release. We welcomed the opportunity to see these principles in action at the Wulgunggo Ngalu Learning Place.

<sup>126</sup> Victorian Aboriginal Legal Service, 'Baggarrook' *Community Justice* (Web page) <https://www.vals.org.au/baggarrook/>.

<sup>127</sup> Department of Premier and Cabinet, Victorian Government, 'Housing to Help Aboriginal Women Leaving Prison' (Media release, 13 February 2020) <https://www.premier.vic.gov.au/housing-help-aboriginal-women-leaving-prison>.

<sup>128</sup> Victorian Aboriginal Legal Service, *Annual Report 2020-21* (Report, 2021) 30-31.

<sup>129</sup> Victorian Aboriginal Legal Service, 'Baggarrook' *Community Justice* (Web page) <https://www.vals.org.au/baggarrook/>.

<sup>130</sup> Victorian Aboriginal Legal Service, *Annual Report 2020-21* (Report, 2021) 31.

### **Strengthening cultural links to support reintegration – Wulgunggo Ngalu Learning Place**

Located in Macks Creek in eastern Victoria, Wulgunggo Ngalu Learning Place is a community-based diversion program that provides residential accommodation for Aboriginal adult males who have been sentenced to a community correction order (CCO) and choose to serve a portion of their order living onsite.

Wulgunggo Ngalu was created as a collaboration between the Victorian Government and Aboriginal people. It was designed to ensure that men residing there are culturally safe and have ongoing access to programs designed to help them to access, reconnect with or strengthen their links to culture. Residents live on site for three to six months and engage in community work, cultural programs and programs related to their CCO. Residents participate in healing processes focused on reconnecting with community and family, including regular engagement with Aboriginal Elders and community leaders who visit the facility to engage with the men and facilitate cultural programs and services.

At Wulgunggo Ngalu, accommodation units are intentionally separated from areas in which residents complete cultural programs and education, so that their living quarters are not associated with their offending. Accommodation units are oriented outwards toward Country.

During our site visit, residents at Wulgunggo Ngalu described how the available culturally safe and specific transitional supports helped them engage with the requirements of their CCO. Men who had completed prison sentences previously emphasised the significant value of community-based and culturally safe post-sentence transition supports. Residents and staff highlighted the safe, non-punitive relationships between staff and residents which support men living at Wulgunggo Ngalu to identify and address offending behaviours.

The evaluation of the Wulgunggo Ngalu also provides a strong evidence base for the expansion of this program.

In Part 6, we identify the limited access to residential transitional support across the adult custodial corrections system. Only a small number of men exiting the system have access to the Judy Lazarus Transition Centre at the end of their custodial sentence. We recommend expanding access to transitional support to include additional facilities, including a dedicated facility for Aboriginal people transitioning from custody to life in the community.

## 17 Creating a safer workplace for Aboriginal staff

Aboriginal staff working in the adult custodial corrections system face serious and unacceptable challenges to their safety and wellbeing. In addition to their duties and responsibilities, they carry cultural obligations and the concerns and trauma of the Aboriginal community. We heard about the impact of the high cultural loads, burnout, and attrition. We have also heard that these roles are poorly resourced, remunerated and supported. Many Aboriginal staff told us about damaging experiences of racism and discrimination.

We have spoken to Aboriginal staff working within prisons, within the Yilam and Aboriginal staff within Justice Health. We can see how their expertise and commitment has contributed to improving outcomes for their communities. However, we consistently heard about the institutional and cultural barriers they have experienced when pushing for changes to make the system more responsive to the needs and experiences of Aboriginal people.

It is also clear that while the Aboriginal workforce play a critical role in the lives of Aboriginal people in custody, they cannot be expected to do the work of the broader workforce and system leadership to improve cultural safety for Aboriginal people in custody. The result is that Aboriginal staff frequently carry an impossible burden of making custodial places safe for Aboriginal people.

Aboriginal staff make up only around 1.8 per cent of the custodial workforce. While this rate of representation is higher than the proportion of Aboriginal people within the Victorian population of 1 per cent<sup>131</sup> it does not align with the disproportionate representation of Aboriginal people in the adult custodial population. Aboriginal people currently comprise approximately 10 per cent of the adult custodial population.

Most Aboriginal people working within the system are employed as generalist prison officers and AWOs. There are no Aboriginal people employed in operational leadership roles within the custodial system, though we recognise the leadership demonstrated by many Aboriginal people working across the system.

Through our engagement, we consistently heard that increasing the number of Aboriginal people working within the adult custodial corrections system would

<sup>131</sup> Australian Bureau of Statistics, 'Victoria: Aboriginal and Torres Strait Islander population summary' *Aboriginal and Torres Strait Islander people: Census* (1 July 2022) <https://www.abs.gov.au/articles/victoria-aboriginal-and-torres-strait-islander-population-summary>.

support cultural safety and ensure that Aboriginal people working within the system did not routinely experience excessive workloads and significant cultural loads. Opportunities for Aboriginal people to move into more senior roles would also help ensure that Aboriginal staff had access to culturally safe management and leadership support.

‘The system has changed for the better having dedicated Aboriginal roles within the prison setting. Back when I started we didn’t have those identified roles. That was really hard to attract. And you can tell the difference in just dealing with an Aboriginal person when one of our mob comes into custody. It’s so different. You can see the relief on their face, and I quite often see the same women coming back and I think seeing a familiar face really supports them around that initial stage ... It’s about having that comfort to speak freely with an Aboriginal person.’

**Expert interview**

Our engagement with Aboriginal staff and Aboriginal people in custody revealed a close and direct connection between the workforce and the experiences of Aboriginal people in custody. We recommend better support for the Aboriginal workforce, more opportunities for career development and ensuring that Aboriginal people are employed across operational and leadership roles within the adult custodial corrections system.

### Key points – Creating a safer workplace for Aboriginal staff

- ▶ Aboriginal people working within the custodial environment experience distinct challenges including racism, discrimination, high workloads, cultural load, and burnout.
- ▶ There are high levels of attrition and vacancies across the system in key identified Aboriginal roles – adding to the workload for existing AWOs.
- ▶ There is a lack of culturally safe management support across the system with no Aboriginal people in operational management roles and insufficient training for leaders to support Aboriginal staff.
- ▶ AWOs do not receive enough training or support for the complexity of their roles. The accountabilities of the role do not reflect what is reasonable for a VPS 3 role.
- ▶ AWOs receive insufficient support for their social, cultural and emotional wellbeing. They are at high risk of being exposed to vicarious trauma.
- ▶ There should be more leadership opportunities for Aboriginal people across the adult custodial corrections system to amplify the efforts of the Aboriginal workforce and support the delivery of custodially safe services to Aboriginal people in custody.



## Supporting and growing the Aboriginal workforce

In addition to experiences of occupational violence, psychological harm and the limited access to supervision and support that are shared across the corrections workforce, Aboriginal people working within the adult custodial corrections system experience additional risks to their safety and wellbeing. This includes repeat experiences of racism and discrimination and the cultural load associated with directly supporting Aboriginal people in custody.

I don't feel safe. If you want to talk about cultural safety, I don't feel safe. There's no cultural safety here for me at all. Not a bit. I've got to step in and out of my life. I'm Aboriginal and then when I'm with the staff, I've got to be that different person, then I go back.'

**Aboriginal staff member**

**As an officer it doesn't mean anything, as a person it means not having to continually educate people about how to interact or treat aboriginal people in a "normal fashion".**  
 –Aboriginal custodial staff

**Cultural safety to me means I am respected as a person and my beliefs.'**  
 –Aboriginal custodial staff

**Being able to have cultural respect. Cultural needs being met.'**  
 –Aboriginal custodial staff

**The ability to work each day and not looked down upon or persecuted for who I am or my beliefs.'**  
 –Aboriginal custodial staff member

**Maintaining security and a feeling of safety by accepting and adapting to all cultures.'**  
 –Aboriginal custodial staff

**Non-judgemental.'**  
 –Aboriginal custodial staff

To support increased cultural safety for Aboriginal staff and increase the number of Aboriginal people who choose to work within the adult custodial corrections system, we recommend the development of a specific Aboriginal Workforce Plan for the adult custodial corrections system.

This Aboriginal Workforce Plan should be developed by DJCS in consultation with the Aboriginal Justice Caucus and community and be led by Aboriginal people. It should include recruitment strategies to attract, recruit and retain Aboriginal staff, including additional identified and non-identified roles across the system. The Plan should:

- ▶ acknowledge the responsibility of DJCS to provide a culturally safe workplace and their duty to eliminate as far as possible structural, institutional, and individual discrimination and racism

- ▶ include strategies to address unconscious bias and barriers in recruitment processes, including ensuring that processes do not create additional barriers for Aboriginal people, including resolving issues relating to the operation of conflict-of-interest declarations and the breadth of kinship ties and criminal record
- ▶ opportunities for lateral entry, traineeships, graduate placements, and secondments for Aboriginal staff to enhance pathways into operational and leadership roles within the adult custodial corrections system
- ▶ enhanced peer support and mentoring program for Aboriginal staff.

An increase in the number of Aboriginal people working within the adult custodial corrections system and in related central DJCS roles should be coupled with increased resourcing of ACCOs to meet the demand for culturally safe services for Aboriginal people in custody.

We note that there are existing strategies to support the attraction, recruitment and retention of the Aboriginal workforce within DJCS.<sup>132</sup> We consider further progress could be achieved through focused attention on the specific experiences and challenges for Aboriginal staff working within the custodial system.

There are existing examples within the Victorian Public Sector of more aspirational approaches to Aboriginal employment and workforce development. This includes the health and human services Aboriginal Workforce Strategy, detailed below, which includes commitments to become an employer of choice for Aboriginal people and the valuing of cultural knowledge and lived experience within the workforce.

While representation from Aboriginal people within the justice workforce is critical for the safety of Aboriginal people in custody, the responsibility for ensuring that custodial environments are safe for Aboriginal people is the responsibility of system and operational leadership, supported by frontline staff. For this reason, the Aboriginal Workforce Plan should also set goals and specific actions and accountability aimed at the non-Aboriginal workforce including:

- ▶ improving the skills, knowledge and capability of non-Aboriginal leaders to ensure Aboriginal staff have access to culturally responsive management
- ▶ providing Aboriginal staff with access to cultural supervision
- ▶ ensuring that racist attitudes and racially discriminatory behaviours are not tolerated in the workplace
- ▶ creating clear and central points of accountability for service delivery, planning and outcomes for Aboriginal staff and Aboriginal people in custody.

We discuss the evidence base for the development of this plan throughout this Chapter.

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<sup>132</sup> Department of Justice and Community Safety *Yarrwul Loitjba Yapaneyepuk - Walk the Talk Together: Koori Inclusion Action Plan*; Department of Justice and Community Safety *Koori Employment and Career Strategy 2017-2020*. DJCS has also advised us of a specific recruitment and retention strategy for people working as AWOs.

### **Developing a strategy to ensure a culturally safe experience for Aboriginal staff – Department of Families, Fairness, and Housing and Department of Health Aboriginal Workforce Strategy (2021–2026)**

The Aboriginal Workforce Strategy (2021–2026) jointly developed by Victoria's Department of Families, Fairness and Housing and Department of Health prioritises cultural safety with its vision: 'To become an employer of choice for Aboriginal people by creating an outstanding culturally safe employee experience, where individuals are valued for their cultural knowledge and lived experience.'<sup>133</sup>

Within the scope of the departments' Aboriginal Workforce Strategy (2021–2026) are recruitment processes, workplace culture, professional development, and mentoring, and valuing the skills, expertise, and perspective of Aboriginal employees. It identifies strategic objectives which act as a framework for change:

1. an outstanding Aboriginal employee value proposition
2. culturally responsive recruitment and selection
3. culturally safe onboarding, induction, and orientation
4. flexible development
5. expanded empowered Aboriginal leadership
6. strengthen Aboriginal and community sector careers.

The outcomes framework included in the strategy specifies outcomes for each objective and a number of measures to assess their effectiveness.

The strategy highlights cultural safety and self-determination as key elements of the Aboriginal employee experience and articulates executive leadership, accountability, and governance as foundations for the strategy's successful implementation.

This example shows how the development and implementation of dedicated workforce strategies for Aboriginal staff can play an important role in identifying objectives, measuring their success, and demonstrating the employer's commitment to creating a culturally safe environment for Aboriginal employees.

<sup>133</sup> Department of Health and Department of Families, Fairness and Housing, 'Aboriginal workforce strategy 2021-2026' (September 2021) 12.

**Recommendation 5.13**  
**Aboriginal Workforce Plan**

The Department of Justice and Community Safety should develop an Aboriginal Workforce Plan to guide the recruitment, retention, supervision and career development for Aboriginal staff within leadership and operational roles in the adult custodial corrections system.

Development of the Aboriginal Workforce Plan should be led by Aboriginal people and involve consultation with Aboriginal staff and the Aboriginal community.

The Aboriginal Workforce Plan should include:

- a) an increase in the number of Aboriginal people in operational and system leadership for the adult custodial corrections system
- b) strategies to identify and address racism, discrimination and unconscious bias in recruitment and selection processes and decision-making
- c) action to eliminate barriers to workforce participation by Aboriginal people, including the processes for screening for conflicts of interest and criminal records
- d) ensuring that position descriptions reflect the specific expertise and experience of Aboriginal people, and the responsibilities they hold to community
- e) access to culturally safe management support and leadership
- f) support for lateral entry and secondment opportunities to support career progression for Aboriginal people across the Department of Justice and Community Safety and Aboriginal community-controlled organisations
- g) access to wellbeing support that is adapted to the custodial environment and the challenges for Aboriginal people working within prisons.
- h) support for system-wide and facility-based staff networks
- i) support for peer mentoring programs
- j) exit interviews with all Aboriginal staff leaving the adult custodial corrections system.

## Improving workplace structures and supports for Aboriginal staff

The lack of cultural and management support for Aboriginal staff was highlighted as a specific risk factor and something that makes working within the adult custodial corrections system culturally unsafe for Aboriginal people. This was a key theme in our discussions about the experiences of AWOs.

'This is the most vulnerable role within the prison, but they have the least support and understanding. The system for Aboriginal staff is not culturally safe.'

**Aboriginal staff member**

Aboriginal staff shared reflections on the potential benefit of direct support from an Aboriginal person in the workplace.

'I've actually thought about this – if I was in that role as a VPS5, and I had a black fella in a black fella role, I'd be sitting there going, "You little beauty! This person is now going to make my life so much easier, because he's going to have that cultural connection to community inside, outside, and provide that cultural support to me, in order to make my job easier".'

**Aboriginal staff member**

While the Yilam and the Aboriginal Justice Group provide leadership within DJCS for the overall coordination and policy framework governing Aboriginal justice issues, central business units within DJCS do not have the proximity or the capacity to hold focus on the everyday experience of Aboriginal people working within custodial environments.

Custodial leaders must also be accountable for providing a culturally safe workplace and giving effect to the principle of self-determination in their management of prison.

We heard how Aboriginal people working at custodial sites felt that the reporting structures and hierarchy were limiting their influence and authority on issues relating to the needs of Aboriginal people in custody.

'The prisons are very hierarchical, and a lot of prisons take it very seriously and don't allow you to go past your manager and have a yarn to the general manager. And because the AWOs are a VPS3 level, they're not really included in a lot of meetings because the OSM [offender services manager] will attend and be a voice for that person. And it's sort of like, well, as an Aboriginal person, what authority do you have?'

**Expert interview**

Our discussions with current and former AWOs and our engagement with people in custody about their experiences also revealed frustration that they were not supported or given the authority to do more for the people in their care.

Custodial leaders must reflect and consider how to listen, acknowledge and respect the expertise of Aboriginal staff and ensure processes are in place for Aboriginal staff to contribute to the development of policies and procedures that affect Aboriginal people in custody.

‘For me the LOPs, so the local operating procedures that are written by the prison, they don’t specify for the Aboriginal prisoners – they’re not designed to actually support the AWOs, or the ALOs to work in our roles the way that we should. So, they don’t support us. I don’t even think that they liaise with the AWOs or the ALOs to actually write those LOPs, when it comes to the Aboriginal prisoners.’

**Aboriginal staff member**

## **Access to cultural supervision and wellbeing support for Aboriginal staff**

Aboriginal staff are particularly vulnerable to vicarious and direct trauma due to working in the adult custodial corrections system. This is because Aboriginal staff, especially AWOs, provide direct support to Aboriginal people in custody, witness and respond to people in distress and do so in the context of receiving little support for their own wellbeing.

Aboriginal staff are not immune to the impact of intergenerational trauma associated with the overincarceration of Aboriginal people and should have access to increased cultural supervision and culturally responsive wellbeing support.

‘As an Aboriginal wellbeing officer we actually wear their trauma.’

**Aboriginal staff member**

Aboriginal staff who responded to our workforce survey were more likely than their non-Aboriginal colleagues to report having been told by doctor that they are at risk of developing a stress-related illness (58 per cent vs 34 per cent) while they have been a corrections staff member, and are more likely to have taken leave due to work-related stress in the past two years (58 per cent vs 38 per cent).<sup>134</sup>

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<sup>134</sup> Cultural Review, Corrections workforce survey (2021).

The need to do more to ensure that Aboriginal people feel culturally safe is supported by recent public sector survey processes. The People Matter survey revealed mixed experiences of cultural safety within the custodial workforce:



Only 49 per cent of the custodial workforce who identified as Aboriginal reporting that they felt culturally safe at work.



39 per cent of respondents disagreed with the statement 'there is a positive culture within my organisation in relation to employees who are Aboriginal and/or Torres Strait Islander'.

Former corrections staff spoke of how the cultural load and their experience of racism at work impacted heavily on their personal lives. We heard how these impacts have contributed to many Aboriginal staff leaving their jobs in the adult custodial corrections system.

'After three months of being there, I was already coming home, talking to my wife about, "Fuck, I don't want to go to work tomorrow". After three months of being there, I was already not wanting to go to work. That's a bad situation, if you've been in a role for three months, and you already don't want to go to work. I thought it would change with the AWO role, I thought it would be a bit different, but again there's no support, you still experience that racism, and you still cop it, no matter which way.'

**Aboriginal staff member**

The limited preventative mental health care and support available to Aboriginal people in custody likely contributes to the demands on the AWOs and Aboriginal staff.

'The Aboriginal men have got layer upon layer of trauma, and their trauma is not addressed. Corrections ... need to start looking at employing for men, an Aboriginal male, for women, an Aboriginal female, who is trauma-based knowledgeable and also understands culture to be able to support these men.'

**Aboriginal staff member**

Aboriginal staff have access to a dedicated Employee Assistance Program through DJCS. While this support program is intended to provide culturally appropriate wellbeing support for Aboriginal staff, it is not specifically adapted to the experiences and challenges for Aboriginal staff working within the custodial environment and providing support to Aboriginal people in custody.

Providing more culturally informed wellbeing support for Aboriginal staff, particularly those working as AWOs, was one of the actions taken by DJCS in response to a recent IBAC investigation.<sup>135</sup>

Recommendations about improving wellbeing support for AWOs have also been made in the review of the AWO role by the Yilam.<sup>136</sup> This resulted in the creation of four fixed term Aboriginal Engagement Adviser roles to support the work of AWOs across the system and the creation of an Aboriginal Workplace Cultural Wellbeing Program.<sup>137</sup>

We support continuing action to extend access to culturally informed wellbeing support for Aboriginal people working in the adult custodial corrections system and close consideration and evaluation on how existing wellbeing support programs contributes to a safer workplace for Aboriginal staff. Further embedding cultural supervision into the workplace is one approach that may assist to improve wellbeing outcomes for Aboriginal staff.

Cultural supervision is used in the health sector to support Aboriginal staff working in mainstream organisations and is standard practice in many Aboriginal and Torres Strait Islander organisations.<sup>138</sup> There are many different models and approaches to cultural supervision that could be adapted to increase cultural wellbeing and support for the Aboriginal corrections workforce. This could include staff being provided with time to connect to culture and Country, or spending time with an Aboriginal person outside the organisation to discuss workplace experiences and issues.

## Lack of management support

Attracting, retaining and supporting Aboriginal staff should include creating the structure and environment to ensure Aboriginal people feel safe in their workplace. It also requires consistent support to facilitate the demands of roles as well as continual recognition of the cultural needs of both staff and people in custody.

'I needed [money] for NAIDOC to get some muffins and food for the people in custody to have a nice time and watch the NAIDOC flag raising on the TV. I was told, "It's not possible. It's not going to happen. We're not going to do NAIDOC."

<sup>135</sup> Independent Broad-based Anti-corruption Commission, *Special Report on Corrections* (Report, 2021) 43.

<sup>136</sup> See, for example, recommendation 4 in Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 6-7, Data provided to the Cultural Review.

<sup>137</sup> DJCS has advised that an Aboriginal Workplace Cultural Wellbeing Program is available to all AWOs, ALOs, AEAs, Yilam team members and LJWs and is designed to provide an additional layer of support to Aboriginal people working within Victorian prisons. According to DJCS the program "aims to support workers to form strength-based solutions to workplace issues."

<sup>138</sup> See for example VACCHO Aboriginal Health and Wellbeing Workforce Strategy (2022).



'I went to the [senior manager], and he approved the money. This helped create some form of cultural safety for these people in custody to enjoy themselves. And when we did a smoking, these people turned from prisoners in greens to strong Aboriginal people within seconds. And all it cost was [some money] and a room.'

**Aboriginal staff member**

We heard from a number of Aboriginal staff that there were challenges associated with the lack of cultural awareness or understanding from their non-Aboriginal manager.

'Did I feel culturally safe? Not always. You can be quite isolated being the only Aboriginal practitioner... Quite often you are reporting to a non-Aboriginal manager who often hasn't supported Aboriginal staff before. So, when it comes down to having leave for returning to Country or Sorry Business, you've sort of got to go through those hoops and explain what that means to you and why it's important to your mob for you to go back home. So, yeah, I think there's a bit of work we could do around improving the cultural safety.'

**Expert interview**

We also heard that the lack of management support can have a significant impact on a person's ability to perform their responsibilities and their personal wellbeing.

'The reason I finished up at [Maximum Security location] was the inability of my direct line manager to be supportive, culturally appropriate, have any knowledge in cultural safety, or want any knowledge in cultural safety – having my culture mocked, being micromanaged, but in the sense where I had all responsibility and accountability, but no ability to actually do my job. So, I had all this accountability, and I was expected to do a role, and I was expected to do it right. .... And I had all the accountability of that role, but no ability to actually do it. So, if something went wrong, I had no ability to fix it, but I had all the accountability if something did go wrong. So, it would be my fault, but I had no way of fixing it.'

**Former Aboriginal staff member**

AWOs reported that this was especially challenging for them given that their role responsibilities also differed from corrections staff. We also heard that a lack of understanding of the nature and requirements of the role could make balancing the competing demands of the role and the expectations of management more difficult.

'Being a black fella in a black fella role, I've got a number of other men that want to come to me. And they will talk to me about certain traumas and things going on in their life that they will not speak to a non-Aboriginal person about. Particularly a female non-Aboriginal person, they won't talk to them. So, because I've come along, the first time in a long time an Aboriginal person, I'm having about an hour and a half to two hours of my day, every day, of cultural support and guidance with these men. And management just don't understand that. So, you try to explain it, "Hey listen, I can't do this, I can't do that, I've got this and this."'

**Aboriginal staff member**

This experience was reflected across our feedback from Aboriginal staff, especially from people working as AWOs.

'Management will always say, 'Oh we can't keep Aboriginal Welfare Officers because it's only a VPS3, it's only \$70,000 a year.' I don't give a shit if it's \$200,000 a year, I'm not going back tomorrow, not going to happen. Pay me a million dollars a year, I'm not going back tomorrow... We need that support for these AWO's. because we're not going to keep them, you can spend all the money in the world trying to attract candidates, you're not going to keep them, doesn't matter how much you pay them.'

**Aboriginal staff member**

AWOs are reasonably isolated in the performance of their duties. Combined with a perception that people in supervisory roles did not understand culture, identity and the unique demand of these roles contributed to feelings of isolation and overload for people working as AWOs.

'Having a manager where they don't know the role of an AWO, they don't care, and don't want to know.... you feel like you are here to get funding, like yes you have ticked the box, I got the black fella in, and if someone dies, we can just blame it on him. That's the sad reality about it, and that's how I feel about it.'

**Aboriginal staff member**

Within the custodial environment, AWOs are often managed by the operational services manager or another non-Aboriginal staff member. There is no clear reporting line that includes cultural supervision and support by an Aboriginal person. We recognise that additional cultural support is now available from the Aboriginal engagement adviser (AEA) roles working across the system, but we continue to support direct access to support through location-based management and supervision arrangements.

**Recommendation 5.14**  
**Providing effective line management and cultural supervision support to Aboriginal staff**

The Department of Justice and Community Safety should require all supervisors and managers to complete mandatory training to ensure they have the skills and cultural competency to provide culturally responsive supervision and management of Aboriginal staff.

This training should be facilitated by an Aboriginal person with support from Aboriginal staff.

In addition to regular workplace supervision, Aboriginal staff should have access to mandatory and regular cultural supervision provided by an Aboriginal person.

## Increasing leadership opportunities for Aboriginal staff

We have recommended an increase in identified Aboriginal leadership positions in the adult custodial corrections system. Aboriginal people who contributed to our workforce survey stated that more Aboriginal staff and more Aboriginal people in leadership roles would improve their experience at work. Sixty per cent of survey respondents who identified as Aboriginal said that more representation of Aboriginal people in the workforce would make them feel more culturally safe. Forty per cent responded that more Aboriginal staff in senior positions would enhance their experience of workplace cultural safety.<sup>139</sup>

Some locations had a larger Aboriginal leadership team with multiple identified roles within the workforce structure. In these locations we observed a greater integration of programs for Aboriginal people in custody and increased support for Aboriginal staff and the delivery of programs.

### Supporting Aboriginal leadership – Ravenhall Correctional Centre

Ravenhall Correctional Centre has facilities and programs for Aboriginal men in custody, including a dedicated Aboriginal Programs team, headed by the Aboriginal Programs Manager in an identified role.<sup>140</sup>

A key function of the Aboriginal Programs team is to help Aboriginal men in custody to strengthen cultural and family connections and knowledge, as well as providing culturally safe programs that respond to the individual needs of people in custody.

The Aboriginal Programs Manager works directly with the general manager to provide advice on issues affecting Aboriginal men in custody and Aboriginal staff members. During our site visit, the Aboriginal Programs team described how this direct reporting line ensures that the needs of Aboriginal people in custody are consistently prioritised, and that Aboriginal staff received support to address the cultural load and expectations of their roles.

Ravenhall employs a number of Aboriginal staff in senior roles. Staff told us that there was a strong and ongoing commitment to supporting Aboriginal leadership and staff, including providing fair and equitable career progression opportunities and access to appropriate cultural support.

There has also been support for increased Aboriginal leadership from Aboriginal community stakeholders and other advocacy organisations working within the system.<sup>141</sup>

<sup>139</sup> Cultural Review, Corrections workforce survey (2021). Note: 12 respondents to the workforce survey identified as Aboriginal.

<sup>140</sup> As at November 2022, DJCS has advised that the identified Aboriginal Programs Manager role and two AWO roles at Ravenhall are vacant.

<sup>141</sup> First People's Assembly of Victoria, Submission to the Cultural Review, (March 2022) 1

## Addressing additional wellbeing risks for AWOs

The AWO role was created in 2000 response to a recommendation of the Royal Commission into Aboriginal Deaths in Custody.<sup>142</sup> AWOs provide critical support for Aboriginal people in custody, with duties ranging from providing ongoing cultural, spiritual and wellbeing support and advocacy for Aboriginal people in custody, to assisting with case management and coordinating cultural activities and programs. We have consistently heard how access to AWOs directly improves the experiences of Aboriginal people in custody and their sense of cultural safety.

AWOs are also expected to improve custodial conditions and outcomes by providing advice, support and guidance to the broader prison workforce about working with Aboriginal prisoners.

### The wide-ranging responsibilities of AWOs

The AWO position description describes their key accountabilities as follows:

- ▶ Provide cultural and practical support for Aboriginal prisoners through identifying their strengths, aspirations and obtainable goals for returning to a non-offending lifestyle in their community.
- ▶ Interview and complete a wellbeing checklist on Aboriginal prisoners as soon as practicable following reception, aiming to provide information regarding available Indigenous specific programs and services.
- ▶ Provide cultural and wellbeing support to Aboriginal prisoners that enables individual pre and post release needs to be met, advocating on their behalf where appropriate.
- ▶ Assist Aboriginal prisoners to access programs and entitlements to assist with reintegration into the community.
- ▶ Assist Aboriginal prisoners to re-connect and/or maintain links with their families, community organisations and other support systems through advice, support and referrals.
- ▶ Participate in case management of Aboriginal prisoners, working with them and custodial staff to develop plans supporting transition back into community.
- ▶ Where required participate in case management review committees, sentence management reviews, parole board hearings and meetings that support transition back to the community.
- ▶ Provide cultural advice, support and guidance to the prison workforce about working with Aboriginal prisoners. This includes contributing to the identification of training opportunities for staff involved in the delivery of offender management to Aboriginal prisoners

<sup>142</sup> Recommendation 174 provides 'That all Corrective Services authorities employ Aboriginal Welfare Officers to assist Aboriginal prisoners, not only with respect to any problems they might be experiencing inside the institution but also in respect of welfare matters extending outside the institution, and that such an officer be located at or frequently visit each institution with a significant Aboriginal population': *Royal Commission into Aboriginal Deaths in Custody* (Report, 1991) vol 5.

- ▶ Coordinate cultural activities, including NAIDOC events, and programs designed specifically for Aboriginal prisoners.
- ▶ Support prisoners through bereavement contacting family to seek permission for attendance at the funeral, liaising with the Yilam and funeral director to support case workers in preparation of permits.
- ▶ Participate in team meetings, supervision sessions (group and individual) professional development activities and Aboriginal network meetings.
- ▶ Maintain appropriate file notes, intelligence reports and other written reports of engagement with prisoners when required.
- ▶ Collect data to inform the planning, development, implementation and evaluation of programs and services delivered.
- ▶ Attend cultural support sessions with the Aboriginal Engagement Advisor as required, and cultural debriefing services provided by the department.<sup>143</sup>

There are currently 27 funded AWOs at VPS Grade 3 level across public and private locations. This includes roles created with recent investment to expand the number of AWO roles across the system. However, we observed during our site visits that number of these positions were vacant during the Review period and heard that many have been vacant for some time.

More recently, DJCS has created four new, fixed-term, Aboriginal Engagement Advisor (AEA) roles within the Yilam. These roles have been designed to provide additional support to AWOs across the system. The creation of these roles was a response to the departmental review of the AWO role which identified a need to provide additional support to AWOs working in the adult custodial corrections system.<sup>144</sup> While these roles are relatively new, we have heard how they have been well received by the Aboriginal workforce and custodial leaders.

However, more must be done to ensure the on-the-ground custodial workforce and leadership support AWOs in their day-to-day work.

## The experiences of AWOs

We heard of a lot of pride and commitment in the Aboriginal custodial workforce, but the experience can be complex and challenging.

'I tried to change things at a local level and it hasn't really happened, so for my opportunity to make change within the system, this could be the opportunity to put my little bit forward at a big thing, my little bits might help to make some change within the system. Because it needs to be changed. It's the worst and best place I've ever worked in my life. It's got some great things about it and some horrible things about it.'

**Aboriginal staff member**

<sup>143</sup> Department of Justice and Community Safety (Corrections Victoria) 'Position Description - Aboriginal Wellbeing Officer' (22 September 2021) 2, Data provided to the Cultural Review.

<sup>144</sup> See recommendation 7, Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 25, Data provided to the Cultural Review.

AWO roles were frequently identified by people in custody and people working within the system as critical to the social and emotional wellbeing of Aboriginal people in custody. This is because the AWO is often the direct link between Aboriginal people and their access to family, community and culture, as well as to culturally responsive services and supports. The AWO may also be the only staff member available to a person in custody who they trust to provide culturally safe support.

We heard from current and former AWOs about the range of unique pressures they experience within their workplace, and the barriers they encounter when providing support to Aboriginal people in custody:

- ▶ extreme workload pressure and challenges associated with the cultural load, which directly affected their ability to provide cultural support to Aboriginal people in custody
- ▶ lack of support and respect within their workplace, including a lack of understanding from management about the nature and unique challenges of their roles and responsibilities, including the increased risk of vicarious trauma.
- ▶ lack of respect for the knowledge and expertise of AWOs, including failure to consult with AWOs on issues relating to service design and planning
- ▶ barriers to delivering services and supports to Aboriginal people in custody, including limited budget, and lengthy administrative processes for delivering events and programs
- ▶ non-Aboriginal staff missing opportunities to learn from or devaluing the expertise and authority of AWOs.

We were concerned to hear that some Aboriginal people in custody, observant of the heavy work of the AWO at their location, have been working informally to address their needs, to make sure the AWO was not overwhelmed by requests for support.<sup>145</sup> This example illustrates both the strength and sense of community among Aboriginal people but also the impact of under resourcing and over relying on one staff member for the support a whole cohort.

Jason's story illustrates a number of recurrent issues we heard about from Aboriginal staff.

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<sup>145</sup> We heard this feedback from people in custody [at 5 locations during our site visits].

### Jason's story

Jason\* is an Aboriginal man and a former AWO. Jason told the Review that the prison system has 'no cultural competency. Cultural competency does not exist'.

As an AWO, Jason had direct contact with Aboriginal people in custody and said that management struggled to understand the cultural significance of having an Aboriginal person in these roles and the cultural load that he experienced.

Jason told the Cultural Review that the lack of cultural understanding of corrections staff who were not Aboriginal had an ongoing impact on both Aboriginal staff and people in custody.

Jason said he was asked to disclose information confidentially discussed with people in custody during Men's Business and that Sorry Business had been denied. Jason felt that the human rights of men in custody are being limited by their inability to consistently practice culture:

'It is the most [culturally] unsafe place I've ever been in all my life. You know, all businesses want to save a dollar where they can... [but for management to say] "We're not going to give prisoners a canvas to paint on arrival anymore, that's only when they ask – they've got to pay for it"... I put my job on the line that day, by standing up for the human rights of these men.'

*A former Aboriginal wellbeing officer*

### Additional pressure experienced by AWOs at reception locations

There are additional workload pressures for AWOs working in reception and remand locations. This is because there are specific requirements and duties to support Aboriginal people as they enter the system, which are typically performed by AWOs.<sup>146</sup> This may include providing wellbeing checks and connecting people who have arrived to service providers.

AWOs consistently told us that they were not able to meet all of their role requirements within their work hours. This included challenges meeting formal system requirements – such as Commissioner's Requirements – because of the competing and overlapping demands associated with their role within the system.

'So, there's roughly between 95 to 100 Aboriginal prisoners at [max security prison] alone, and all that work boils down to literally one individual, which are the AWO. Which there should be, for a maximum-security, we have high turnovers every single day, and there's one AWO.'

**Aboriginal staff member**

<sup>146</sup> There is a Commissioner's Requirement that sets out key requirements and duties to support the cultural safety and wellbeing of Aboriginal people in custody. This includes a requirement that all Aboriginal people entering custody are given access to an appropriate contact person within 24 hours of their reception. The Commissioner's Requirement states that ideally this will be an Aboriginal wellbeing officer or Aboriginal liaison officer. If they are not available, an Aboriginal staff member attached to the Naalamba Ganbu Nerrlinggu Yilam or an appropriate Aboriginal community member known to the prison should be contacted. There is also provision for immediate interim support to be provided while a contact occurs: Corrections Victoria, *Commissioner's Requirement 2.7.1 - Aboriginal and Torres Strait Islander Prisoners* (September 2022) 2-3.

There has also been an additional impact associated with the growth in the prison population, including the number of people on remand. The requirement that Aboriginal people entering custody are seen by an AWO creates workload pressures that are directly connected to the number of people entering prison. These escalating and overlapping pressures within a highly volatile environment must be addressed.

## Further training for AWOs

Our engagement with AWOs revealed that many staff would like access to increased training to support the performance of their duties.

‘There was no formal training for the AWO role, it was just shadowing and sort of them just showing me the ropes for that limited time ... But after two and-a-half weeks of informal training, I was left by myself. Look, I’ve got experience in a custodial environment, but I haven’t done this role before. So, I was doing my best to keep up and do what I could, but it was quite overwhelming workload, yeah.’

**Aboriginal staff member**

Importantly, AWOs are not prison officers and do not undertake the pre-service training provided to custodial staff. This includes specific training on some of the expectations of the custodial environment, policies, processes and requirements and the general training on the intersectional needs of people in custody. Training on supporting people to connect with their cultural identity has also been suggested as this is a specific skill that people may want to develop to support their duties and responsibilities.

‘Going into the role of an AWO – there’s no training for an AWO. I knew what to do because I’d been there before. I know what Aboriginal people need because I am an Aboriginal person. I understand culture, I understand Sorry Business, I understand the significance. There’s no training. There’s no trauma training. I was told right from the get-go.’

**Aboriginal staff member**

We also heard from some staff who felt they would benefit from training on local security and operating procedures to increase their own understanding of the custodial environment and sense of safety.



AWOs have expressed a sense of isolation, disrespect and exclusion, that comes with being in a non-uniformed role – likely exacerbated by experiences of racism and discrimination. Providing AWOs with access to and support to complete relevant parts of the pre-service and ongoing training program for custodial staff may also help to create a more inclusive workplace environment.

## Over-reliance on AWOs to meet all the needs of Aboriginal people in custody

The challenges for people working in these roles was a recurrent theme during consultation with stakeholders, the workforce, and people in custody. This included an over-reliance on AWOs by other corrections staff.

‘Having Aboriginal wellbeing officers that operate in prisons, is trying to address some of the cultural needs that the Aboriginal people in prison have. But we’re kind of conscious that that’s often one person in the entire prison, so that is a huge undertaking. And, with the best will in the world, that is insufficient. Talking to a corrections officer just this week, she made the point, talking about [a prison location] – “well, there’s just one AWO, so everyone wants her”. But, you can only ever be in one place at one time.’

**Expert interview**

There were multiple reports of AWOs being expected to absorb everyday duties of prison officers when they relate to Aboriginal people in custody. This practice adds to the cultural load of staff and their unreasonable workload. One participant reflected:

‘The AWO might be there to help you and support you, but you can’t flick everything onto the Aboriginal wellbeing officer because that prisoner is Aboriginal.’

**Expert interview**

The heavy reliance on AWOs to provide cultural support to Aboriginal people in custody is reflected in the extensive duties and wide-ranging accountabilities of AWOs within the adult custodial corrections system – outlined above.

DJCS must ensure the broader workforce have a clear understanding of the AWO role, intended responsibilities, authority and ways of working. This includes a clear expectation that all people working in the adult custodial corrections system are accountable for providing a culturally responsive service and culturally safe environment.

## Investing in additional resourcing, supervision and culturally safe wellbeing support

The Cultural Review suggests the list of accountabilities in the AWO position description may be unreasonable for a person employed as a VPS3 within the adult custodial corrections system, even without the cultural load that these responsibilities carry. While some of these role accountabilities may be shared across the workforce, it is not difficult to see why it has been challenging to recruit and retain AWOs, and why AWOs are at high risk of excessive workloads and cultural burnout.

'The workload takes away from what the role is designed for as well, helping our fellas that have been there for a few months, get in contact with legal, family, that sort of stuff, those sorts of services externally. And yeah, I found it quite overwhelming for one person to have all that responsibility. There's no contingency in place for what happened while I was on leave, I came back to an enormous amount of work. So, I guess for me, there needs to be more people in that role, and that support alone would help.'

**Aboriginal staff member**

These challenges are not new. In 2015, the Victorian Ombudsman published her Investigation into the rehabilitation and re-integration of prisoners in Victoria. Recommendation 14 of the investigation was that Corrections Victoria undertake a review of the AWO/ALO positions to determine:

- ▶ whether the position description is consistent with the duties, tasks and responsibilities undertaken by the officers performing these roles
- ▶ if the current number of these positions and ratio of these officers to Aboriginal and/or Torres Strait Islander prisoners across the Victorian prison system requires increasing.<sup>147</sup>

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<sup>147</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, 2015) 155.

In response, the Yilam led a review of the AWO/ALO roles in 2017, which found a number of systemic issues with the functioning of the roles.<sup>148</sup> This evaluation pointed to high staff turnover, the number of roles not matching the increase in the number of Aboriginal people in custody, lack of training, guidance, and cultural understanding among colleagues.<sup>149</sup> The evaluation also noted that current debriefing and psychological supports for AWOs and ALOs were not adequate.<sup>150</sup>

The review made a number of recommendations to support people in these roles with greater clarity in their role responsibilities, revised reporting lines and additional supports for recruitment and onboarding processes.<sup>151</sup> DJCS has recently committed to expand the number of these roles and increase the support provided to people working in these roles. This included the creation of the Aboriginal Engagement Advisor roles to provide additional support to AWOs across the system. There has also been further investment to create additional AWO roles.<sup>152</sup>

An Aboriginal Workplace Wellbeing Program has also been made available to AWOs, ALOs, AEAs, Yilam team members and LJWs. DJCS has advised that the Workplace Cultural Wellbeing program is designed to offer an additional layer of support to Aboriginal staff currently working within Victorian prisons.<sup>153</sup> This program was not raised by staff during our engagement processes.

We note that the Aboriginal Justice Caucus has recommended a full review of identified roles within the adult custodial corrections system.<sup>154</sup> The recent Parliamentary Inquiry into Victoria's Criminal Justice System also made recommendations relating to the provision of additional funding for AWO roles within

We share the concerns and recommendations made by Yilam, Aboriginal Justice Caucus and others. Even with the recruitment of additional AWO/ALOs, current arrangements for resourcing and supporting AWOs is not sustainable.

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<sup>148</sup> Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 5, Data provided to the Cultural Review.

<sup>149</sup> Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 5, Data provided to the Cultural Review.

<sup>150</sup> Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 5, Data provided to the Cultural Review.

<sup>151</sup> Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 6-7, Data provided to the Cultural Review.

<sup>152</sup> The 2021-22 State Budget provided \$14.8 million to reduce the growing over-representation of Aboriginal people in the Victorian justice system and promote greater Aboriginal self-determination across the system. This included \$2.5 million over two years to increase current Aboriginal Wellbeing Officer positions and implement a new staffing model.

<sup>153</sup> DJCS advised that the Workplace Cultural Wellbeing program aims to support workers to form strength-based solutions to workplace issues. These issues may arise from areas such as cultural loads, cultural wellbeing, exposure to vicarious trauma, burnout, community expectations and any other issues culturally affecting Aboriginal staff working with Aboriginal people. While supporting workers they will also be provided with strategies to enhance self-care.

<sup>154</sup> Aboriginal Justice Caucus, Submission No 106 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (1 September 2021) 15.

**Recommendation 5.15**  
**Attracting, retaining and supporting Aboriginal wellbeing officers**

The Department of Justice and Community Safety should recognise the significant role responsibilities of the Aboriginal wellbeing officers and ensure that these roles have:

- a) appropriate pay and conditions to attract, retain and support Aboriginal people in these roles at all locations
- b) culturally competent management support to minimise the risks of vicarious trauma, excessive cultural load and individual burnout
- c) a workforce ratio model that:
  - provides at least one Aboriginal wellbeing officer at each location
  - includes workload guidance for Aboriginal wellbeing officers, including the number of Aboriginal people in custody an Aboriginal wellbeing officer can be expected to support – noting that the number may vary across security ratings, with additional capacity required at front-end prisons and those with high remand populations
  - facilitates the creation of additional Aboriginal wellbeing officer positions where the number of Aboriginal people in custody at a single location exceeds the capacity limits described in the workplace guidance
- d) increased staff support at intake where there is greater risk for Aboriginal people in custody and increased workload demands on Aboriginal wellbeing officers.
- e) access to elements of pre-service training provided to custodial officers on issues critical to the performance of Aboriginal wellbeing officer roles, including professional boundaries and case management.

## **Non-Aboriginal staff working in specialist support roles must demonstrate professional and personal capabilities**

There are non-Aboriginal roles within the system that have been specifically created to support Aboriginal people in custody when Aboriginal AWOs are not available at a location. There are Aboriginal liaison officers (ALOs) and Aboriginal services officers (ASOs) across the adult custodial corrections system.

While the AWO role is a designated position<sup>155</sup> and can only be filled by Aboriginal people, when a suitable Aboriginal candidate cannot be recruited, a non-Aboriginal person can be employed as an ALO or an ASO to provide support to Aboriginal people in custody and work closely with the ALO.<sup>156</sup>

<sup>155</sup> Under section 12 of the *Equal Opportunity Act 2010*, employers can take positive steps to help disadvantaged groups, called 'special measures'. Designated positions are a type of 'special measure'.

<sup>156</sup> Corrections Victoria, *Deputy Commissioner's Instruction 2.07 - Aboriginal and Torres Strait Islander Prisoners* (12 September 2022) 4 [1.2].

Prison staff can express interest in taking on the duties of an ALO or an ASO in addition to their normal work duties. While they are not required to be Aboriginal, there is an expectation that prison officers working in these roles will have knowledge of, and interest in, Aboriginal culture and improved justice outcomes for Aboriginal prisoners is required.<sup>157</sup>

We heard from ALOs who are passionate about their role in supporting and advocating for Aboriginal people in custody. However, we also heard of ALOs feeling overwhelmed by their workloads and many did not have specialist knowledge or training (beyond what is provided to the workforce).

We recognise the work underway within the system to strengthen capability within the non-Aboriginal workforce to support Aboriginal people in custody.<sup>158</sup> This has included the development of specific training materials to assist ASOs to provide culturally informed support to Aboriginal people in custody.<sup>159</sup>

We consider that a comprehensive induction program is critical for preparing non-Aboriginal staff taking on ALO and ASO duties to work with Aboriginal people in custody to support cultural safety.

**Recommendation 5.16**  
**Ensure Aboriginal Liaison Officers have access to specialist training and support**

The Department of Justice and Community Safety require Aboriginal Liaison Officers to complete specialist training on Aboriginal culture and identity, communication styles and preferences before taking on the responsibilities of the role.

This should be in addition to any routine cultural safety training provided to custodial officers and should be refreshed on a regular basis.

<sup>157</sup> See recommendation 7, Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 25, Data provided to the Cultural Review.

<sup>158</sup> See recommendation 7, Department of Justice and Community Safety (Corrections Victoria, Naalamba Ganbu and Nerrlinggu Yilam) 'Review of the Aboriginal Wellbeing Officer Role' (October 2017) 25, Data provided to the Cultural Review.

<sup>159</sup> DJCS has advised that an ASO Induction Package was developed for newly appointed ASOs. The purpose of the package is 'to provide the new ASO with the foundational information to be able to support Aboriginal prisoners', and includes sessions on the expectations and accountabilities of the role, key programs, organisations and services, shadowing an AWO, Koori cultural awareness training and an opportunity to spend a day with a local Regional Aboriginal Justice Advisory Committee (RAJAC) Executive Officer attending regional services and/or community events.

# Part 6

## People in custody

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People are placed in custody for a wide range of reasons. A proportion of people in custody have been convicted of serious and violent criminal offending. Other people are in custody for non-violent offending, such as drug offences. Some people in custody are on remand and are presumed to be innocent. Most will return to life in the community.

Creating a custodial environment that provides opportunities for people to build pathways and skills that will interrupt the cycle of offending is squarely in the community interest and in line with a long-term preventive response to crime. This can only be achieved in a safe environment that treats people with dignity, respect and prioritises rehabilitation and return to community life.

In June 2022, there were 6,568 people in custody within Victoria's 15 prisons and correctional centres. Around 95 per cent of people in custody are men, and almost 60 per cent are serving a sentence (the remainder are unsentenced, including those on remand awaiting the hearing of their criminal charges and those awaiting sentence).<sup>1</sup>

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<sup>1</sup> According to data provided by Corrections Victoria, 'Unsentenced prisoners' are persons who have been remanded to custody while awaiting the outcome of their court hearing. They may be unconvicted (remanded) or convicted but awaiting sentencing (remanded for sentencing). Unsentenced prisoners also includes any person who is subject to a Detention Order after the expiration of their sentence and where there are no other warrants holding them in prison. Department of Justice and Community Safety - Corrections Victoria, 'Monthly prisoner and offender statistics 2021-22' (Web Page, June 2022).

While security and good order was the traditional focus of prisons, there has been a shift in recent decades toward a more rehabilitative culture – one that is centred on respect, rights, health, wellbeing and interactions that encourage a life free of offending. In short, a rehabilitative culture locates rehabilitation as a core purpose and operating model for the custodial system:

'[A rehabilitative culture] is more than the prison's social culture; it includes the prison's "philosophy and fitness for purpose in relation to reducing reoffending". Challenging and enabling people to change requires a culture that is often demanding to work and live in. However, the benefits of a rehabilitative culture far outweigh the demands: rehabilitative prisons are safer, and they provide much more job satisfaction for staff'.<sup>2</sup>

A number of these elements have been introduced into Victoria adult corrections system over time, however, overall, we observed in many locations that the system's rehabilitative aspects are in competition with a narrower security approach. In these settings, human rights can easily become discretionary. Instead of making an environment more secure, harsh and punitive responses and illegitimate exercises of power can undermine the safety of people in custody and the workforce.

Over the course of our Cultural Review, we heard from many people in custody that they do not feel safe and supported. There were varied experiences across the system but there were a number of consistent themes identified by people in custody that contributed to their sense of safety and ability to make positive change.

## **'Releasing your neighbour' – supporting people in custody to re-enter the general community**

In Norway, the corrections system is organised around the central idea that 'we are releasing your neighbour'.<sup>3</sup> While there are substantial differences between Norwegian and Australian custodial approaches, there is a shared reality that most people in custody will one day return to life in the general community.

This notion – based on the idea that a person's time in custody can be managed in a way that supports their reintegration into society where they can become a 'good neighbour' – provides a useful organising logic for thinking about how the custodial system should operate.

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<sup>2</sup> Ruth Mann, 'Rehabilitative Culture 2: An update on the evidence and practice' (2019) 244 *Prison Service Journal* 1, 3.

<sup>3</sup> BBC News, 'How Norway turns criminals into good neighbours', (Web Page, 7 July 2019) <https://www.bbc.com/news/stories-48885846>.

A person sentenced custody is punished through the deprivation of liberty. The custodial environment is not meant to foster or perpetuate additional punishment. While deprived of their liberty, people in custody continue to be part of the general community even though they are not living freely within the community. Conditions within prison should reflect, as closely as possible, life in the community, to help people prepare for their eventual release.<sup>4</sup>

Ensuring that active steps are taken to align the experience of custody with normal life in the general community is supported by the Mandela Rules. The United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) also reflect this idea of creating community-like settings in custody, urging prison operators to 'minimize any differences between prison life and life at liberty' that can discourage people in custody from building the skills they need for life in the general community.<sup>5</sup>

In some jurisdictions this idea is described as 'normalisation' – enhancing social rehabilitation by shaping community life within custody to resemble life outside custody as far as possible, enabling people in custody to develop their capacity and skills through work, education and access programs and outside social services.<sup>6</sup> This approach locates a person's eventual transition to the community at the centre of the custodial response.

In this part of the report, we focus on what changes will create a more rehabilitative culture within the adult custodial corrections system, to enable it to better meet the needs of people in custody and support community safety through rehabilitation. We also identify changes that will support corrections staff to deliver services that reflect individual and changing needs of people in custody and contribute to greater community safety.

Importantly, we acknowledge the enormous challenges and deep professionalism required to support people in custody with histories of serious criminal offending. We emphasise that corrections staff and the adult custodial corrections system cannot be expected to do the work of all social services and community agencies. However, it is essential that the culture within the system creates an environment that builds connections and fosters partnership with services and supports in the community to support rehabilitation and improve community safety.

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<sup>4</sup> 'Rule 5 emphasises the positive aspects of normalisation. Life in prison can, of course, never be the same as life in a free society. However, active steps should be taken to make conditions in prison as close to normal life as possible and to ensure that this normalisation does not lead to reproducing undesirable aspects of community life inside the prison': Council of Europe Committee of Ministers, *Commentary to the European Prison Rules*, revised 2020 (CM(2020)17-add2).

<sup>5</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th session, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 5(1).

<sup>6</sup> Jill van de Rijt, Esther van Ginneken and Miranda Boone, 'Lost in translation: The principle of normalisation in prison policy in Norway and the Netherlands' (2022) *Punishment & Society* 1-18.



## Embedding a rehabilitative approach

Embedding a rehabilitative approach across the adult custodial corrections system requires a dedicated effort based on the following principles:

- ▶ recognition that the profile of people in custody is changing, that their needs are more diverse and that changes to accommodation, supports and infrastructure, may be required to meet their needs
- ▶ embedding person-centred approaches into every interaction with people in custody, including through enhanced and integrated case management
- ▶ increasing connections with family, community and other services to support people in custody to successfully return to the community
- ▶ decision-making that is fair, consistent and transparent and reflects the purpose and objectives of the adult custodial corrections system
- ▶ healthcare outcomes that are equivalent to services available in the community and healthcare that is culturally safe for people in custody
- ▶ greater opportunities for therapeutic supports, work and education that respond to the individual needs of people in custody and promote rehabilitation and life skills
- ▶ improved access to intensive transition support, including, for some people, time within the community.

## In this part

This part of the report is structured as follows:

- ▶ **Chapter 18. Meeting the complex needs of people in custody and supporting rehabilitation** looks at factors influencing the needs and experiences of people in custody, focusing on the experience of specific cohorts identified in our Terms of Reference, and how to introduce a trauma-informed approach to meet individual needs and support rehabilitation.
- ▶ **Chapter 19. Embedding person-centred approaches** identifies the need to reorient the system toward person-centred responses, supported by improvements to the quality of interactions between staff and people in custody and a new approach to case management.
- ▶ **Chapter 20. Supporting fair, transparent and ethical decision-making** outlines some of the issues and challenges associated with operational decision-making and supports focused action to increase the fairness and transparency of decision-making processes, including disciplinary processes.
- ▶ **Chapter 21. Improving health outcomes for people in custody** considers access to healthcare and the role of healthcare supporting safety and improved outcomes for people in custody.

- ▶ **Chapter 22. Connecting people to programs and opportunities to support rehabilitation and positive change** supports timely and safe access to rehabilitation and increased opportunity to develop skills and participate in meaningful work and education opportunities.
- ▶ **Chapter 23. Improving access to transition and reintegration support and connections to social services sector** connects the support provided to people in custody with their safe transition to the community and identifies opportunities to increase access to intensive and residential transition support for people leaving custody.

## Acronyms and abbreviations

ABI	Acquired brain injury
ACT	Australian Capital Territory
ADHD	Attention deficit hyperactivity disorder
ALO	Aboriginal liaison officer
AWO	Aboriginal wellbeing officer
ASD	Autism spectrum disorder
Bangkok Rules	United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders
CALD	Culturally and linguistically diverse
CISO	Corrections independent support officer
CMRC	Case Management Review Committee
CPT	Case planning transition
CVRP model	Corrections Victoria Reintegration Pathways model
DPFC	Dame Phyllis Frost Centre
DJCS	Department of Justice and Community Safety
FIS	Forensic Intervention Services
HiPP	World Health Organization Health in Prisons Project
JLTC	Judy Lazarus Transition Centre
KEX	Kiosk Express System
LGBTIQ+	Lesbian, Gay, Bisexual, Trans and Gender diverse, Intersex, Queer and Others ('+') whose gender identity or sexual orientation is not represented by the letters

Mandela Rules	United Nations Standard Minimum Rules for the Treatment of Prisoners
NDIS	National Disability Insurance Scheme
OSTP	Opioid Substitution Therapy Program
PIMS	Prisoner Information Management System
RACGP	Royal Australian College of General Practitioners
SDO	Service delivery outcome
VPS	Victorian Public Service
WPCC	Western Plains Correctional Centre
WHO Framework	World Health Organization Prison Health Framework
Yilam	Naalamba Ganbu and Nerrlinggu Yilam

## 18 Meeting the complex needs of people in custody and supporting rehabilitation

The changing profile of people in custody has challenged the institutional approach of the adult custodial corrections system and placed pressure on staff capability, processes and physical infrastructure. The system is not currently equipped to meet the individual, complex and diverse needs of people in custody – a prerequisite for enabling people to rehabilitate and successfully re-enter the general community.

A slow evolution in the prison population has occurred over recent decades – from predominately young, white, cis-gendered men to a population representing greater diversity in cultural backgrounds, identities and needs. Alongside this more general shift in the custodial population, the over-representation of Aboriginal people in the adult custodial corrections system has persisted. This change in the profile of people in custody has revealed gaps in system infrastructure and exposed attitudes that do not reflect the expectations of a modern custodial corrections system.

Many of these attitudes, evident during our onsite engagement, are a legacy of earlier eras when disability and mental illness were deeply stigmatised and racism prolific in the community. While community attitudes and understanding has improved, the criminalisation of trauma and disability continues,<sup>7</sup> and there remains a lack of understanding of how the experiences of people with particular attributes in the criminal justice system directly shapes their experiences in custody.

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<sup>7</sup> Law Council of Australia, 'Part 1 - People with Disability' *The Justice Project* (Final Report, August 2018) 18.

While there has been growing awareness that the needs of people in custody are changing, the custodial system has made only limited progress to shift entrenched attitudes and operational preferences to make space for person-centred and trauma-informed responses.

In this chapter, we identify the range of characteristics, backgrounds and experiences that may influence or shape the experiences of people in custody and define their needs for effective and safe support while in prison.

It is also important to note that there are other influences that determine how the system considers and responds to the needs and experiences of people in custody, including structural barriers to responding to a growing remand population and providing access to programs and supports – see *Part 1. Introduction* for further discussion. Limitations of the physical environment and infrastructure can also disproportionately impact the safety and experience of some people in custody, particularly people with specific vulnerabilities, such as transgender women and people with disability, cognitive impairment or mental health conditions.

Currently, limitations in the data the Department of Justice and Community Safety (DJCS) collects about people in custody impedes the development of individual case information and a system-wide view of the experiences of people in custody. We encourage DJCS to improve its processes for identifying and recording the backgrounds, needs and experiences of people in custody, to enable it to better understand how people from diverse backgrounds and with diverse needs experience the system.

## Key findings – Meeting the complex needs of people in custody

- ▶ The profile of people in custody in Victoria has changed over time. While some progress has been made toward embedding a therapeutic model across the system, there is still substantial work required to ensure the system recognises and meets the complex needs of people in custody, to support rehabilitation and reintegration in the community.
- ▶ Women in custody, including mothers in custody, have complex needs that the system is not adequately equipped to meet. Women who have experienced trauma, abuse and violence may be retraumatised by their experience in custody. Lack of cultural safety is a significant risk for Aboriginal women in custody.
- ▶ Homophobia and transphobia persist in Victorian prisons. LGBTIQ+ people in custody face a heightened risk of violence and assault, including sexual assault. They may be targeted by other people in custody, and there is often a high tolerance for such behaviour and stigma around reporting it.
- ▶ Trans people in custody are particularly vulnerable to violence and assault. The processes for managing their placement and treatment do not adequately ensure their safety and wellbeing, including lack of suitable accommodation and inadequate training for staff to understand their needs.
- ▶ The number of people in custody from culturally and linguistically diverse backgrounds is growing, and there is a need to better understand their religious, cultural and linguistic needs. Lack of targeted support for these groups means individuals often rely on other people in custody from their cultural group to help bridge language gaps and help them participate.
- ▶ Physical facilities and access to healthcare pose significant challenges for older people in custody. In particular, older people at minimum-security locations may be reluctant to seek medical help to avoid having to move to a higher-security location for treatment.
- ▶ People with disability in custody are often not receiving the support and specialist services they require. This is exacerbated by inadequate screening processes, which means there may not be a clear understanding of an individual's needs.

# What participants told us about **NEEDS AND EXPERIENCES OF PEOPLE IN CUSTODY**

**People in custody have complex needs, diverse backgrounds and experiences.**

‘I don’t think the system is correctly set up to deal with the trauma that 99.9% of women that are faced with ... The baseline of it, is that most women in corrections are victims themselves to begin with before they’ve ended up here. So all the corrections systems does is revictimize, retraumatise and therefore there’s recidivism ... Let’s let these women heal. Let’s let them heal with their families as well.’  
*Person in custody*

**The prison environment can re-traumatise people in custody.**

‘Words cannot describe how brutal that is when you first come to jail and you’re treated like nothing and no one helps you. You’re just beside yourself. It was really hard but then once you settle on getting to the end of your sentence everything does settle down.’  
*Person in custody*

‘Prison is not supposed to be punitive as soon as you walk through the door. The punishment is being here.’  
*Staff member*

**Staff do not feel confident meeting the complex needs of people in custody**

‘Having more support would be really welcomed and direction too with what we’re trying to do when it comes to rehabilitation and reintegration.’  
*Staff member*

‘We’ve got a high level of youth, ID, ageing prisoners, mental health problems ... It’s a fairly complex unwell jail system and there’s a lot of training that needs to be done for the officers. On their normal business, security. Never mind the therapeutic. You have people in custody that have dementia, we train our staff to be a bit of everything and no one can be everything. And the security is so important. The fundamental job we do is to keep the community safe, and to keep our people safe.’  
*Staff member*



**Some people in custody feel safe and supported by custodial staff.**

☞ Good staff are personable, treat people with respect, if a prisoner is threatening or acting aggressively, it makes sense that staff respond.  
*Person in custody*

☞ The staff are fantastic, very helpful and are always willing to listen and help as much as possible.  
*Person in custody*

☞ Staff are mostly good, they are front line people, they cop a lot.  
*Person in custody*

☞ Most officers here will facilitate access to programs, give you some information or put you on a list if you ask about them.  
*Person in custody*

**Some people in custody experience poor treatment and disrespect.**

☞ I have been threatened by staff, there are staff who are rude and arrogant to the men. Everyone, including myself, has to walk on eggshells so we don't get told off. Staff show no empathy and use black humour which I don't appreciate. This is supposed to be a place in which you progress, but it's hard to progress when I get treated like a piece of garbage.  
*Person in custody*

☞ I'm a father. It hurts when they call me by my cell number like I'm not human.  
*Person in custody*

☞ In prison I felt helpless, worthless, like I can't do nothing about it. Whether officers were abusing or trying to bully. I felt like shit because I know I can't do nothing about it. If I did do something, then that's going to impact on me bad, no matter what happened. Even if they're in the wrong, they're still right.  
*Person in custody*

**People in custody with specific needs can experience additional vulnerability due to an inflexible and punitive operational environment.**

☞ I've never really felt safe in jail. I've never felt like I could trust any of the prison officers. I've never felt like we're actually being rehabilitated. I never felt like there was any services to actually help me. I've never felt like I had any real connection to any of my community or anything like that either. There's nothing really good I've taken away from prison.  
*Person in custody*

☞ You are not visited by counsellors [when you are in the management unit]. You don't have many appointments - if you have medical appointments you are picked up by van, handcuffed and then escorted. It's a very [resource intensive process] and sometimes guards are reluctant to take you to appointments ... Also, every time you go to the slot - you are urine tested.  
*Person in custody*



## Some cohorts are more vulnerable to poor outcomes within the criminal justice system

Prisons were not created to solve complex health, social and economic problems. Despite this, many people in custody come from backgrounds of disadvantage and have complex health and social issues that affect their everyday lives – such as substance use, cognitive impairment, disability, chronic health conditions, mental health issues and backgrounds of trauma and abuse.<sup>8</sup>

People in custody told us about interrelated and compounding problems that affected their lives including experiences of disadvantage, limited access to health and social supports in the community, family breakdown and criminalisation of health-related issues.

We recognise that many of the issues and experiences that people bring into the adult custodial corrections system may be linked to gaps in services within the broader social services system. Preventing people with complex and intersecting needs from entering the criminal justice system requires integrated and coordinated whole-of-government effort.

The reality is the vast majority of people in custody will return to living in the general community one day. It is essential that they receive the care and support they need to make a safe and supported transition to life outside the system. A person's time in custody may provide a critical opportunity to access the supports and services that may have been inaccessible to them in the community.

A 2015 report by the Victorian Ombudsman about the rehabilitation and reintegration of prisoners in Victoria identified some common experiences in their backgrounds:

'A quarter of Victoria's prisoners come from just 2 per cent of the state's postcodes and half from just 6 per cent. High school completion rates are negligible: 6 per cent for men and 14 per cent for women. The average prisoner was unemployed at the time of committing the offence and has a history of substance abuse. Many female prisoners have a history of abuse, and over 40 per cent are homeless upon release. Children of prisoners are six times more likely to be imprisoned than their peers. Mental illness and cognitive disabilities are also common.'<sup>9</sup>

**Victorian Ombudsman**

<sup>8</sup> Australian Institute of Health and Welfare, *Health of prisoners* (Web page, July 2022) <https://www.aihw.gov.au/reports/australias-health/health-of-prisoners>; Office of the Public Advocate, Submission to the Cultural Review (December 2021) 10; Victorian State Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (1 September 2021) 16-19; RMIT University Centre for Innovative Justice, Submission to the Cultural Review (November 2021) 2; Human Rights Law Centre, Submission to the Cultural Review (December 2021).

<sup>9</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, 2015) 5.

In its submission to the Cultural Review, the Victorian Aboriginal Legal Service reflected on the impact of custody for people who already experience social disadvantage and exclusion:

'Prison can be a deeply traumatising experience, and these harms are particularly acute for people already marginalised or living with a history of trauma, such as Aboriginal people, those living with disability or mental illness and victim-survivors of family violence. Inducing this kind of trauma directly conflicts with the therapeutic approach to rehabilitation and social integration which is needed to address the underlying causes of offending for most people held in Victorian prisons.'<sup>10</sup>

**Victorian Aboriginal Legal Service**

A number of stakeholder submissions we received highlighted the challenges of supporting the safety, wellbeing and outcomes for an increasingly complex custodial population.<sup>11</sup> These challenges have been further amplified by the high proportion of people in prison on remand. This has created an intense and volatile climate at some locations. These short stays in custody also make it more difficult for effective services and programs to be delivered:

'With that instability and high churn of the population, it makes it hard to manage needs, but also for those minority groups or groups where you'd want to have a different service solution. It's really difficult. The other challenge is there is very little opportunity for treatment – given the short durations/short remand status. This is also true for education, vocational training and health service provision.'

**Expert interview**

Through our engagement, it became clear that the current system does not have the capability and facilities to consistently deliver safe responses to the spectrum of complex health and social needs of people in custody. While we recognise that the most effective response to the health and social needs of people in custody may be best delivered through health and social services, there are operational changes that can reduce the harm of imprisonment for more vulnerable people.

We have particular concerns about the continued use of separation and behaviour management responses to handle complex health issues and disability or deliver increased 'protection' for people who might be more vulnerable in custody.

We also have concerns about the impact of the growing rates of imprisonment for women – including the impact of short stays in custody – and the capacity of the system to deliver a trauma-informed and gender-sensitive response without dramatic change to system and staff orientation, capability, operational practices and infrastructure.

<sup>10</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 81.

<sup>11</sup> Forensicare, Submission to the Cultural Review (December 2021) 2-3; Caraniche, Submission to the Cultural Review (December 2021) 1; Bendigo Kangan Institute, Submission to the Cultural Review (November 2021) 2.

## A trauma-informed approach

Many people in custody have experienced trauma, which can have ongoing psychological and physiological consequences that can impact on their behaviour in custody and, in turn, increase the risk of punitive responses from staff.<sup>12</sup>

A trauma-informed approach to service delivery involves building an understanding of how people's lives, needs, symptoms and presentations may be impacted by their experiences of trauma.<sup>13</sup> Key features of trauma-informed approaches in prisons can include:

- ▶ providing access to programs that aim to support recovery and healing from trauma as a primary goal
- ▶ promoting respectful, safe and positive relationships with staff and between people in custody
- ▶ minimising the possibility of retraumatisation through employing trauma-informed alterations to the physical environment, interactions, language, operational policies and procedures
- ▶ reducing punitive responses to unwanted behaviour and use of restrictive practices including separation and restraints as a last resort.<sup>14</sup>

Caraniche also highlighted the value of trauma-informed practices in the custodial settings:

'When trauma informed principles are introduced, trained and reinforced staff can play a major role in minimizing triggers, stabilising prisoners, reducing critical incidents and de-escalating behaviours which decreases the risk of responses which may mirror past abuse. In a prison setting, custodial staff and prisoner relationships are the day-to-day fabric of both trauma recovery and of retraumatisation. As prisoners increase their sense of safety, the safety risks to staff and the community decreases.'<sup>15</sup>

**Caraniche**

<sup>12</sup> Caraniche, Submission to the Cultural Review (November 2021) 4.

<sup>13</sup> Liz Wall, Daryl Higgins and Cathryn Hunter, 'Trauma-Informed Care in Child/Family Welfare Services' (Policy and Practice Paper No 34, Child Family Community Australia Information Exchange, February 2016) 9.

<sup>14</sup> Denise E. Elliot et al, 'Trauma-informed or trauma-denied: Principles and implementation of trauma-informed services for women' (2005) 33(4) *Journal of Community Psychology* 461, 465-9; Alyssa Benedict, 'Using Trauma-Informed Practices to Enhance Safety and Security in Women's Correctional Facilities' (National Resource Center on Justice Involved Women, Department of Justice, United States, 2014) 9-17; Department of Justice and Regulation, *Strengthening Connections: Women's Policy for the Victorian Corrections System* (November 2017) 24-5; Forensicare, Submission to the Cultural Review (December 2021) 8.

<sup>15</sup> Caraniche, Submission to the Cultural Review (November 2021) 9.

## The complex needs of women in custody must be addressed

Women in the adult custodial corrections system have very different experiences, histories, needs and requirements to men. For example, women in custody are more likely to:

- ▶ have been victims of sexual assault, family violence and experiences of trauma<sup>16</sup>
- ▶ have poor mental health and substance-dependence issues<sup>17</sup>
- ▶ come into the adult custodial corrections system with other complex health needs.<sup>18</sup>

### Snapshot data does not reflect the number of women moving in and out of the system

Point-in-time prison population measures do not fully capture the large number of women entering custody for short periods of time throughout the year. Many unsentenced women are held in custody for short periods of time before being released on bail or receiving a non-custodial sentence, while a small proportion are acquitted of all charges.

Flat Out Inc., an advocacy and support service that supports women, trans and gender-diverse people (and their children) in their interactions with the criminal justice system, described to us how the flow or 'churn' of women through the system at much higher rates compounds disadvantage and disconnection from family and community. They told us that this means women have less opportunity to access the support they need in prison and, following release, to address the issues that contributed to their offending. This can increase risk, particularly for Aboriginal women in custody, where short sentences affect connections to Country, community, culture, family and interrupt cultural practices and obligations.<sup>19</sup>

<sup>16</sup> Research into the prevalence of child sexual abuse and other forms of victimisation among women in custody indicates figures of between 57 and 90 per cent: Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings' (Issue No 13, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2012) 4. Further, in its submission to the Royal Commission into Family Violence, Caraniche estimated that more than 70 per cent of its female clients had been exposed to family violence, substantially higher than the rate for its male clients: Caraniche, Submission to Royal Commission into Family Violence <http://rcfv.archive.royalcommission.vic.gov.au/getattachment/32F939F4-BD43-4431-969D-0CCB2C831378/Caraniche.pdf>.

<sup>17</sup> Australian Institute of Health and Welfare, 'The health and welfare of women in Australia's prisons.' (Cat. No. PHE 281, November 2020) 6 <https://www.aihw.gov.au/getmedia/32d3a8dc-eb84-4a3b-90dc-79a1aba0efc6/aihw-phe-281.pdf.aspx?inline=true>.

<sup>18</sup> Department of Justice and Regulation, *Strengthening Connections: Women's Policy for the Victorian Corrections System* (November 2017) 2. Unpublished Justice Health data referenced in *Strengthening Connections* indicates that nearly 70 per cent of women in Victorian prisons have a chronic health care plan.

<sup>19</sup> Staff member – Expert interview with the Cultural Review.

Women generally experience higher levels of unemployment and lower educational attainment.<sup>20</sup> Women are also more likely to have been the primary caregiver of young children at the time of reception into prison.<sup>21</sup> Some women are pregnant and give birth while in custody. A small number of women are living with their pre-school-aged children in prison.

There are also differences in women's offence profile compared to men – with drug-related offending recorded as the most serious charge or offence for around a quarter of women in custody.<sup>22</sup> In contrast, the most serious charge or offence recorded for men in custody is assault, which was recorded by around one quarter of men in custody.<sup>23</sup> Women are also more likely to be on remand than men – as at October 2022, 55.5 per cent of women in prison were on remand. This increases to 65 per cent for Aboriginal women.<sup>24</sup>

The adult custodial corrections system was not created with the specific needs of women at its centre. Many of the elements of the women's custodial response to offending were originally borrowed or adapted from men's prisons and do not respond to the specific trauma backgrounds and health needs of women, often closely connected to their offending.

### **The custodial system can exacerbate existing trauma for women**

Our research, engagement processes and interviews with women in custody and organisations working with women in the system have highlighted the significant number of women in custody who have been victims of crime, with complex backgrounds of trauma, abuse and violence.<sup>25</sup> This observation has been repeated across several recent review processes.<sup>26</sup>

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<sup>20</sup> Mary Stathopoulos et al, 'Addressing women's victimisation histories in custodial settings' (Issue No 13, Australian Centre for the Study of Sexual Assault, Australian Institute of Family Studies, 2012) 7.

<sup>21</sup> From 2011-12 to 2016-17, the proportion of mothers who were primary caregivers prior to reception into prison averaged around 32 per cent. By comparison, the same figure for fathers was around 18 per cent: Department of Justice and Regulation, *Strengthening Connections: Women's Policy for the Victorian Corrections System* (November 2017) 11.

<sup>22</sup> Corrections Victoria, *Profile of Women in Prison (2020)* <https://files.corrections.vic.gov.au/2021-11/CV%20Prison%20Women%202021%20Nov%20update.pdf>.

<sup>23</sup> Corrections Victoria, *Profile of People in Prison (2020)* [https://files.corrections.vic.gov.au/2021-06/Infographic\\_Profile\\_of\\_people\\_in\\_prison2020.pdf](https://files.corrections.vic.gov.au/2021-06/Infographic_Profile_of_people_in_prison2020.pdf).

<sup>24</sup> Department of Justice and Community Safety (Corrections Victoria), Data provided to the Cultural Review.

<sup>25</sup> As noted earlier in this chapter, research into the prevalence of child sexual abuse and other forms of victimisation among female prisoners indicates figures of between 57 and 90 per cent. Further, in its submission to the Royal Commission into Family Violence, Caraniche estimated that more than 70 per cent of its female clients had been exposed to family violence, substantially higher than the rate for its male clients. The RMIT Think Tank, Victorian Aboriginal Legal Service, Flat Out Inc., Human Rights Law Centre, Victoria Legal Aid and Law and Advocacy Centre for Women also noted in submissions and interviews with the Cultural Review the significant backgrounds of trauma and abuse for women in custody.

<sup>26</sup> *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) 633; Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Report, 2022) vol 1, 137; Victorian Ombudsman (2017), Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017) 53.

The potential for the adult custodial corrections system to retraumatise has also been a recurring theme of our engagement with women in custody:

'I don't think the system is correctly set up to deal with the trauma that 99.9 per cent of women that are faced with correctional issues have been subjected to. And that's the baseline of it, is that most women in corrections are victims themselves to begin with before they've ended up here. So all the corrections systems does is revictimize, retraumatise and therefore there's recidivism. That's what happens. Because nobody gets the chance to actually go, "let's let these people heal. Let's let these women heal. Let's let them heal with their families as well".'

**Person in custody**

Seemingly benign elements of the system – such as noise, the environment, the manner in which staff interact with women in custody, and routines such as strip-searching – can stir complex trauma for women in custody:

'Triggers can vary from what may seem as little as a door slamming, to officers speaking down to me which only confirms the mentality of "us and them" and generated self-esteem issues. Then there is strip-searches cell searches and prison ramps done in a forceful way.'

**Person in custody**

Some women also reported that they are not provided with equivalent opportunities to those available to men within the system:

'It's really evident that the women's system receives less opportunities, less funding. We're really disadvantaged when you compare us to the men's system. And I would really like to see less funding going into building prisons for men, because there is a multitude of them, and have something closer to the city for women that can replicate a reintegration back into normal life so that women can stop being disadvantaged, regardless of their age. That they can just stop being disadvantaged in their release from prison.'

**Person in custody**

The recognition that women's prisons should not be an extension or sub-category of the men's system has been a core driver of work to develop gender-sensitive understanding of the experience of women in custody and how systems, processes and infrastructure should be adapted to reduce trauma.

## Features of gender-responsive women's prisons

Acknowledging that the criminal justice system has historically been developed with the needs of men in mind, gender-responsive approaches to corrections recognise that women<sup>27</sup> have distinct histories, pathways to offending, experiences within the criminal justice system and needs that must be addressed to support successful reintegration into the general community and reduce the risk of recidivism.<sup>28</sup>

The following principles should guide the development and implementation of gender-responsive approaches:

- ▶ **Acknowledge that gender makes a difference** – The design and implementation of policy, training and programs must recognise the implications of gender on women's histories, offending behaviours, needs and responses to custody and treatment.
- ▶ **Create an environment based on safety, respect and dignity** – Recognising the prevalence of emotional, physical and sexual abuse that many women in custody have experienced, corrections responses must reflect the importance of emotional and physical safety and avoid retraumatisation.
- ▶ **Develop policies, practices, and programs that are relational and promote healthy connections to children, family, significant others and the community** – A focus on the impact of relationships and their connection to both women's offending behaviour and their growth and strength in custody is essential for promoting successful outcomes.
- ▶ **Address substance abuse, trauma and mental health issues through comprehensive, integrated and culturally relevant services and supervision** – Services and programs must recognise the interrelationship between substance abuse, trauma and mental health. Treatment programs are better able to engage women if they are culturally appropriate.
- ▶ **Provide women with opportunities to improve their socioeconomic conditions** – Improving outcomes for women in custody requires preparing them through education and training to support themselves and their children upon release into the community.
- ▶ **Establish a system of community supervision and re-entry with comprehensive, collaborative services** – To address the unique challenges experienced by women when they re-enter the general community, comprehensive, community-based wraparound services are critical.<sup>29</sup>

<sup>27</sup> Gender-responsive approaches can and should also consider the unique needs of others whose experience and identities intersect with gender, for example young people, older people, people with disabilities, the LGBTI+ community, the CALD community, religious minorities, and indigenous peoples.

<sup>28</sup> Elizabeth Fleming et al., 'Adopting a Gender-Responsive Approach for Women in the Justice System: A Resource Guide' (2021) *The Council of State Governments Justice Centre*.

<sup>29</sup> Barbara Bloom, Barbara Owen and Stephanie Covington, National Institute of Corrections, *Gender responsive strategies: Research, practice and guiding principles for women offenders*. (Report, 2003) 76.

DJCS is working to ensure the adult custodial corrections system is more responsive to gender.<sup>30</sup> Most recently, DJCS established the Women's System Reform Project, which seeks to 'better understand who and why women are entering prison, how long they remain in prison, and to ensure the system can cater to the needs of the women in custody in a gender responsive and trauma informed way'.<sup>31</sup>

Key reform initiatives under the Women's System Reform Project have included:<sup>32</sup>

- ▶ improving the case management model for women's prisons, to embed a gender-responsive and trauma-informed approach, ensuring that the interventions delivered recognise the unique risks, needs and pathways to offending for women
- ▶ changing the security classification framework for women, to lower the default security classification for women entering custody and seeking opportunities to better capture gender-specific factors that reduce risk
- ▶ establishing new women's employment specialist positions, to strengthen employment opportunities for women leaving custody
- ▶ developing a gender-responsive recruitment strategy, targeting candidates with attributes and skills suited to working with women in custody and increasing the number of women employed in the system
- ▶ implementing a trauma-informed approach, including reviewing and amending local operating procedures to align them with key principles of trauma-informed practice and improving training for staff working in the women's system.

In addition, DJCS has advised of plans for the implementation of more trauma-informed infrastructure at the Dame Phyllis Frost Centre (DPFC).<sup>33</sup> It is encouraging to see this work underway and the strategic intent to create a service response that recognises women's unique therapeutic and rehabilitative needs.<sup>34</sup>

Some women shared positive experiences of a more trauma-informed approach and the value of staff who demonstrate skill and care based on specific training in mental health and the backgrounds and circumstances of many women in custody.

However, more generally, we observed a gap between the strategic intent of reform priorities, operational practice and the experiences of women in custody. Work to embed new ways of working and more responsive approaches may be constrained by the system's overall design and historic orientation toward a male prison

<sup>30</sup> This has included *Better Pathways: An Integrated Response to Women's Offending and Reoffending* (2005) which was developed by Justice Health and Corrections Victoria and the Women's System Reform Project which was launched in 2017 and established a new service delivery model for women in custody.

<sup>31</sup> Victorian State Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (1 September 2021) 73.

<sup>32</sup> Department of Justice and Community Safety (Corrections Victoria) 'Women's System Reform Project - Key Reform Initiatives (April 2022)', Data provided to the Cultural Review.

<sup>33</sup> DJCS has advised that a \$188.9 million project will deliver 106 new beds and supporting infrastructure including a new reception building, new units providing close support, new multi-purpose buildings, an extension of the perimeter wall, and expanded legal and tele-court facilities.

<sup>34</sup> See, for example, Department of Justice and Regulation, *Strengthening Connections: Women's Policy for the Victorian Corrections System* (November 2017).



population, underpinned by a culture that has not yet embraced more responsive, person-centred approaches.

### **Aboriginal people are over-represented and culturally unsafe within the adult custodial corrections system**

The custodial environment is not a safe place for Aboriginal people. For Aboriginal people, the systems and processes of the adult custodial corrections system amplify the impacts of colonisation and experiences of intergenerational trauma, systemic racism and disadvantage, perpetuating the over-representation of Aboriginal people in Victorian prisons:

'I feel like that if they had more understanding of Aboriginal culture and what we've been through and all that stuff they might be more willing to assist us and help us, rather than shut us down all the time.'

**Person in custody**

The challenges for Aboriginal people in custodial environments have been known for a very long time. Inadequate access to culture and cultural support, widespread experiences of racism, and limited provision of culturally appropriate healthcare were key issues raised by Aboriginal people during our engagement.

We heard directly from Aboriginal people that they do not feel safe in custody in Victoria. See *Part 5. Aboriginal cultural safety* for our recommendations to increase safety for Aboriginal people in custody.

### **The experience of many LGBTIQ+ people in custody is not visible or understood**

LGBTIQ+ people may be more vulnerable to physical violence and assault while in custody.<sup>35</sup> There is no specific system response to this vulnerability to violence.

DJCS does not collect reliable data about the number of LGBTIQ+ people in custody, and there is limited data available to help safely manage these increased risks for LGBTIQ+ people in custody:

'One simple first step is that every custodial setting must have their data collection set up so that LGBTQ+ data can be sensitively collected with the purpose to provide a more accurate and appropriate mechanism in which to support people in custody. [There are] examples of data, in the United States, the UK and in the Scandinavian countries that [show] LGBTQ+ people are incarcerated at a higher rate than the general population. But we don't have data here in Victoria.'

**Commissioner for LGBTIQ+ Communities**

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<sup>35</sup> James Brown and Valerie Jenness, 'LGBT People in Prison: Management Strategies, Human Rights Violations, and Political Mobilization' (2020) *Oxford Research Encyclopedia of Criminology* <https://oxfordre.com/criminology/view/10.1093/acrefore/9780190264079.001.0001/acrefore-9780190264079-e-647>.

We convened two focus groups for LGBTIQ+ people across two sites as part of our engagement processes. During those conversations, people in custody described their increased apprehension about violence and risk of physical and sexual assault. We heard from one person in custody that they were targeted by other people in custody due to their sexual orientation:

'[As a gay man] I felt so intimidated. It's the first time I've ever been in prison. I had no idea whether we could or couldn't report things and who do you go to when it was obviously a senior person there anyway and I was just so humiliated. Some of the prisoners were walking around frequently baring their arse and making such rude gestures in front of me because of [me being gay].'

**Person in custody**

Other themes that emerged through our engagement with LGBTIQ+ people included that:

- ▶ homophobia and transphobia continue to be part of the experience of LGBTIQ+ people in custody
- ▶ the lack of diversity in the workforce can influence the attitudes and behaviours toward LGBTIQ+ people in custody
- ▶ staff require more training to develop understanding, knowledge and capability when responding to the experiences and needs of transgender women in custody
- ▶ policies and processes for name changes and gender-affirming treatment are onerous and perpetuate trauma for LGBTIQ+ people.<sup>36</sup>

We understand that there is a specific strategy under development within DCJS to ensure the system better responds to the needs of LGBTIQ+ people. We support this work and further effort to increase the visibility of LGBTIQ+ people in custody and their experiences, resulting in safer spaces for people to express their sexuality in custody.

### **Trans and gender diverse-people are particularly vulnerable in custody**

It is widely accepted that trans and gender-diverse people are at higher risk of physical and sexual violence and harassment. The physical safety of trans and gender-diverse people while in custody was a common concern raised by trans women in custody, stakeholders and some corrections staff we spoke to.<sup>37</sup>

<sup>36</sup> LGBTIQ Legal Service, Submission to the Cultural Review (December 2021).

<sup>37</sup> For example, Financial Counselling Victoria Inc., Submission to the Cultural Review (December 2021) 4; LGBTIQ Legal Service, Submission to the Cultural Review (December 2021) 11-14.

Research indicates that the discrimination and social exclusion trans and gender-diverse people experience in the community can create greater risk of homelessness, drug and alcohol use, sex work participation, and mental health issues – activities that may be criminalised<sup>38</sup> and then amplified in custodial settings:

'There's issues [with transgender people's] safety, there are issues where they've been assaulted by other people in prison, and where they've been in fear from correctional officers who have expressed transphobic hatred towards them. There are all the issues around access to medication and expert care if they're transitioning, those sorts of things. I think this issue in particular about actually transitioning, changing name and sex marker is probably the cutting-edge issue in terms of a cultural change, which is happening in the broader society, but it's not happening to the same extent within the prison system.'

**Flat Out**

DJCS's policy for decisions about placement of trans people follows the guiding principle that a person should be imprisoned in a facility that aligns with their gender rather than their sex assigned or assumed at birth. Decisions are made by a multidisciplinary team on a case-by-case basis. DJCS has also advised that decisions about placement includes input and advice from a person with lived transgender experience and a forensic psychologist.

However, in practice, DJCS's current decision-making processes and approach to assessing safety and risk in the placement of transgender women within the system result in most transgender people in custody remaining at locations that do not align with their gender:

'If a trans person started their transition outside of custodial settings, once in custodial setting, there is a principle that allows them to continue that treatment or that process. And I think that the Victorian Government's Commissioner's Requirements outlines that and outline the number of requirements in relation to the management of prisoners who are trans and gender diverse, or intersex. And so, that has significant ramifications on protocols at reception for strip-searches and has a number of ramifications for healthcare for that population'

**Expert Interview**

We also heard that being in custody results in additional barriers to transition for transgender people. The LGBTIQ Legal Service identified the additional legislative requirements for name changes for people in custody as an issue of particular concern:

'Legally changing one's name and acknowledgement of sex on a birth certificate, while an incredibly important step in a [trans and gender-diverse] person's transition, is also largely an administrative process and should not be restricted by the need to obtain the prior approval of the Secretary.'<sup>39</sup>

**LGBTIQ Legal Service**

<sup>38</sup> Centre for Innovative Justice, *Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice system* (Issues Paper, July 2021).

<sup>39</sup> LGBTIQ Legal Service, Submission to the Cultural Review (December 2021) 18.

A new principal act provides an opportunity to address any provisions that may be operating in a discriminatory way.

### **The lack of safe accommodation for transgender women in custody impacts their safety and human rights**

There are acute challenges for trans women in custody including where they have been placed in custody in men's prisons.

Trans women who were or had been placed in men's prisons described violence, sexual assault, threats and other poor treatment by other people in custody:

'I've had incidents with male prisoners, being harassed sexually or threats of assaults, being objectified, I've talked to multiple staff, and they trivialise and don't really do anything about it. They just brush it off like, "It's going to happen; you're in a men's jail, that kind of stuff is quite normal", this and that, and it's just brushed off like there's no issue. There's no reporting done, there's no file notes done on the complaints that I've raised in regards to things that have happened to me. It got to a point where I was only coming out for an hour and a half a day because I didn't want to come out of my room.'

**Person in custody**

Where trans women have been placed in women's prisons, they have frequently been held in more restrictive conditions, including for prolonged periods within management units at DPFC. These arrangements limit the rights of trans women, can lead to a significant deterioration in mental health, and reveal a system that does not have appropriate systems and infrastructure to uphold the human rights of transgender women protected under international law.<sup>40</sup>

'The choice and the selection of where [trans women] go is so important for their own safety ... But what we're really doing is denying them their rights, despite their protected attribute based on their gender identity, because they're generally going to be locked up in isolation, or segregated from the main population, out of fear that they might be sexually assaulted daily, or physically assaulted daily. And so, that presents a real interesting challenge for us, because how do we protect those inmates who go into prison? How do we protect those who don't receive the full kind of access to rehabilitation, who don't receive full access to what other inmates do.'

**Commissioner for LGBTIQ+ Communities**

Despite DJCS's guiding principle and commitment to trans people being placed in a prison that aligns with their gender, we share the concerns of trans women and stakeholders and believe trans women should be placed in the general population of women's prisons and not experience discrimination or threats to their safety due to their gender identity. Trans people should also not be subjected to more restrictive or harsher conditions due to their gender identity and a lack of appropriate placement options.

<sup>40</sup> See further The Yogyakarta Principles [http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles\\_en.pdf](http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf).

We recommend that DJCS invest in appropriate infrastructure to meet the needs of vulnerable cohorts, and this must include consideration of dedicated accommodation within the women's system for transgender women who cannot be placed within the general population of a women's prison.

Placement of trans women in dedicated accommodation should take into account the preference of the woman, her security rating and individual needs – and should support her safety and human rights including individual health, wellbeing and support needs. The accommodation should have dedicated staff from the LGBTIQ+ community or people with an understanding and respect for the rights of trans people. The environment should support rehabilitation through healing, dignity, pride and building a sense of community:

'It would allow a community to begin to emerge, of trans and gender diverse prisoners, where they can start that healing process together, unpack the stuff that is happening in their lives. But it will also allow us to engage in specialised expertise and experienced care, where we employ people to come in particularly to work with that group ... If we had building fit for that community, we could start to tailor the program and support that offers them the rights and responsibilities that is supposedly afforded them by legislation, safety and security. But also starts the process of rehabilitating them and providing that peer support function, which we know LGBTIQ+ communities respond to so well.'

**Commissioner for LGBTIQ+ Communities**

As we did not hear from any people identifying as trans men during our onsite engagement, our findings and recommendations focus on the experiences of trans women. We encourage DJCS to adopt an inclusive approach in responding to our recommendations, recognising that the custodial population reflects the composition of the general community and will include trans men. The system must ensure that trans men can also be accommodated safely at a location that reflects their gender without impacts on their human rights.

## **The number of people in custody from culturally and linguistically diverse backgrounds is increasing**

While the majority of people in custody were born in Australia, the custodial population also includes individuals from a range of cultural groups, including people who were born overseas. DJCS does not collect data on cultural identity and the languages spoken by people in the adult custodial corrections system. DJCS does record 'country of birth' for people in custody, but this does not identify cultural and linguistic diversity within the Australian-born community.

Notwithstanding a growing range of cultural programs within the system, people in custody with diverse cultural needs described challenges related to religious and cultural requirements and observance, access to appropriate food, access to people from their community to talk about their needs and experiences and issues understanding the rules and routine.

'I asked for Halal food and the [officer] said "I don't care" when I told him I don't eat meat which comes from pigs he said, "Not my problem".'

**Person in custody**

We also heard about challenges accessing education and programs due to language barriers and a lack of interpreters to support equal participation and course completion.

Others reported observing racist attitudes toward people in custody from culturally and linguistically diverse backgrounds:

'We had an increase of Muslim [people in custody] and the staff are very resistant against the Muslim population. Some African Australian prisoners coming through, they were also quite racist towards them. They would be patronising and condescending in the way that they talked. These people are bilingual, they speak multiple languages. They're very intelligent. But the staff talk to them like they're stupid or something. They try and mimic their accents and other stupid games like that. And don't get me started on the [the way they treat] Aboriginal prisoners.'

**Person in custody**

The Islamic Council of Victoria reflected that cultural and religious practices are not understood and respected within the custodial environment. They noted, for example that there are often issues with the availability of adequate spaces for congregational prayers as well as difficulty accessing Halal meat.<sup>41</sup>

We heard that there should be more flexibility within the custodial system and processes to accommodate the cultural needs of Muslim people in custody – for example, the provision of medications during Ramadan need to take into account fasting requirements.<sup>42</sup>

'I remember in the past prisoners didn't have to give urine samples due to Ramadan because they are fasting. What I've heard in the last few years was that the prisoners were asked to give samples. In some places they have been forced to give samples or even take medication at a times they're not supposed to take medication. So, they were basically being forced to break their fast.'

**Islamic Council of Victoria**

We heard about issues with the availability of adequate spaces for congregational prayers and the need to ensure that Muslim people have access to utensils that have not been used to cook pork and access to Halal meat.<sup>43</sup>

<sup>41</sup> Islamic Council of Victoria - Expert interview with the Cultural Review.

<sup>42</sup> Islamic Council of Victoria (2021) Submission to the Cultural Review (November 2021) 5.

<sup>43</sup> Islamic Council of Victoria - Expert interview with the Cultural Review.

Stakeholders working with people in custody from culturally and linguistically diverse backgrounds noted that what works for some cultures may not work for others and that there is a need to understand the specific cultural of cultural groups to deliver effective supports and rehabilitation programs. In addition, recognising the influences of shame, stigma and social structures in different communities is important for developing services that respond appropriately to their cultural needs.

## Current infrastructure does not meet the needs of the increasing number of older people in the custodial system

The custodial environment creates many practical challenges for older people in custody, including physical accessibility challenges, access to meaningful employment and recreation, and adequate provision of health and personal care. We also heard that premature ageing experienced by people involved in the criminal justice system is a significant issue.<sup>44</sup>

Service providers working within the system identified the impact of the aging population as a key safety and service delivery issue.<sup>45</sup> For example, one service provider noted:

'That's probably the other huge issue for service delivery is the amount of elderly people in prison. While they're relatively fit and self-managing, ageing as normal and can cope with their own activities of daily living everything's fine, but as soon as somebody becomes frail, begins the dementing process it becomes very difficult to care for them and manage them in prison.'

**Expert interview**

One of the biggest challenges is the built environment of prisons, which is not well adapted for the accessibility needs of older people, potentially limiting their participation in community life within their location:

'I am made to feel like my injury doesn't exist, because that's the way I am treated. Because I can't help myself, I need assistance.'

**Person in custody**

Increasing healthcare needs are also a challenge for older people in custody:

'I have a physical disability that is increasingly incapacitating. I am informed that I cannot have the required medical treatment until I leave prison. All requests by me for alternative measures to deal with it have been denied.'

**Person in custody**

<sup>44</sup> Catholic Social Services Victoria, Submission to the Cultural Review (November 2021).

<sup>45</sup> Catholic Social Services Victoria, Submission to the Cultural Review (November 2021); Anonymous submission, Submission to the Cultural Review (2021).

At one site, we conducted a focus group with older men in palliative care. A number of participants spoke positively about the treatment and care they received from nursing staff:

'The staff are excellent. The staff are very helpful. The nurses are great. I am pretty happy. I'm from Pentridge Prison days and conditions there were pretty bad. So, this is good.'

**Person in custody**

Others reflected that the palliative care unit seemed to be understaffed, leading to anxious delays in receiving treatment and care:

'There was one night when I was having trouble breathing and it took the medical staff forty or fifty minutes to assist.'

**Person in custody**

We observed that privacy in the unit could be improved – there were no curtains in the unit and medical examinations were performed in view of other people in the unit.

See Chapter 21 for further discussion of the delivery of healthcare in the adult custodial corrections system.

## **Young people in custody require specific protections and targeted responses that are not available across the system**

There are a number of children and young people within the adult custodial corrections system. While the experiences of children in the system are not within the scope of the Cultural Review,<sup>46</sup> our conversations with stakeholders identified the distinct needs of people aged 18–25 within the adult custodial corrections system.<sup>47</sup>

Youthlaw outlined the mental and physical health impacts young people may experience in adult custodial environments:

'Custodial facilities are often unsafe and harmful environments that often exacerbate and compound the disadvantage and trauma experienced by young people. The mental and physical health of these young people when they emerge from incarceration has often deteriorated significantly, while the barriers to reintegrating with the community are high. Time in custody often results in a cycle of reoffending, remand and custodial sentences that is underpinned by the system's failure to meet a young person's underlying needs.'<sup>48</sup>

**Youthlaw**

<sup>46</sup> As at November 2022, the Department of Justice and Community Safety has advised that there is one child in custody within the adult custodial corrections system.

<sup>47</sup> Expert interviews - stakeholders; Commission for Children and Young People, Submission to the Cultural Review (December 2021) 2-4; Youthlaw, Submission to the Cultural Review (December 2021) 2-3; Jesuit Social Services, Submission to the Cultural Review (December 2021) 16-7.

<sup>48</sup> Youthlaw, Submission to the Cultural Review (December 2021).



Research indicates that young people aged 18–25 are distinct from adults because their neurological, psychological and social development is generally not complete until they reach 25 years of age.<sup>49</sup> Stakeholders stressed the need for specific attention to these developmental factors when young people are in custody.<sup>50</sup>

The Commission for Children and Young People raised concerns about the limited 'youth-specific' placement options across the adult custodial corrections system and highlighted that the absence of sufficient youth-focused units and staffing groups disadvantages particular youth cohorts including young women, Aboriginal people, people with intellectual disability and people from culturally and linguistically diverse backgrounds.<sup>51</sup> Stakeholders supported additional investment in specialist youth units in adult prisons.<sup>52</sup>

Recent research from the Sentencing Advisory Council noted that holding young adults in adult prisons can expose them to harm from older people in custody and restrict their participation in important programs and activities that are central to their effective rehabilitation and prosocial development.<sup>53</sup>

We spoke to a number of young people across the system in focus groups who shared various personal challenges about life in custody.

## People with disability in custody are often not provided with the supports and specialist services they require

There is currently no systematic assessment of an adult's disability when they enter custody in Victoria. However, research indicates that people with disability are significantly over-represented in Australian prisons.<sup>54</sup> Disability advocates describe this as a failure of adjacent systems and services to address the inequalities experienced by people with disability in the community.<sup>55</sup>

We heard that in many cases, people are unlikely to have their disability recognised while they are in prison, nor for adjustments to be made to meet their needs.

### Screening processes do not effectively identify the needs and supports that people with disability require in custody

Nationwide data shows that almost 29 per cent of people entering custody reported they had a chronic condition or disability that affected their participation in day-to-day activities, employment or education.<sup>56</sup> An estimated one in 10 people in prison

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<sup>49</sup> Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders* (Report, December 2019) xii, 2, 5-7, 65, 97; Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019) 6, 73.

<sup>50</sup> Youthlaw, Submission to the Cultural Review (December 2021); Commission for Children and Young People, Submission to the Cultural Review (December 2021) 3; Centre for Multicultural Youth, Submission to the Cultural Review (December 2021) 2-3; Jesuit Social Services, Submission to the Cultural review (December 2021) 17.

<sup>51</sup> Commission for Children and Young People, Submission to the Cultural Review (December 2021).

<sup>52</sup> See, for example, Youthlaw, Submission to the Cultural Review (December 2021).

<sup>53</sup> Sentencing Advisory Council, *Rethinking Sentencing for Young Adult Offenders* (Report, December 2019) 79.

<sup>54</sup> *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, Leanne Dowse et al. 'Police responses to people with disability' (Research Report, 2020) 4;

<sup>55</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021) 10.

<sup>56</sup> Australian Institute of Health and Welfare, *The health of Australia's prisoners* (Report, 2019) 78

have an intellectual disability<sup>57</sup> and a study commissioned by Corrections Victoria in 2011 found that 42 per cent of men and 33 per cent of women in Victorian prisons showed evidence of an acquired brain injury (ABI), compared with an estimated 2 per cent among the general population.<sup>58</sup>

People in custody with disability may require support with physical or cognitive tasks including assistance with reading and understanding rules, personal hygiene, participating in programs, and making complaints.<sup>59</sup> Identification of a person's disability is an obligation of Article 31 of the Convention on the Rights of Persons with Disabilities that requires state parties to 'undertake to collect appropriate information, including statistical and research data'<sup>60</sup> to address the barriers faced by people with disabilities in exercising their rights.

In its submission to the Cultural Review, the Office of the Public Advocate emphasised the importance of disability screening to identify individual needs and supports that a person may require while they are in custody.<sup>61</sup> This is particularly important in relation to connecting people in custody with services provided through the National Disability Insurance Scheme (NDIS):

'For the NDIS to apply, the applicant must demonstrate disability-related behaviours of concern that are distinguished from criminogenic behaviours, support for which is the responsibility of the relevant state or territory justice department. In reality, the behaviours that are considered "criminogenic" are synonymous with the disability-related behaviours of concern – for example difficulty regulating emotions and subsequent physical aggression. Making a distinction between the two is exceptionally difficult and a somewhat theoretical exercise for the purpose of funding decisions. Unclear delineations often become the subject of complex funding disputes between the two entities, leading to inefficiencies and delays for participants.'<sup>62</sup>

Victoria Legal Aid pointed to the gap between the needs of the growing number of people with disability in custody and what care the custodial system is able to provide:

'What are the client experiences we are most concerned about? I think that for me the most difficult and disturbing cases are people with significant disabilities and mental health conditions that end up in prison and in an extremely restricted environment, restrained. And where they're spending significant time in custody because of service failures on the outside and our inability to connect – even where there are things like NDIS packages in place – to connect to services to get people successfully out.'

**Victoria Legal Aid**

<sup>57</sup> Shannon Dias et al., 'Co-occurring mental disorder and intellectual disability in a large sample of Australian prisoners' (2013) 47(10) *Australian and New Zealand Journal of Psychiatry* 938-944. >

<sup>58</sup> Department of Justice and Community Safety, *Acquired brain injury in the Victorian prison system* (Corrections research paper series paper No 4) 19.

<sup>59</sup> Australian Human Rights Commission, *Equal before the law: Towards Disability Justice Strategies*, (Report, 2014) 28.

<sup>60</sup> Article 31, Convention on the Rights of Persons with Disabilities, United Nations.

<sup>61</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021).

<sup>62</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021) 24.

### **Specialist units and resourcing for tailored support services for people with disability are limited**

We heard that complex behaviours associated with a person's disability could make them vulnerable to victimisation or bullying by other people in custody or punitive treatment by corrections staff. Many stakeholders we spoke to expressed significant concerns about the capacity of the adult custodial corrections system to adequately meet the needs of the growing number of people in custody with disabilities and the risks posed to their safety and wellbeing when these needs are not addressed.<sup>63</sup>

'You've got more prisoners with a disability than can access the specialist units. So, they end up in the general prison population, where they are very vulnerable and often subject to bullying and other unwanted behaviours. They really shouldn't be there. What we end up with are measures being taken to punish them or they end up on protection where they're isolated. It's very difficult.'

**Office of the Public Advocate**

There are limited facilities and pathways within the adult custodial corrections system for people with an intellectual disability. Existing facilities do not have capacity to meet current demand for specialist support within the system. Currently there are two specialist facilities within the system:

- ▶ Marlborough Unit – 35-bed unit located within a secure area of Port Phillip Prison (see case study below)
- ▶ Rosewood Unit – a 44-bed specialist unit within DPFC.<sup>64</sup>

There are also supported pathways available at Loddon Prison and Dhurringile Prison where men with an intellectual disability can access a mainstream environment while receiving support from prisoner support workers or peer mentors.

DJCS has also recently received additional funding to extend the pilot of the Prison Disability Support Initiative for a further four years.<sup>65</sup> This initiative involves a team of 16 clinical staff who provide four streams of support for people with a cognitive disability in prison. The support includes assessment, consultation, behaviour support plans and assistance applying for or accessing disability supports such as the NDIS. DJCS advises that the pilot program received over 500 referrals from staff to the service in the first 12 months of operation.

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<sup>63</sup> For example, Victorian Disability Worker Commission, Submission to the Cultural Review (November 2021) 2-3; Centre for Innovative Justice, Submission to the Cultural Review (November 2021) 2-3; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 56-60; Jesuit Social Services, Submission to the Cultural review (December 2021) 15.

<sup>64</sup> DJCS advises that the purpose of Rosewood is to provide a safe environment for women with complex needs that have found it challenging to maintain a placement elsewhere, as they require additional support and/or supervision. This includes, but is not limited to women who have a cognitive impairment (intellectual disability / acquired brain injury), women who have a physical disability, women who find it challenging to reside in cottage style accommodation, women who are participating in the Marmak Outpatient Program and women on overnight observation regimes.

<sup>65</sup> DJCS advises that the 2022/23 State Budget included four more years of funding for the Prison Disability Support Initiative. This is a team of 16 clinical staff that provide four streams of support for people with a cognitive disability in prison. This includes assessment, consultation, behaviour support plans and support applying for or accessing disability supports such as the NDIS.

Some people in custody are employed as peer support workers within the system through the Peer Mentoring program. This involves providing assistance or mentoring to other people in custody who require support, including those who live in specialist disability support units. The Australian Human Rights Commission included the Peer Mentoring program as a good practice example in a list of programs and services that assist people with disability in the criminal justice system.<sup>66</sup>

We met with several peer mentors during our site visits and were impressed by their compassion, care and dedication to caring for their mentees.

### **Specialist support for people in custody with intellectual disability or cognitive impairment – Marlborough Unit at Port Phillip Prison**

During our site visit to Port Phillip Prison, we visited the Marlborough Unit and observed the benefits of the Joint Treatment Program, launched in 2007, to provide programs and specialist support to people in custody with cognitive impairment and intellectual disability. We spoke to people in custody living in the unit, people in custody who provided peer mentoring and support services and corrections staff.

The 35-bed unit is located in a secure area of the maximum-security prison and was designed to provide programs to address offending behaviour and build the social skills of people in custody with cognitive impairment and intellectual disability. Corrections staff at Port Phillip Prison are responsible for the day-to-day management of the unit, including clinical interventions and delivery of programs. The daily schedule of activities includes drug and alcohol support, education programs (including art therapy and gardening) and prison industries.

Staff described feeling overwhelmed and ill-equipped to meet the individual and complex needs of people in custody living in the unit and spoke about the burgeoning demand for places in the unit that could not be met:

‘We need another unit like this. This is the only unit in the whole of the Victorian prison system for hundreds and hundreds of [people in custody]. I now [have a] big waiting list ... We need another unit. We are so desperate ... We definitely need clinical support where we can do ...behaviour management, psychosocial programs.’

Despite these constraints, we observed a range of positive interactions between peer mentors, people in custody living in the unit and corrections staff. One peer mentor told us:

‘It gives something back to us too. When you see these guys succeeding, you know you’re doing something right. It makes you feel good about yourself. These guys do more for me than I do for them. [There are] guys not coming back to jail anymore.’

<sup>66</sup> Australian Human Rights Commission, *Programs and services that assist people with disability in the criminal justice system* (Web page) <https://humanrights.gov.au/our-work/disability-rights/programs-and-services-assist-people-disability-criminal-justice-system>.

Places are limited in these specialist units and, as a result, many people in custody with disability are placed in mainstream units that do not provide the specialist support, accommodation and programs they require to fully participate in prison life.<sup>67</sup> While some additional support may be provided through specialist pathways and peer mentors, we heard that people with a disability remain vulnerable to a range of disproportionate outcomes associated with their disability.

Limited availability of places within specialist units risks perpetuating inadequate understanding of the needs of people with cognitive disabilities and limited access to specialist care. The inevitable result will be significant challenges for staff in managing behaviour and supporting their rehabilitation:

'People that have complex and challenging behaviours associated with their cognitive impairment are often placed in restrictive regimes, like management units.'

Expert interview

### **The extent of neurodiversity and other factors that may influence a person's vulnerability or experience in custody is not clear**

The term 'neurodiversity' refers to the different ways people experience and interact with the world around them. It is often used to refer to autism spectrum disorder (ASD), as well as other neurological or developmental conditions such as attention deficit hyperactivity disorder (ADHD), dyslexia or learning disabilities.<sup>68</sup> It is estimated that 15–20 per cent of the population have some form of neuro-diversity.<sup>69</sup> While there is evidence that people with neuro-variations may be over-represented in the custodial population in Victoria, a lack of systematic disability screening and data collection is limiting our understanding of the real number of people who are neurodiverse within the custodial population.<sup>70</sup>

Stakeholders advised that there are no assessments conducted upon entry that would clearly identify factors that may indicate neurodivergence.<sup>71</sup> We heard that people with neuro-variations are frequently not offered or asked what supports or adjustments they might need. In some cases, a person entering custody may be unaware that they are entitled to such supports or do not identify as having a

<sup>67</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021).

<sup>68</sup>

Nicole Baumer, 'What is neurodiversity?' *Harvard Health Publishing* (Web page, 23 November 2021) <https://www.health.harvard.edu/blog/what-is-neurodiversity-202111232645>.

<sup>69</sup> Nancy Doyle, 'Neurodiversity at work: a biopsychosocial model and the impact on working adults' (2020) 135(1) *British Medical Bulletin* 108–125. The author notes this figure is based on the extent and overlap between neurodiverse conditions, the estimated individual prevalence of different neurodiverse conditions and the under diagnosis of women who present with other mental health issues.

<sup>70</sup> Family and Community Development Committee, Parliament of Victoria, *Inquiry into services for people with Autism Spectrum Disorder* (Final report); Office of the Public Advocate, *Decision Time: Activating the rights of adults with cognitive disability* (Report, March 2021); Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial* (Report, 2018).

<sup>71</sup> RMIT University Centre for Innovative Justice (2021), Submission to the Cultural Review (November 2021); Office of the Public Advocate, Submission to the Cultural Review (December 2021).

neurological or developmental variation, while others are unable or unwilling to communicate their neurological status.<sup>72</sup>

Lack of access to appropriate adjustments and communication support for people with neurodiverse conditions limits their participation in important programs necessary for parole and rehabilitation and can lead to their social isolation while in custody.<sup>73</sup> Evidence from a New Zealand inquiry found that neurodiverse people can face discrimination from corrections staff and other people in custody for being 'different' and experience challenges in understanding prison rules and participating in educational or vocational activities.<sup>74</sup> Neurodiverse people may also be more easily triggered by aspects of the prison environment and routine which may influence their behaviour in custody.

### Collating and reporting better data about the needs and experiences of people in custody

As discussed in *Part 2. Systems*, our work understanding the needs and experiences of people in custody has been constrained by the quality of data available. Where data is available, there is limited linkage between datasets, and DJCS makes limited use of system data to monitor the experiences and needs of people in custody. The individual needs of some people in custody are invisible within DJCS's data. Many of these needs and requirements have a direct influence on how people may experience the custodial system and could inform planning to meet those needs. This includes information about the cultural backgrounds and practices, sexual orientation and neurological or developmental conditions of people in custody. Where the system fails to identify or accommodate these needs, there can be direct consequences to the safety and rights of people in custody.

For example, understanding how people with a cognitive impairment experience restrictive practices or how people with personality disorders experience behaviour management plans has been limited by the way data is recorded, limiting its ability to be analysed or to reveal emerging patterns and risks.

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<sup>72</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021); Clare Allely, 'Autism Spectrum Disorders in the Criminal Justice System: Police Interviewing, the Courtroom and the Prison Environment' in *Recent advances in autism* (SM Group Open Access eBooks, 2016).

<sup>73</sup> Australian Human Rights Commission, *Equal before the law: Towards disability justice strategies* (Report, 2014) 24.

<sup>74</sup> Ian Lambie, Office of the Prime Minister's Chief Science Advisor, *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand* (Discussion paper, 2020) 6.

We encourage DJCS to sensitively build and share more data about people in custody and to support continuous improvement and needs analysis within the system. The Offender Management Framework already recognises the importance of up-to-date and accurate information about people in custody; however, as discussed in chapter 6 of *Part 2. Systems*, there are significant gaps in demographic and health information in individual and system databases. To better understand the needs and experiences of different cohorts and understand how policy and practices affect their experiences and outcomes, DJCS needs to improve the collection and analysis of demographic data as part of improvements to overall data capability.

Effective risk management and service delivery also requires joined up systems and collaborative practice to identify changing needs and provide responsive services.<sup>75</sup> By the time a person enters the adult custodial corrections system, significant data about their lives, their health, their circumstances and their offending has often been recorded and collated by different justice and social services agencies; however, this information does not always follow a person into and through the adult custodial corrections system. There are opportunities for closer connection between the adult custodial corrections system and other parts of the justice and social services system – including better information-sharing practices, with the specific consent of people in custody.

The potential increased vulnerability of these groups means it is important that data is collected and reported, to enable the system to safeguard the rights of people in custody and support positive outcomes. It is unacceptable that many people's sexual and cultural identities continue to be invisible to the system and do not inform the services they receive.

In Recommendation 2.6, we urge DJCS to invest in improving data capability and information management systems to ensure the system captures clear and accurate information about the circumstances and needs of people in custody. We have also made recommendations about how improved data and information management processes could promote continuous improvement and help identify emerging risks and needs in the system.

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<sup>75</sup> Department of Justice and Community Safety (Corrections Victoria) *Offender Management Framework – Achieving the balance* (2006) 8.

## Traditional prison design and existing infrastructure does not meet the needs of a more complex and diverse population

The design, layout and conditions of prison facilities plays a critical role in creating a therapeutic environment for people in custody to have their individual needs met. For example, design elements including natural lighting, choice of materials, colour, shape and temperature have all been shown to be important environmental factors for psychological wellbeing.<sup>76</sup> Access to nature and 'green spaces' in hospitals has also been demonstrated to have positive impacts on both wellbeing and physical health.<sup>77</sup>

In the custodial context, recent research from the United Kingdom has demonstrated that the presence of nature in prison facilities had a significant effect on the wellbeing of people in custody, including reducing the incidence of self-harm and violent incidents, as well as reducing rates of staff sick leave.<sup>78</sup> Yet we observed multiple sites where there was negligible green space, with multiple staff remarking about the heat and lack of protection from the elements. These locations contrasted starkly with minimum-security locations in more natural surroundings.

We have heard that the role of the built environment in supporting rehabilitation has been a key consideration in the design of the new Western Plains Correctional Centre (WPCC). For example, the infrastructure in the new facility has a greater focus on aesthetics, including use of colour and texture, and includes sound-deadening materials and windows designed to allow more natural light into units, which are not conventional features of prison facilities in Victoria.<sup>79</sup>

Across the existing prison sites, we heard that limited specialist facilities were limiting access to appropriate age-related care, mental health care and disability support. We heard multiple examples of people with cognitive impairment or acute needs being placed in more restrictive conditions and prolonged confinement due to alternative accommodation options not being identified or available. Staff also made the connection between lack of appropriate facilities and more restrictive conditions and practices, including use of force:

'Some locations are not designed to deal with management-style prisoners and not designed to deal with mentally unwell prisoners or intellectually disabled prisoners, there's no real supports around that. And what happens is that staff will resort to force, sometimes excessive force, to deal with somebody that really needs some therapeutic intervention, not a physical intervention.'

**Staff member**

<sup>76</sup> Kelsey et al, 'Ethical Prison Architecture: A Systematic Literature Review of Prison Design Features Related to Wellbeing', 2022) 25(3) *Space and Culture* 479-503.

<sup>77</sup> Ulrich, R. S., 'View through a window may influence recovery from surgery' (1984) *Science* 224, 420-421.

<sup>78</sup> Moran et al, 'Does nature contact in prison improve wellbeing? Mapping land cover to identify the effect of greenspace on self-harm and violence in prisons in England and Wales' (2021) 111(6) *Annals of the American Association of Geographers* 1779-1795; Moran et al, 'Nature Contact in the Carceral Workplace: Greenspace and Staff Sick Leave Absence in Prisons in England and Wales' (2022) 54(2) *Environment and Behaviour* 276-299.

<sup>79</sup> Staff member – Expert interview with the Cultural Review.



While a strengthened multidisciplinary and person-centred approach to meeting the needs of people in custody will assist to address some of these challenges, significant improvements to infrastructure are required to accommodate these cohorts in a way that is consistent with their needs and rights and support increased safety across the adult custodial corrections system.

**Recommendation 6.1**  
**Investing in accommodation and infrastructure that supports individual needs and human rights of vulnerable cohorts**

The Department of Justice and Community Safety should ensure that accommodation, infrastructure and specialist staffing across the adult custodial corrections system meet human rights standards and better support the needs of vulnerable cohorts including people with disability, people with cognitive impairment, young people, trans and gender diverse people, older people and people with other physical, behavioural or wellbeing needs, noting:

- a) the significant number of people with cognitive disability living in custody and inadequate specialist accommodation
- b) inadequate youth-specific units across the system
- c) trans and gender-diverse people frequently being placed in management units or under restrictive regimes due to a lack of appropriate accommodation options that align with their gender identity
- d) that the conditions within and state of repair of some management units, particularly Swan 2 at the Dame Phyllis Frost Centre, are not fit-for-purpose or compliant with human rights standards and should be closed immediately.

Existing newer facilities should be repurposed in place of older facilities that do not meet appropriate standards.

DJCS has advised that the plans for the closure of Swan 2 at DPFC are advancing, with new infrastructure under construction, expected to replace this facility in 2023.

In Chapter 16 of *Part 5. Aboriginal cultural safety*, we discuss the importance of improving cultural safety for Aboriginal people through the built environment and recommend minimum standards for cultural spaces and facilities to be included within the proposed new legislative framework.

## 19 Embedding person-centred approaches

Person-centred approaches to care are an essential feature of a safe and rehabilitative environment – but they require more than individual case management. They require a shared understanding of the purpose of the system and an environment that ensures that all actions and decisions support a person’s pathway through the justice system. A person-centred approach places the needs of the individual at the centre of the system response and ensures that people in custody have an active role in decisions about their time in custody. This expectation is reflected in both international human rights standards<sup>80</sup> and in the Guiding Principles for Corrections in Australia.<sup>81</sup>

Person-centred approaches are already embedded in many other social and human services. Within the health system, person-centred approaches have led to improved outcomes for patients. The concept of person-centred care is also a feature of the original Healthy Prison Framework developed by the World Health Organization.<sup>82</sup>

Person-centred approaches recognise the importance of providing a constructive environment and ensuring positive and respectful interactions between staff and people in custody. This should be embedded into every part of the system and be guiding principle for throughcare – the coordinated provision of support to a person from their reception into prison until they are living safely in the general community.

This understanding is already reflected in the DJCS Offender Management Framework which guides the case management and rehabilitation of people in

<sup>80</sup> See, for example, *United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners*, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 5.

<sup>81</sup> The Guiding Principles for Corrections in Australia provide that 'all prisoners/offenders are supported and encouraged by staff to address their criminogenic needs through active participation in developing case plans, accessing aligned services and participating in programs specific to their risk of reoffending and individual needs': Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018) guideline 5.3.1.

<sup>82</sup>

World Health Organization, *Healthy Prison Test* referenced in the Queensland Corrective Services *Healthy Prisons Handbook* (28 September 2016) <https://www.publications.qld.gov.au/dataset/qcs-policy-and-research/resource/72c6d2cf-2fe1-4e28-bf59-ad7bf3066ad6>.

custody in Victoria.<sup>83</sup> The Offender Management Framework also recognises that all staff make a contribution to understanding and responding to a person in custody.

The challenge for the system is to ensure this commitment is consistently reflected in system orientation, leadership, capability, resourcing and support.

During our engagement, we observed that some corrections staff are already adopting person-centred approaches in their day-to-day work with people in custody:

'I love my job because my values align with the values of the organisation. We keep the community safe; we keep the men safe. I need to contribute every day for the best of my ability because of men being released. If they are going back to live next door to my mum/best friend/child, I need to have done the best I could to make a positive behaviour change for those men. It's not everyone but you have to try. If officers are not demonstrating to the [people in custody] that they believe they can change – what are they aspiring to? ... We're not here to judge or sentence them to worse behaviour. I am here to invest my skills, empathy, and values to effect change.'

**Staff member**

However, we also heard that some staff consider more therapeutic responses to be in conflict with managing security and risk. This view was often articulated by staff who considered that their primary role was to ensure the 'security and good order' of the prison:

'There are some excellent case managers who have the best interests of the prisoner at heart and others that believe that some individuals do not deserve the opportunity.'<sup>84</sup>

**Bendigo Kangan Institute**

As noted elsewhere in this report, developing a more rehabilitative and humane culture is not at odds with prison safety. On the contrary, there is a close connection between person-centred and rehabilitative approaches and the safety and stability of the system overall. Within the custodial environment, this is often referred to as 'dynamic security'.<sup>85</sup>

<sup>83</sup> Department of Justice and Community Safety (Corrections Victoria) *Offender Management Framework – Achieving the balance* (2006) - Practice Principle 4 focuses on providing a constructive environment for people in custody.

<sup>84</sup> Bendigo Kangan Institute, Submission to the Cultural Review (November 2021) 2.

<sup>85</sup> United Nations Office on Drugs and Crime, *Handbook on Dynamic Security and Prison Intelligence* (Criminal Justice Handbook Series, 2015) [https://www.unodc.org/documents/justice-and-prison-reform/UNODC\\_Handbook\\_on\\_Dynamic\\_Security\\_and\\_Prison\\_Intelligence.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf).

### What is dynamic security?

The concept of dynamic security is based on:

- ▶ positive relationships, communication and interaction between staff and people in custody
  - ▶ professionalism
  - ▶ collecting relevant information
  - ▶ insight into and improving social climate of the prison
  - ▶ firmness and fairness
  - ▶ understanding the personal situation of the person in custody
- communication, positive relations and exchange of information among all staff.<sup>86</sup>

Over the course of our engagement, we saw how more therapeutic custodial environments are able to actively prepare people in custody for their return to the general community, as well as providing a safer and more rewarding work experience for staff. We saw a clear commitment from DJCS to develop more therapeutic and supportive environments but also observed resourcing and capability constraints. We spoke with many staff who are committed to 'doing things differently' but who felt unsupported, time poor and, at times, harshly judged by their peers for being 'soft on prisoners'.

Significant cultural change is required to embed person-centred approaches at an operational level. That this shift can be achieved through:

- ▶ enabling the workforce to build additional skills and capability (see Part 3)
- ▶ recognising the value of positive professional relationships between staff and people in custody, adopting more relational and person-centred approaches in all interactions
- ▶ increasing effort to enhance and integrate case management responses and processes
- ▶ enabling connections with family and stronger partnerships with service providers and the social services system
- ▶ fair and transparent decision-making (see Chapter 20).

Embedding person-centred approaches to care is one of our foundational recommendations to drive cultural change. As discussed in Part 2, this shift needs to be supported by data and information management tools and systems and active use of data and information to shape service delivery and encourage continuous improvement within the system.

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<sup>86</sup>

United Nations Office on Drugs and Crime, *Handbook on Dynamic Security and Prison Intelligence* (Criminal Justice Handbook Series, 2015) [https://www.unodc.org/documents/justice-and-prison-reform/UNODC Handbook on Dynamic Security and Prison Intelligence.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Handbook_on_Dynamic_Security_and_Prison_Intelligence.pdf).

## Key findings – Embedding person-centred approaches

- ▶ DJCS has developed the building blocks for integrated and collaborative case management; however, the structures and processes of the adult custodial corrections system have not embedded case management as core business or an overarching framework for coordination of the sentence planning, decision-making and service coordination.
- ▶ While the policy framework for the delivery of case management is person-centred and evidence-based, and represents good practice, case management is not consistently being delivered as intended across the system.
- ▶ Attitudes toward case management and skill in its delivery vary widely across the system, with some staff continuing to consider that more therapeutic responses conflict with their 'primary' role managing security and risk.
- ▶ People in custody have a poor understanding of the role of case managers and how to contact them, particularly for people in custody on remand for the first time.
- ▶ Staff rotations and turnover as well as the high churn of the remand population are creating challenges for continuity of case management.
- ▶ Some custodial staff do not feel they have the time and tools required to deliver quality case management, including access to infrastructure and devices as well as rostered time for writing file notes, performing case management tasks and attending Case Management Review Committee (CMRC) meetings.
- ▶ Multidisciplinary responses are not common practice, despite this being best practice.
- ▶ The role of family and community supports is currently recognised in the Corrections Victoria Reintegration Pathway (CVRP) model; however, family members and social supports are not typically involved in case management.
- ▶ Performance measures related to case management do not effectively measure the quality of case management provided and outcomes for people in custody.

# What participants told us about **CASE MANAGEMENT**

People in custody do not have regular and useful conversations with their case manager.

I don't believe I have any support from staff in that regard. I don't know who my caseworker is. I couldn't tell you. ... There's nothing meaningful in a case management plan. The case managers do it beforehand and just get the prisoner to sign it. It's all perfunctory.

*Person in custody*

Some of the case management comes down to, 'You got anything to tell me this month?' They go, 'No.' 'OK, cheers.' Had our chat, that's it. That's not good case management. If you've known the prisoner for a long time, you know - like if you're into your case management, which I am, you know what's going on for them anyway. So, you can say on things like, 'Oh, how did you go with your mum the other day' and you know what's going on.'

*Staff member*

People in custody found it difficult to build positive relationships and access support from prison officers due to staff rotations and staff turnover.

The rotation of staff and use of causals made it much harder to develop a rapport between staff and inmates. Individual circumstances are never taken into consideration, so you're treated like a sheep. You're not safe because the staff don't care beyond their minimum obligations and operational duties.'

*Person in custody*

Coordination of services, supports and opportunities is not a strong feature of the case management process.

Education, healthcare, mental health - all these things need to come together to create a supportive and nurturing perspective, outlook and practice. A lot of people in prison are broken. If they don't come in broken, they end up broken - and they're released into the community. It's unfair on the prisoner, and it's definitely unfair on society.'

*Staff member*



People in custody may be reluctant to share their wellbeing and mental health concerns with their case manager because they are worried about negative consequences.

I was locked into a cell when I first came into prison custody because I was crying and I said "I need help with this" and the officer replied "Well, it's too late, can't help you," and so I responded "Okay, I'll find someone that will," and I was crying and I was like, "Can you please help me?" and the officer I was talking to came up and I was getting yelled at so I started yelling back and they said "Nope, you're locked down. Take everything out of your cell, you're locked down for the night." That was the moment where I thought, "I can't go to them to get help. I can't go to different officers. No one's going to help me. I'll just do it on my own."

*Person in custody*

Maybe if there was actually somebody on staff that was a Correctional Officer, that could still keep security and order of the prison but who women could go to talk to in a time of upset or crisis without waiting a week or two for an appointment, that's if they're on the list for counselling.

*Person in custody*

Case management duties are often focused on procedural compliance not outcomes for people in custody.

One of the biggest challenges is casework and trying to conform to the requirements that are put in front of us that don't necessarily provide outcomes for prisoners. A lot of pressure is put on us to do certain things in a certain way, and quite often it's not achieving the best results for the prisoners, and it becomes quite challenging to stay motivated to do those parts of the role.

*Staff member*

Connections to family members and community supports are not prioritised within system responses.

Phone calls also cost a lot. The pay structure isn't much, \$26 a week and things you can purchase are expensive. Body wash is \$5. The price of basic toiletry items is about \$15. That only leaves \$10 a week for calls - it's not enough. It limits me to one call to family member per week.

*Person in custody*

People lose relationships, they lose their contact, they lose support...They send you 4 hours away and you get a 45-minute contact visit? No ones going to drive 8 hours back and forth for a 45-minute visit. COVID hit and I haven't seen my family for two years.

*Person in custody*

We have been isolated by our inability to communicate with our families and for a parent, this inability to see and hold our children is a heavy burden to bear.

*Person in custody*

## Valuing positive interactions with people in custody

### Recognising that every interaction with a person in custody can have an impact

Every interaction with a person in custody shapes their experience and attitudes while in custody and can contribute to their rehabilitation. We heard from people in custody about how important interactions with staff became in the absence of family and other supports:

'This is the first time in my life I have had mental health support. They have got me on medications and the officers here care about me. They check on me and help me get motivated. I have a lot of respect for them.'

**Person in custody**

Conversely, people in custody also told of us of poor treatment, abusive and disrespectful language and small humiliations (for example, during 'counts') which made interactions between staff and people in custody more difficult, further entrenching existing power imbalances and adding hostilities that sometimes escalates to conflict.

Language - especially language that shames and stigmatises - can have a powerful influence on a person's identity, dignity and self-worth. Ensuring that interactions between staff and people in custody are person-centered, respectful and empower and support positive change is essential to rehabilitation.<sup>87</sup> When we visited Judy Lazarus Transition Centre (JLTC), the use of respectful language - including the use of first names - contributed to a more constructive environment and more positive interactions between people in custody (known at JLTC as 'residents') and staff.

Women and Mentoring Australia told us about the importance of constructive relationships between women and corrections staff to support the overall purpose of the system:

'If the goal of imprisonment is a punishment to stop people offending, and hence avoid returning to prison, then there is a requirement for people in custody to be given the tools to make better choices and lead a positive life out in the community. But for that to happen women in custody need to have their self-esteem built up, not torn down.'<sup>88</sup>

**Women and Mentoring**

<sup>87</sup> Harney et al 'It is time for us all to embrace person-centred language for people in prison and people who were formerly in prison' *International Journal of Drug Policy* 99 (2022) Available at <https://static1.squarespace.com/static/5ef3cdaf47af2060a1cc594e/t/6157b4f097e0a672f386e6d3/1633137905387/It+is+time+for+us+all+to+embrace+person-centred+language+for+people+in+prison+and+people+who+were+formerly+in+prison+by+Harney+et+al+%282021%29.pdf>

<sup>88</sup> Women and Mentoring, Submission to the Cultural Review (February 2022).



The importance of positive interactions between staff and people in custody and a shift in mindset, attitudes and behaviours was described by many participants as essential to system and cultural change:

'[We] need to set the scene early that [the role of custodial staff] has significantly evolved to become one of action-oriented change agent. We know that there's an enormous amount of information out there about the impact of relationships on dynamic security and creating safety in a correctional environment. That's where our custodial staff can really shine.'

**Expert interview**

We heard that positive interactions and relationships can have a lasting impact on people in custody:

'When prison officers showed genuine interest in a prisoner, their family, and treated the women with respect and kindness, these positive memories remained with the women.'<sup>89</sup>

**Women and Mentoring**

Some corrections staff reflected upon their commitment and role in supporting the rehabilitation of each person in their care. These staff demonstrated exceptional empathy, understanding and the ability to look beyond an individual's offending behaviour and connect with them at an interpersonal level:

'My role is basically, if anyone asks, it's usually holding the hope for men until they're ready to hold it for themselves ... And the vehicle of that is just pretty much connecting the disconnected. So, these guys are six months prior to release, and it's basically setting the path for them guys to have a meaningful life, that there's other opportunities. Every day I do reflections with them around, "It might look like this now, but it doesn't have to remain like that". So, a big part of my role is in preparation for release.'

**Staff member**

For these staff, creating hope and building self-respect and confidence were key ingredients for supporting people in custody to change their behaviour:

'We see our role as assisting them to be the best version of themselves and addressing their needs, working out what their needs are, making sure they've got the right support and services. Returning to family and life and not returning to custody, that's our goal. So that's what motivates us – we could go do something else; we have bachelor's degrees. We could go and work somewhere else. We're committed; we believe in what we do.'

**Staff member**

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<sup>89</sup> Women and Mentoring, Submission to the Cultural Review (February 2022). The Cultural Review recognises that the submission from Women and Mentoring is directly informed by women with lived and living experiences participating in the Peer Advisory Group.

While leadership in the adult custodial corrections system are committed to a person-centred approach, we did not observe this translated across all sites. The different orientations and capacity to provide a person-centred approach across custodial sites was notable, and it was usually but not always aligned with the security rating of the prison. It was clear that the stronger emphasis on security at some locations can influence the nature of the interactions between staff and people in custody:

'[When I was at a minimum-security location] the power balance was – we knew the power was still there, it was not the power, but we had a respect for their authority. We didn't fear their authority, we respected it because of the way that they treated us ... at [minimum-security location], they did a training package called trauma-informed training, I want that here, because when it's trauma-informed I feel they had a little bit more empathy and humanity about them in the way that they talked to us, and it becomes less like a coercive controlling relationship and it becomes more equal, and rather than telling you what to do and talking at you and demanding like a narcissist, they work with you and your individual needs and try and compromise to come to – to work with you to find the best outcome for you and your progression to go home.'

**Person in custody**

There are different tools and approaches available to support staff to revalue their interactions with people in custody and make each one count. For example, 'Five Minute Interventions',<sup>90</sup> adopted by some locations already, directly connects daily interactions with people in custody with longer-term rehabilitation outcomes and provides prompts for staff to ensure that these relationships are a positive feature of the custodial environment.

Greater recognition of the value of constructive and respectful relationships and everyday interactions between staff and people in custody will be an essential element of a system that values and supports rehabilitation. This approach will complement existing processes – including more person-centred and integrated approaches to case management – and make clear that irregular case management conversations will not have the same influence on rehabilitation and positive change if they are not reinforced by the everyday experiences of people in custody.

<sup>90</sup> HMPPS Insights, *Five Minute Intervention* ('The everyday conversations we have can provide rehabilitative opportunities. When you use procedural justice principles and FMI skills you can help people to think and behave differently.') <https://www.hmppsinsights.co.uk/wp-content/uploads/2020/12/Five-Minute-Intervention-Overview.pdf>.

## A more person-centred and integrated approach to case management

Case management is currently the primary tool used to deliver person-centred approaches and facilitate constructive conversations with people in custody.

Corrections Victoria defines case management as:

'A collaborative relationship and structured process within which evidence-based interventions are delivered to reduce reoffending, risk is appropriately managed, and compliance or security is monitored. The process involves assessment, planning and intervention regarding an individual's needs and the actions taken to address those needs are reviewed.'<sup>91</sup>

DJCS already recognises that people exiting prison are less likely to reoffend if they staff help them prepare for their release and they have access to information, support and targeted interventions to assist with their identified transitional needs.<sup>92</sup> Corrections Victoria's Case Management Statement states that 'evidence informed case management is the mechanism through which behaviour change is planned and achieved.'<sup>93</sup>

There are opportunities for DJCS to continue building on the existing foundations to create a more a 'integrated' and coordinated approach to case management that brings together multidisciplinary stakeholders and supports. The Department of Health and Human Services characterises integrated case management as 'seamless, coordinated access to a range of services that can address different aspects of an individual's need .... All services work in a coordinated way to achieve shared outcomes for the individual'.<sup>94</sup> Integrated case management also facilitates connections with family and community supports.

This integrated and multidisciplinary approach is consistent with the Guiding Principles for Corrections in Australia, which articulate best practice principles for a modern adult custodial corrections system underpinned by good governance, respect, safety and security, health and wellbeing, and rehabilitation and reintegration.<sup>95</sup>

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<sup>91</sup> Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016) 10.

<sup>92</sup> Corrections Victoria, *Commissioner's Requirement 3.1.1 - Transition Support and Preparation for Release* (29 July 2020).

<sup>93</sup> Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016) 21.

<sup>94</sup> Department of Health and Human Services, *Social Housing Advocacy and Support Program (SHASP): Interim Integrated Case Management Guidelines* (Guideline, 2012) 5.

<sup>95</sup> These principles provide for integrated end-to-end case management supported by effective, consistent and system-wide frameworks that ensure accurate assessment, planning, intervention and review and holistic and structured case management, with case planning that considers the person's risks and needs and utilises a multidisciplinary approach to encourage positive behaviour change and promote accountability: Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018).

## Current approach and experiences of case management

In a custodial context, case management seeks to help individual people in custody to achieve outcomes specific to their individual needs and consistent with the objectives of the system – that is, to support their rehabilitation, wellbeing and preparedness to re-enter the general community and positively participate in society without reoffending.

Corrections Victoria's approach to case management is set out in two key strategic policy documents *Case Management Practice Guidelines: What We Do* and a supporting *Case Management Statement: Why We Do What We Do*.<sup>96</sup>

### Objectives of Corrections Victoria's case management model

Corrections Victoria's key objectives for case management are set out in the *Case Management Statement: Why We Do What We Do*:

- ▶ **Support community safety** – Supporting and contributing to community safety through the effective case management of offenders is to be a key driver and outcome of all Corrections Victoria case management activity.
- ▶ **Manage risk** – While working to reduce reoffending and promote rehabilitation, the management of risk in offender management environments is considered the 'baseline' for all other case management activity.
- ▶ **Create working alliances** – Working with offenders is to be undertaken on the basis of collaboration and partnership, knowing this has the best chance of building motivation, responsibility and ownership in the offender regarding their rehabilitation.
- ▶ **Reduce reoffending** – In order to reduce the risk of reoffending, Corrections Victoria case management activity will be focused on facilitating rehabilitative opportunities and outcomes for offenders.
- ▶ **Build strengths** – Corrections Victoria case management recognises that building and developing offender strengths and capabilities is critical for promoting pro-social living.<sup>97</sup>

The Corrections Victoria Case Management Statement also sets out what it describes as the foundations for correctional case management – evidence-based practice principles designed to reduce reoffending, promote rehabilitation and increase community safety.

<sup>96</sup> Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016).

<sup>97</sup> Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016) 10.

All staff working in prison locations are required to understand what case management is, how it applies to day-to-day practices, and their responsibility for case management outcomes.<sup>98</sup> The primary responsibility for case management sits with custodial officers, as the staff responsible for the day-to-day supervision of people in custody.<sup>99</sup>

The current approach to case management is intended to meet individual needs and respond to identified risks for people in custody,<sup>100</sup> and the role of person-centred approaches is already recognised by the policy framework and many people working within the adult custodial corrections system. However, while the policy framework for case management represents good practice and is evidence-based, we found that case management is not consistently being delivered as intended across the system.

We encountered promising pockets of case management practices. At Ravenhall Correctional Centre, we observed close working relationships between custodial staff and clinicians in the forensic mental health units and close supervision units. Clinicians and custodial staff appeared to deliver high-quality case management and mental health treatment as part of a specialist, stable and well-integrated team. One staff member in this team described the way they tailor their approach to meet the needs of Aboriginal people in custody:

'Our team will do anything from sit in with GP appointments, rebuild relationships with family, encourage the [person] to reengage in their roles as fathers, mothers or grandfathers, grandmothers, aunties, uncles, whatever it may be, and really try to help them re-establish that identity in the community before they go home, and then kind of reinforcing it when they go back out.'

**Staff member**

People in custody we spoke to shared reflections about their positive experiences with case management:

'The officers there have training in mental health, trauma informed training and training diagnosis and disorders that informs officers on how to manage and work with [people in custody], with specific needs. This gives officers a better understanding of the individuals needs whilst giving tools to better cope in situations regarding the [people in custody] they are working with.'

**Person in custody**

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<sup>98</sup> Corrections Victoria, *What is Case Management? Prisons and Custodial Facilities*.

<sup>99</sup> Department of Justice and Community Safety (Corrections Victoria) 'Position Description - Prison Officer - Trainee (COG 1) and Prison Officer (COG 2a)', Data provided to the Cultural Review.

<sup>100</sup> Department of Justice and Community Safety (Corrections Victoria) *Offender Management Framework – Achieving the balance* (2006).

Staff also explained the importance of good case management at a number of sites:

'You do a lot of case work with your prisoner group that you're allocated and I'd always put a lot of effort into mine, because that's why I came into the job. I think that a lot of these guys have never had anyone positive in their life to tell them that they can do better, and I'm a very positive person. So, I wanted to try and help make a change. I know that it's not realistic for a lot of them, but if I can help some of them, then that's me doing my job. You've got two types of people that come in as a prison officer: you've got people that want to lock them up and people that want to help.'

**Staff member**

Another staff member described their daily case management work which involves a combination of emotional and practical assistance:

'When I used to do case management, if I had a prisoner who was really engaged with it, I would spend most of my time with that prisoner. I'd help him where he wanted it, I'd do this for him, I'd do that for him. But most of the stuff I was doing was not done whilst writing out a file note. It was done behind the scenes. So, it was the phone calls with programs, it was the phone calls with Caraniche. Sometimes it was the emails. I as a prisoner officer am trying to get the prisoner happy, the prisoner rehabilitated, and give him the best opportunity to do whatever he needs to do that's not criminal when he gets out.'

**Staff member**

There are more positive experiences of case management within more therapeutic locations. The quality of case management was described as exceptional at JLTC, the only dedicated transitional facility within the adult custodial corrections system. The JLTC residents we spoke to described good communication and engagement with staff and reported good support and easy access to their case managers, parole officers and other key supports and services, facilitated by staff, who mostly work together to support residents.

## Limitations of the current approach to case management

Over the course of the Cultural Review, we heard from a number of staff and people in custody about key issues and opportunities associated with the current case management response. We heard more negative than positive reflections about the quality of case management, with some individuals describing feeling 'lucky' when they were paired up with a 'good' case manager.

'I was quite lucky with my case managers. I had some good people who were interested, and they helped.'

**Person formerly in custody**

Concerns about the quality of case management raised by staff, people in custody and service providers included:

- ▶ inconsistent or inadequate opportunities to meet with a case manager
- ▶ poor understanding of the role of case managers and how to contact them, particularly for people in custody on remand for the first time
- ▶ inconsistent attitudes and commitment toward case management duties within the workforce –including staff committed to case management being ridiculed by their colleagues and taking on other team members' duties
- ▶ hesitation about discussing mental health issues with a case manager for fear that it could have consequences for a person's conditions in custody
- ▶ disruptions to continuity of case management and opportunities to build trusting relationships caused by staff rotations and turnover
- ▶ churn of people in custody through the system and across different locations interrupting case management and other processes
- ▶ lack of coordination between custodial staff and health and allied staff to support case management and work toward agreed outcomes
- ▶ custodial staff not having the time and tools required to deliver quality case management including access to infrastructure and devices as well as rostered time for writing file notes, performing case management tasks and attending CMRC meetings
- ▶ processes for case management prioritising procedural compliance rather than supporting improved outcomes for people in custody
- ▶ performance measures for case management that do not effectively measure the quality of case management and outcomes for people in custody
- ▶ limited opportunities for people in custody to be included in case management discussions and processes.

### **Time and capacity issues impact delivery of case management**

There are significant demands on corrections staff time, and case management – particularly where it involves a person-centred approach – takes time to do properly. Rostering and the structure of shifts should ensure there is sufficient time for meaningful case management conversations and actions.

However, we heard that lack of capability and time and the unwillingness of some custodial staff to conduct quality case management is creating unfair pressure on those who recognise the value of this task to absorb additional work.

We also heard that case management is generally approached as an isolated task rather than something that is embedded in the overall approach to the management of people in custody. One staff member described how case management was treated as 'tick-box exercise' by some staff, with few tangible benefits:

'Some of the case management comes down to, "You got anything to tell me this month?" They go, "No". "OK, cheers". Had our chat, that's it. That's not good case management. If you've known the prisoner for a long time, you know – like if you're into your case management, which I am, you know what's going on for them anyway. So, you can say on things like, "Oh, how did you go with your mum the other day?" and you know what's going on.'

**Staff member**

We also heard that there are challenges presented by the growing number of people in custody on remand – their potentially short time in custody limits opportunities for staff to build positive and effective relationships:

'[System] churn has been a really big one. So just the fact that if you look at the recidivism rates for people who have been in custody for a couple of years or more, they're not too bad, but if you look at the recidivism rates for people who churn in and out of the system that we don't get an opportunity to build relationships and engage with, it's through the roof. Churn's a big challenge.'

**Expert interview**

### **Differing staff attitudes and approaches to case management**

We observed different staff orientations and motivations toward their case management functions. Some staff told us that they enjoy their case management role and feel passionate about outcomes for people in custody. Others characterised case management as a waste of time, believing that people in custody can't change:

'Prison officers don't see a purpose for case management and they're quite loud and proud about this. They're here for the security of the prison and this [case management] is foreign to them. Getting to know the prisoner and their story and getting them to articulate their needs, a lot of them are really reluctant to engage in case management. They probably don't understand it if we're really being clear. There's no consequence if you don't do it ... I guess the audits, they might tick a box but they're just doing that to satisfy their audit requirements.'

**Staff member**

We heard directly from a number of custodial staff that they do not consider case management to be a core focus of their role. Stakeholders echoed this idea, noting that some staff consider it to be peripheral to their other duties. Caraniche recommended further training for staff to clarify their role and the importance of the dual priorities of rehabilitation and security – this clarity might assist staff to reconsider corrective action that might undermine a person in custody's rehabilitation.<sup>101</sup>

<sup>101</sup> Caraniche, Submission to the Cultural Review (December 2021).



Some stakeholders recommended that case management and security roles should be separated, allowing for some custodial staff to focus exclusively on security while new specialist prison case managers are recruited.<sup>102</sup> While we support the need for further training and the introduction of specialist skills in case management (see *Part 3* for further discussion), there is a risk that completely separating security and case management roles may lead to ‘security focused’ custodial staff who have little or no understanding or skills in supporting people with complex needs and their rehabilitation.

### **Some people in custody do not feel connected to their case manager**

Despite the general expectation within corrections policy that case management is an important feature for supporting rehabilitation, we heard that some people in custody are not having regular and constructive discussions with their case manager and that there can be weak connections between case management conversations and the person's overall experience in custody and outcomes upon release.

People in custody told us they often felt that decisions were being made about them without their input and they didn't have access to key information about their time in custody:

‘I have no idea what's happening, that's my problem and it's not just me, we don't know. We don't know when I'm sitting for parole. It's four weeks away. It's actually five weeks today. I have no idea whether I am going on my earliest [release date] or whether it's going to be later. What do you need from me? There's no communication. The communication in here, not just between the [prisoners] and the officers but even between the officers it's dismal. It's non-existent. You tell an officer something, but when you go and follow it up and that person is not there, they have no idea.’

**Person in custody**

We heard that rotational policies have been introduced to most sites in order to prevent staff from becoming too familiar with people in their care. However, we also heard that rotational policies can impact the quality, consistency and continuity of case management as well as staff members' ability to settle into a role and develop expertise. We heard that rotational policies can be disempowering to staff who may feel they have little control or choice in their placements. We understand the WPCCC workforce model has plans for more stable rosters and custodial ‘communities’ to support more meaningful case management.

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<sup>102</sup> Anonymous submission, Submission to the Cultural Review (2021).

## Developing a more integrated approach to case management for Victoria

Effective and integrated case management requires systems and processes that can identify, record and respond to the changing health, social and wellbeing needs of people in custody and provide consistent end-to-end support. It also requires this activity to be prioritised and resourced as a core activity within the system.

While DJCS has developed the building blocks for integrated and collaborative case management, current systems and processes have not embedded case management as core business or an overarching framework to link case management with sentence planning and service coordination:

'In terms of case management, we currently utilise an evidence-based model, but it's really about how we provide the space for people to implement that as well as how we oversee and support that and create opportunities for ongoing training. And what expectations we set that we're actually checking in on to test if that's happening. It's about how you set the system up to monitor it, as much as creating the right frame ... In terms of the CMRCs at the moment, I mean, we've talked about people trying to acquit things like SDO 23, which means that at times meetings are happening on weekends and you do not always have the right people at the table, it is important that there is a multidisciplinary approach when it is required, but most importantly it should have the case manager there for it to be effective. It's pretty crucial.'

### Expert interview

A more integrated and multidisciplinary approach to case management should place the needs of a person at the centre and ensure that all decisions, actions and supports relating to that person connect with an overall plan to support their transition to the community. This should include decisions about conditions and management within custody, a person's movement through and around the system, and their access to education, work and rehabilitation opportunities. A person's family, community and supports should be part of these processes to ensure that people can maintain relationships with the supports in the community they will eventually return to.

Current case management policy sets out a number of options for what could be described as integrated or collaborative approaches to case management, including CMRCs and case conferencing.<sup>103</sup> However, we understand these multidisciplinary reviews are not common practice, and are generally limited to key milestones in a person's sentence such as a parole application, decisions about placement, or where 'risk levels are high or escalated or the case manager feels 'stuck' in assisting the offender to address their offending and related issues.'<sup>104</sup>

Where these more formal collaborative case review meetings do occur, we have heard that people in custody have limited influence over decisions made about them, and review meetings can sometimes happen without the relevant person in custody, or their case manager, being present:

'When you read the case management framework and you read about the theory and the case management review committee meetings, CMRCs, in theory it sounds great; it should work. But then the operational reality is sometimes different.'

Expert interview

Staff we spoke to identified rostering as a structural barrier that influenced whether they were able to participate in CMRC meetings and contribute to review and planning processes.

DJCS has identified the need to improve case management approaches across the system. Work is already underway that may assist to address many of the challenges we identified through our engagement. In particular, we note work underway on the Case Management Uplift Project, established in late 2021 to improve the custodial workforce's understanding and practice of case management.

The Case Management Uplift Project aims to address barriers to effective case management and improve the perception among staff that case management process is predominantly administrative and utilised to record the uptake of programs and services rather than a critical tool for supporting rehabilitation and transition into the general community.<sup>105</sup> As a part of the project, staff attraction and recruitment processes will emphasise case management expertise. The project also includes opportunities for staff professional development, creation of new tools to support better case management practice and a focus on quality assurance. These new case management tools and approach are being piloted in the women's system to align with the Women's System Reform Project.<sup>106</sup>

<sup>103</sup> Corrections Victoria, Offender Management Framework - Case Management Review Committee (no date)> ; Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016).

<sup>104</sup> Corrections Victoria, *Case Management Statement - Why we do what we do* (Strategic policy, 8 July 2016) 21.

### **Enhanced case management at Western Plains Correctional Centre**

DJCS describes enhanced case management as a cornerstone of the new Western Plains Correctional Centre (WPCC) operating model. Key features of WPCC's planned case management model include:

- ▶ a dedicated work team with a stable roster, to support continuity of case management and enable greater collaboration between case managers and people in custody
- ▶ stable rosters intended to attract qualified and motivated candidates, including recruits from other sectors
- ▶ a multidisciplinary approach to case management involving corrections staff and service providers
- ▶ ongoing training and investment in case managers.

People in custody will commence case management immediately upon their arrival at WPCC, and a case manager will support each person in custody until they leave the site, whether to another location or to re-enter the general community.

Other elements of the WPCC model including a renewed approach to recruitment, workforce development and technology.

Some of our recommendations in other parts of this report will further strengthen skills and capability to deliver person-centred, collaborative and integrated case management. However, there are limitations to what an incremental approach can achieve when it is not connected to a broader shift in culture and clearer recognition of reorientation as a purpose of the system.

As part of the renewed approach to case management, DJCS should also consider:

- ▶ reviewing the current case management approach to ensure it aligns with evidence and best practice, the purpose and principles of the custodial system and considers approaches from other jurisdictions
- ▶ roster arrangements that reflect the time required for effective case management discussions
- ▶ requiring that people in custody and case managers are included in CMRC meetings and have an opportunity to participate in discussions
- ▶ including services and supports outside of custody in case management processes to ensure that people in custody have access to a holistic and continuing service response through community-based supports.

## Learning from the experience of case management approaches in other jurisdictions

More integrated and person-centred approaches to case management to support rehabilitation have been implemented in other jurisdictions. For example, in November 2021, South Australia implemented a new 'end to end' approach to case management which locates the person and their needs at the centre of the process.<sup>107</sup> The South Australian approach to case management is part of a package of reforms that aim to reduce recidivism by 10 per cent.<sup>108</sup> Notably, South Australia has the lowest recidivism rate in Australia.<sup>109</sup>

The South Australian approach adopts a more holistic and integrated approach to resolve the perceived conflict between rehabilitation and security goals. Another notable point of difference is the language adopted within their case management approach that requires staff to see people in custody as worthy of support and capable of change.

### Guiding principles for case management in South Australia

The guiding principles of the case management approach in South Australia are set out in the case management framework:

- ▶ **Community safety and rehabilitation:** Commits to providing an appropriate level of safety and security and a consistent focus on the rehabilitation goals of our service populations. Teamwork and balanced thinking are key to ensuring the appropriate application of compliance monitoring and case management processes as part of collaborative case management planning, goal development and attainment.
- ▶ **Continuity:** Recognises that the service populations frequently transition through our service system whether between prison accommodation units or to different prison sites, prison to community or between community sites, prison and programs. Alignment and consistency in our approach to case management is essential to ensure that the work commenced in one location is not lost as the service user transitions through the correctional system.
- ▶ **Holistic:** Supports a shift in mindset toward increased focus on a strengths-based approach in tandem with our risk need responsiveness approach underscores the importance of a holistic approach focused on factors most likely to assist and support an individual to achieve their life goals along with, where applicable, their desistance focused goals.

<sup>107</sup> South Australia Department of Correctional Services, *E2E Case Management: Our Approach*, 15-16 [https://www.corrections.sa.gov.au/\\_data/assets/pdf\\_file/0004/730291/End-to-End-Case-Management-Our-Approach.pdf](https://www.corrections.sa.gov.au/_data/assets/pdf_file/0004/730291/End-to-End-Case-Management-Our-Approach.pdf).

<sup>108</sup> See further Government of South Australia *Strategic Policy Panel Report: A Safer Community by Reducing Reoffending: 10% by 2020*. [https://www.corrections.sa.gov.au/\\_data/assets/pdf\\_file/0003/27795/10-by-20-Strategic-Policy-Panel-Report.pdf](https://www.corrections.sa.gov.au/_data/assets/pdf_file/0003/27795/10-by-20-Strategic-Policy-Panel-Report.pdf)

<sup>109</sup> Sentencing Advisory Council 'Released prisoners returning to prison' <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/released-prisoners-returning-to-prison#:~:text=This%20rate%20is%20slightly%20lower%20than%20the%20Australian,one%20measure%20of%20recidivism%20or%20repeat%20criminal%20activity>.

- ▶ **Person-centric:** Provides that case management is tailored to address the service needs of each unique service user and recognises that differences have been demonstrated through research to have relevance to the effectiveness of different interventions.
- ▶ **Strengths-based and responsive:** Focusses on each service user's strengths, unique needs and the dynamic nature of their life experience. By identifying and drawing on the resilience and strengths of service populations it aims to avoid inadvertently perceiving them as somehow deficient as individuals or incapable of change.
- ▶ **Gender and culture matter:** Supports gender and culturally responsive strategies to inform case management, inclusive of compliance management, planning and goal setting.
- ▶ **Community focused:** Requires strong relationships with human service, community and allied partners and actively advocate and link service populations, in a timely way, to pro-social networks (family, community and services) of support to enable their ongoing community connection as people transition through and from the correctional service system back to community life.
- ▶ **Relationship-based, every contact matters:** Provides that all people working within the system have a role to encourage, model and motivate positive interpersonal relationships and pro-social behaviour in all interactions. Importantly, the shift in case management practice has been supported by a new case management system – 'iSafe' that aims to be a single source of information relating to people under justice supervision in South Australia. This electronic system replaced all paper-based and legacy systems.<sup>110</sup>

Some of the South Australian case management principles are already implicitly recognised in the Offender Management Framework; however, the current approach does not explicitly articulate the role of person-centred approaches and relationships in promoting rehabilitation, safety and security.<sup>111</sup>

The South Australian model is new and has not yet been evaluated, but it provides a helpful model for locating case management activity within a broader system response that strives to reduce recidivism backed by accountability for achieving this goal.

End-to-end case management has also been implemented within the youth justice system in Victoria. Youth Justice defines case management as 'a collaborative, structured process of assessment, planning, intervention and review that determines and responds to a young person's individual risks and criminogenic needs in order to reduce reoffending and improve community safety'.<sup>112</sup> This approach also

<sup>110</sup> South Australia Department of Correctional Services, E2E Case Management: Our Approach, 10-11 [https://www.corrections.sa.gov.au/data/assets/pdf\\_file/0004/730291/End-to-End-Case-Management-Our-Approach.pdf](https://www.corrections.sa.gov.au/data/assets/pdf_file/0004/730291/End-to-End-Case-Management-Our-Approach.pdf).

<sup>111</sup> Corrections Victoria *Offender Management Framework*. <https://www.corrections.vic.gov.au/offender-management-framework>.

<sup>112</sup> Department of Justice and Community Safety, *Youth Justice Case Management Framework* (2018), 10.

recognises the role of multi-agency collaboration and that this approach is vital to coordinating services to meet a young person's needs.<sup>113</sup>

## Building information systems to increase continuity and coordination in case management processes

We heard that case management would be significantly improved by better record-keeping and closer integration of systems and processes across the adult custodial corrections system. Current information systems require people in custody to retell their often-complicated 'story' each time they move to a new location or are located a new case manager. Case notes are often patchy, with information stored in a combination electronic and paper-based files:

'Every time you move units you have a different case worker. Because each case worker looks after a particular unit or area, so if you move you have to sit with a new case worker, tell them all your family history, your past history, why you're in jail, what your goals are, what you're doing ... [it's] traumatising.'

**Person in custody**

The need to improve information-sharing to support a more trauma-informed approach was also identified during our conversations with corrections leaders:

'It would be great to improve information-sharing. We don't want to constantly be interrogating people about their developmental history, their offence history, et cetera, over and over again, because that's not a trauma-informed approach. It is in itself traumatising.'

**Expert interview**

We recognise that there will be staff movement within the system and around different units within a location. However, we have also heard that this can prevent people in custody from developing a positive relationship with their case manager:

'I probably had five case managers. They just continuously changed. And then the problem that you have is I personally don't want to talk about my offending with my case manager.'

**Person in custody**

A renewed approach to case management which includes improved information systems and processes to deliver a more collaborative and integrated approach will reduce the disruption and impact of movements of staff and people in custody around the system.

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<sup>113</sup> Department of Justice and Community Safety, *Youth Justice Case Management Framework* (2018), 10.

## Shifting the focus away from procedural compliance to outcomes for people in custody

How well case management is meeting expectations is monitored through file review processes and service delivery outcomes (SDOs). One of the key concerns about the current approach to case management is that the processes are driven by procedural compliance rather than specifically tracking and improving the response to people in custody.

'We try to get our staff to interact with the prisoner group through the casework, but I don't think it's achieved what we were hoping it to achieve, because staff have had training on how to meet the service delivery outcome for case management, but not actually how to assist the prisoner, in so much as referrals and things like that. I mean if there's something really glaring them in the face, then yep, they can get them a psych call, they can get a medical appointment and stuff like that, but a lot of the underlying issues, I don't think we're identifying.'

**Staff member**

The SDO used to measure case management, SDO 23, is intended to embed and improve case management across the system. Despite this, we heard from corrections staff at different locations that the focus on procedural compliance with the record-keeping requirements of SDO 23 often eclipsed consideration of the purpose and quality of case management:

'One of the biggest challenges is casework and trying to conform to the requirements that are put in front of us that don't necessarily provide outcomes for prisoners. A lot of pressure is put on us to do certain things in a certain way, and quite often it's not achieving the best results for the prisoners, and it becomes quite challenging to stay motivated to do those parts of the role. If it takes most of your time to achieve the monthly requirements for your casework, then you're not getting time to spend doing actual things that are helpful or beneficial for the prisoner. It's very scripted, how we do our casework each month and what we have to achieve ... To find someone that's got the natural ability and skillset to do both roles really well, [security and casework] it's hard... We're expecting everyone to come into the system to do both those roles and do it well. It doesn't work ... The prisoners are not getting the best outcomes, for sure.'

**Staff member**

In *Part 2. Systems*, we have recommended a broad review of SDOs to ensure that they accurately measure system performance, aligned with its core purpose, and help identify emerging issues and risks within the system. As part of this review, DJCS should improve its processes for measuring the delivery of person-centred, high quality case management to people in custody.



**Recommendation 6.2**  
**Embedding person-centred approaches to support rehabilitation**

The Department of Justice and Community Safety should embed person-centred approaches across the adult custodial corrections system that:

- a) reflect the updated purpose and principles of the revised legislation, including to support rehabilitation
- b) support regular, positive interactions between staff and people in custody
- c) ensure that there are sufficient resources for effective case management, including rostering arrangements
- d) link system performance measures for case management processes to individual outcomes (as part of the broader review of service delivery outcomes)
- e) better enable connections with family and community supports, including participation by family and community supports in case management and other custodial processes
- f) involve people in custody in decision-making and case-management discussions that affect them
- g) better integrate and connect with other services and supports provided to people in custody – these commitments should be specifically reflected in the revised legislation.

## Increasing connections with people and services outside the custodial environment

While people in custody are deprived of their liberty, it is important that they do not lose their connections to family, community and supports. These connections are essential for wellbeing, to reduce the risk of reoffending and support them to transition back into the general community. People in custody told us that connection to their family and community was integral to their sense of self:

'We have been isolated by our inability to communicate with our families and, for a parent, this inability to see and hold our children is a heavy burden to bear.'

**Person in custody**

A number of staff identified supporting family connections as one of the ways that they can help people in custody to achieve positive change in their lives:

'The biggest thing for me is what we're trying to achieve here is actually meaningful. So, if we are able to reduce recidivism, we've done something really, really good. We've changed a life, we've changed a family, we've changed a community, we've changed society. That is really powerful and has meaning.'

**Staff member**

For people in custody from culturally and linguistically diverse backgrounds, connections to family and community support may also help retain connections to religion and culture that are not already available within the custodial environment. We heard that visitor programs are highly valued by culturally and linguistically diverse communities and that access to a range of activities to enjoy with family and community should be supported:

'I think the visitations programs are really necessary, so visiting the culturally and linguistically diverse people in custody from cultural-based community organisations that really help facilitate those connections with and back to the community and extended family. It's really important and facilitated through sporting, music, cooking, religious activities. [We] can't underestimate the religious services which are really important.'

**Expert interview**

The DJCS Diversion and Rehabilitation Strategy features specific initiatives to support connections between women and their families.<sup>114</sup> We recognise that not all people in custody will have family and community support available to them and that there may be a range of reasons why a person does not want their family involved in the administration of their sentence. However, where a person in custody wishes to remain connected to family and other supports, there should be processes within the system to maintain and strengthen those connections.

### **Stronger recognition of the role of family and community supports in legal framework and decision-making**

Access to families and supports is not a privilege for people in custody but something that should be actively supported. In the United Kingdom, a review found that people in custody who receive family visits are 39 per cent less likely to reoffend than those who do not<sup>115</sup> and that supportive relationships with family members 'give meaning and all-important motivation to other strands of rehabilitation and resettlement activity'.<sup>116</sup> Similarly, we heard from Sisters Inside about the important role relationships with children and families play in helping women in custody achieve successfully reintegrate back into the general community.<sup>117</sup>

Other jurisdictions expressly recognise the contribution of family and community supports in case management and support for people in custody. For example, in South Australia, the legislation expressly recognises the importance of involvement

<sup>114</sup> Most recently in September 2019, the Diversion and Rehabilitation Strategy was funded \$14.56 million over a four-year period. Initiatives in this strategy have included the implementation of Family Therapy, Family Engagement Officers, a housing program for remand prisoners, Women's Employment Specialists and a Family Visits Program. DJCS has advised that number of these initiatives will lapse in June 2023 without further funding which will result in progress being lost.

<sup>115</sup> Lord Farmer, *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, Ministry of Justice (2017) 7.

<sup>116</sup> Lord Farmer, *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, Ministry of Justice (2017) 7.

<sup>117</sup> Sisters Inside - Expert interview with the Cultural Review.

and participation by family and community, with specific recognition of the role of family and community in rehabilitation processes for Aboriginal people in custody.<sup>118</sup>

In New Zealand, the role of family is recognised in the extended purpose and principles for the custodial system. New Zealand's *Corrections Act 2004* provides:

'An offender's family must be recognised and involved in decisions related to sentence planning and management, and rehabilitating and reintegrating the offender into the community, so far as is reasonable and practicable in the circumstances and within the resources available.'

'Contact between prisoners and their families must be encouraged and supported, so far as is reasonable and practicable and within the resources available, to the extent it is consistent with maintaining safety and security requirements.'<sup>119</sup>

New Zealand provides further commitments to safeguarding Māori *whānau* (family and community connections) in *Hōkai Rangī*, the 2019–2024 strategy for Ara Poutama Aotearoa – the Department of Corrections:

'Where they are willing, whānau will be supported to walk alongside Māori in our care and management on their rehabilitation and reintegration journey. These whānau will be supported in this by our staff.'

Ara Poutama Aotearoa will proactively communicate with whānau Māori, involve them, and keep them close and connected to those in our care and management. We will streamline communication processes so whānau can contact those in our care.

We will work across relevant sector agencies, whānau, hapū, iwi, and other relevant parties to foster healthy, sustainable, and stable whānau relationships – focusing on the wellbeing of whānau to achieve the wellbeing of the person in our care and management.

We will recognise that whānau extends beyond the nuclear family and is inclusive of extended family, kaupapa family, hapū and iwi, and others who are not kin but have a shared sense of whānau identity around a particular kaupapa. Where no obvious whānau support is available, we will support people to make pro-social connections in the community.'<sup>120</sup>

Other jurisdictions have dedicated mechanisms to help people in custody and their family maintain communication and contribute to their case management. In

<sup>118</sup> *Correctional Services Act 1982* (SA), ss 3(2)(f) and 3(2)(g).

<sup>119</sup> *Corrections Act 2004* (NZ).

<sup>120</sup> New Zealand Department of Corrections *Hōkai Rangī, the 2019-2024 strategy for Ara Poutama Aotearoa*, 17.

Scotland, families of people in custody are connected to social workers who support them to contribute to case management and other processes.<sup>121</sup>

Every prison has a family contact officer, who is responsible for encouraging and maintaining links with families. As well as acting as a liaison point between visitors and people in custody, the family contact officer can also put visitors in touch with appropriate partner agencies for advice and support. The direct phone numbers of each family contact officer are published on the Scottish Prison Service website.<sup>122</sup> There is also a Family Help Hub for children and family members of people in custody to access before or after a visit. The hub provides information about custody, visits and services and supports available in the community.<sup>123</sup>

The Youth Justice Strategic Plan 2020–2030 also recognises the role of family in the rehabilitation of children and young people. Within the youth justice system, there are opportunities for family members to contribute to case management processes and a recognition of the importance of continuing prosocial connections to the community.<sup>124</sup>

In Victoria, some policies, including the Corrections Victoria Reintegration Pathway (CVRP) recognise that people in custody are likely to do well if they have access to these supports.<sup>125</sup> However, there is no statutory guidance or recognition to ensure that supporting connections to family and community is embedded in service delivery.

There is merit to strengthening the practical supports, access and communication provided to family and community to ensure they are included, as appropriate, in rehabilitation and reintegration planning for their family members in custody.

### **Consideration of family and community connections in decision-making**

Recognising the role of family and community supports in the legal framework and within case management can help shape decisions about a person's movement within the system. We heard that people are often disconnected from their family and community supports when they enter the adult custodial corrections system, which can impact their health, wellbeing and rehabilitation:

'I don't think it's right that corrections send remanded prisoners far away – sending them three or four hours away from their families. People lose relationships, they lose their contact, they lose support. They want to see their family, they want support. They send them four hours away and you get a 45-minute contact visit? No one's going to drive eight hours back and forth for a 45-minute visit. COVID hit and I haven't seen my family for two years, it's just shocking.'

**Person in custody**

<sup>121</sup> Scottish Prison Service 'Integrated Case Management' (Web page, undated) <https://www.sps.gov.uk/Families/HowCanIbeInvolved/Integrated-Case-Management.aspx>.

<sup>122</sup> Scottish Prison Service, 'Family Contact Officers', Available at: <https://www.sps.gov.uk/Families/WhereCanIGetSupport/Family-Contact-Officers.aspx>

<sup>123</sup> Ibid.

<sup>124</sup> Department of Justice and Community Safety (2020) *Youth Justice Strategic Plan 2020-2030*.

<sup>125</sup> See for example, Corrections Victoria, *Family Engagement and Parenting Programs and Services Guide* (2022).

Maintaining connections to family, culture and community has particular significance for the social, cultural and emotional wellbeing of Aboriginal people in custody. In Part 5, we make recommendations that support closer consideration of cultural rights when making decisions relating to the placement and classification of Aboriginal people in custody.

We also heard that older people in custody benefit from closer connections with family and community supports, as it can assist with the identification of any changes in their physical and cognitive needs:

'Current placement of older prisoners is heavily weighted at Hopkins Correctional Centre. Due to the regional location of Hopkins, it can be difficult for family and supports to visit someone placed here. Placement of older prisoners at a more accessible location would allow staff to more regularly seek input from families and supporters – which is critical in understanding a person's baseline, monitoring for changes in the person's physical and mental health, and in working with custodial staff to put in place appropriate safeguards.'<sup>126</sup>

Forensicare

### Reducing the prohibitive cost of connecting with family and other supports

While the operational changes in response to the COVID-19 pandemic are out of scope for the Cultural Review, we heard that the pause on in-person visits, reduced delivery of programs and challenges with communications systems made it difficult for many people in custody to maintain connections with family and community.

**'We are already a vulnerable part of society that is at risk of doing the wrong thing. Now you take away any sort of good support networks and release them into the community.'**

'Instead of doing all that they could do to try and get us home quicker – "alright you can't see your families, you can't get leave, you can't do that; in turn we will get you to your families quicker" – that's all been wiped. All we have done – a lot of us – is we have gone backwards on any chance of normality.

We have all lost connection with everyone. You do a Zoom for 45 minutes and we'll give you ten dollars a week.

We are supposed to be like, "Oh thank you, you've given us a Zoom, that's really connecting me with my friends, my family, my partner, my kids" ... There's a handful of blokes who have lost their families now. Lost their missus, lost their kids.

We are already a vulnerable part of society that is at risk of doing the wrong thing. Now you take away any sort of good support networks and release them into the community and go "You're messing up, you have breached parole, you have gone backwards". You have made a system which is going to give you another sentence.'

*Focus group with people in custody*

<sup>126</sup> Forensicare, Submission to the Cultural Review (December 2021) 9.

One of the frequent issues raised by people in custody was the prohibitive cost of phone calls. The combination of very low daily wages for employment within the custodial environment means that people in custody may not be able to remain in contact with family and community:

'You get one \$5 welfare call [when you arrive]. And I still don't understand why – like in today's society, when all the phone companies are on unlimited plans – our phone calls still cost \$12 to make a mobile phone call. Like we earn – top dollar [maximum amount] is \$8.95 a day. I don't understand. I don't get it.'

**Person in custody**

We heard from multiple people that they have not been able to speak with family and supports as frequently as they would like to.

We recommend DJCS review the phone provider contract to enable delivery of telephone services in a way that is more consistent with costs in the community. We note that telephone calls from phone boxes are now free within the community. We also note the opportunities to continue using innovative solutions such as video calls, introduced in response to the COVID-19 pandemic, and support work to embed these tools as permanent features of the system.

**Recommendation 6.3**  
**Improved connections**  
**with family, friends and**  
**community supports**

The Department of Justice and Community Safety should increase opportunities for people in custody to maintain and build connections and relationships with family and community supports.

The department should:

- a) ensure that placement decisions concerning people in custody take into account the location of existing family and community supports
- b) improve access to telephone calls for people in custody and reduce the cost
- c) introduce ongoing web-based communication options
- d) embed the use of tablets and other technology solutions that were successfully piloted during the COVID-19 pandemic
- e) introduce a subsidised visitors program to support families with the travel and accommodation costs associated with visiting people in custody
- f) expand funding for culturally safe, community-led programs to help people in custody from culturally and linguistically diverse backgrounds build, repair and maintain relationships with their families and communities
- g) increase access to community permits for home visits for eligible people in custody.



## 20 Supporting fair, transparent and ethical decision-making

In custodial settings, decisions are made every day that affect the lives of people in custody – from when and what they will eat, to how far they can move beyond their cell, how their requests will be handled and conflicts resolved. Ideas of fairness and justice should shape each of these decisions.

To ensure that staff and management can make decisions about people in custody that are fair, transparent and consistent with an ethical framework, the adult custodial corrections system requires clear guidance and accountability processes. People in custody should have opportunities to participate in decisions that affect them, be able to understand the reasons for decisions and have access to independent support and review of decisions made, where necessary.

In the administration of a custodial sentence imposed by a court of law, a person is deprived of their liberty and their ability to meet their own needs in almost all aspects of their life in prison. People in custody must rely on staff to broker connections to programs, healthcare, supports, family and community. This is a natural consequence of incarceration which requires the state to take on responsibility for the care, safety and rehabilitation of people in custody. In assuming this responsibility, the government must ensure the system and staff working within it are supported to make ethical decisions that meet individual needs and are consistent with the purpose of the system – to promote rehabilitation, support community safety and reduce recidivism.

The importance of ethical decision-making in a custodial setting is also significant due to the power imbalance between people in custody and corrections staff and the closed environment in which decisions are made. Some people in custody may be hesitant or unwilling to challenge decisions they feel are unfair – indeed, many people in custody feel that they should not expect fair treatment in custody. The lack of scrutiny of decision-making within the adult custodial corrections system makes it even more important that staff and leaders make decisions fairly and consistently with the purpose and principles of the system, and in a way that minimises integrity concerns.



There is also value in fair and transparent decision-making that extends beyond the rights and experiences of people in custody. People who understand the process and reasons for a decision are more likely to accept the decision, which in turn can promote a safer custodial environment for everyone within it, one more conducive to rehabilitation.<sup>127</sup>

Ethical decisions require individuals to actively exercise their discretion and a deeper level of inquiry which may sometimes be a departure from the 'usual response'. As such, we recommend that DJCS develop an ethical decision-making framework to support a shift away from compliance-based and punitive decision-making and guide staff to make ethical decisions that promote rehabilitation and deliver a humane response to offending.

In this chapter, we focus on how ethical decision-making can be applied at an operational level to increase fairness and transparency. This includes:

- ▶ an increased commitment to procedural fairness for people in custody
- ▶ structured guidance for corrections staff to help them make ethical decisions that are informed by the purpose and principles of the adult custodial corrections system
- ▶ elimination of routine strip-searching and clear statutory guidance on the lawful use of restrictive practices
- ▶ procedural changes for responding to the conduct of people in custody, including access to review decisions and a new pathway to respond to lower-level conduct by people in custody
- ▶ increasing the independent support available to people in custody, including the establishment of a dedicated advice service.

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<sup>127</sup> Jackson et al (2010) Legitimacy and Procedural Justice in Prisons, *Prison service journal* (191) 4-10, 5; <https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/procedural-justice/>; David Bierie, 'Procedural justice and prison violence: Examining complaints among federal inmates (2000-2007)' *Psychology, Public Policy, and Law* (2013) 19(1) 15-29; Day, Brauer & Butler 'Coercion and social support behind bars. Testing an integrated theory of misconduct and resistance in US prisons' (2015) 42(2) *Criminal Justice and Behavior*, 133-155; Fitzalan Howard & Wakeling, 'People in Prisons' Perceptions of Procedural Justice in England and Wales' (2020) 47(12) *Criminal Justice & Behavior*, 1654-1676.

## Key findings – Fair, transparent and ethical decision-making

- ▶ People in custody perceive decision-making as lacking in consistency, fairness and transparency, limiting the potential for constructive, motivating and respectful relationships to be built.
- ▶ At some locations, corrections staff make decisions about people in custody that are intentionally punitive or that act as retribution for poor behaviour, creating integrity risks.
- ▶ When people in custody perceive that decision-making and behavioural management processes are unfair, there is little incentive for good behaviour.
- ▶ An overly compliance-focused culture within the system's command-and-control hierarchy discourages corrections staff from making ethical, individualised decisions about people in custody.
- ▶ Staff require training, skills and support to use their discretion to make ethical decisions. Opportunities for reflective practice, collaborative decision-making and constructive questioning of local practices could help staff build confidence in taking a more nuanced approach.
- ▶ People in custody do not have sufficient support, representation or understanding of disciplinary processes to enable them to participate fully. This limits opportunities to ensure decisions are fair and effective.
- ▶ The way some decisions are made and communicated to people in custody does not consider the needs of particular groups or their rights – for example, people with cognitive disability.
- ▶ There are insufficient opportunities for people in custody to be involved in and empowered to make decisions about themselves and their rehabilitation – a critical life skill essential to their successful transition and participation in the community.

# What participants told us about **DECISION-MAKING**

**People in custody are vulnerable to abuses of power.**

One officer told me, when I said to him, I wrote a letter, I said, "Sometimes I don't get replies." He goes, "That's because that's in section five." I said, "Oh, we've got section five now have we?" I wasn't being facetious or anything, I was just surprised that there's a section five that no one had told me about. I said, "What's that?" He said, "The shredder. Sometimes your letters never go to the person, that's why you don't get their reply." So, that's section five, of the shredder.'

*Person in custody*

The officers are in control of your life and they hold the key and how they are towards you can really affect you.'

*Person in custody*

**People in custody reported inconsistent or unclear decision-making relating to their conditions and requests**

Some officers don't know their roles, are they allowed to give you something or are they not? Somethings you are entitled to, somethings they are unsure if you can have.'

*Person in custody*

Send all guards to the same school and learn the rules - the same rules - before being placed at any facility.'

*Person in custody*

They're more worried about covering each other's arses, and not actually making a decision themselves, and worried about who's running the prison at the top of actually stirring the pot ... You're still treated like an idiot. And just little things like that and they don't give you a decent reason as to why.'

*Person in custody*

**People in custody may not understand their rights and may need extra support to understand their options.**

It's even harder in prison when you can't read and write and you're needing to ask inmates for assistance.'

*Aboriginal wellbeing officer*

I can't call my family ... I don't know if my kids (are) ok ... Staff speak to me in their own language and it makes me very scared.'

*Person in custody*

I had a Governor's Hearing but was not provided any legal support. If you plead not guilty, they get officers to come in and give evidence. If you plead guilty, no officers are asked to give evidence. You normally get fined. The fines are expensive. We earn \$6 dollars a day. It's ridiculous to ask prisoners to pay such large fines on wages like that.'

*Person in custody*

**People in custody experience barriers to reporting poor treatment or taking action about their experiences in custody.**

👤 Prison officers look after their own. I personally reported inappropriate behaviour to a senior member of staff and was told "Let it go, no matter what you say I will always believe a prison officer."

*Person in custody*

👤 I don't get anywhere with Corrections Victoria, because they protect their own.'

*Person formerly in custody*

👤 There is some racism from staff, push-back from staff. They understand us but they pretend they don't get it. Other non-Asian people get things done before us and because we don't understand the laws, we can't argue.

*Person in custody*

**People in custody may not feel safe complaining because they are concerned about the consequences for their treatment and conditions in custody.**

👤 Unfortunately there is a terrible undercurrent of distrust between women and officers ... It's not that we fear speaking up, it's we fear repercussions.'

*Person in custody*

👤 I'll be honest, I haven't [reported any inappropriate behaviour of officers]. I probably should have, but there's always that fear of repercussion if you report things like that because they always back their officers.'

*Person in custody*

👤 I don't feel safe in prison. Staff let things happen in units to avoid paperwork ... Staff give out private information to prisoners who have reported other prisoners ... Staff lie on their reports to back up their work mates ... Most staff come to work with an attitude and take it out on us.'

*Person in custody*



## Decision-making in custodial settings

Corrections staff and leaders must make decisions concerning people in custody every day in a variety of contexts, including individual, consensus or collaborative decision-making by custodial, VPS and other staff, each with varying levels of time for deliberation, guidance and supervision. Some decisions are made swiftly 'on the ground' with a person in custody or in response to a situation, whereas other decisions may be made centrally, such as decisions made by the Sentence Management Branch in Corrections Victoria.

These include decisions about:

- ▶ placements
- ▶ case management
- ▶ access to healthcare, medication and mental health support
- ▶ a person's employment within prison and access to education, skills and training
- ▶ access to rehabilitation programs that meet an individual's needs
- ▶ access to facilities and cultural practice
- ▶ visitation and connecting with family, community and others
- ▶ the management of behaviour including informal responses and outcomes of disciplinary proceedings that result in loss of privileges or impact parole
- ▶ level of freedom and conditions of detention, including time outside of cells and use of restrictive practices such as seclusion and force.

### Existing framework for discretionary decision-making

The *Corrections Act 1986* and the Corrections Regulations provide a broad framework for decisions within the custodial system. There is also an obligation to consider human rights under the Charter of Human Rights and Responsibilities.

The Commissioner's Requirements and Deputy Commissioner's Instructions (or Operation Instructions, for private prisons) translate the law for the workforce; however, there is no overarching framework or principles-based approach that is adapted to and applied within the custodial context.

In their day-to-day roles, custodial staff face the challenge of making fair and considered decisions in response to a high volume of requests and incidents each day, while also complying with thousands of pages of operational policies and guidelines.

For the most part, these operational policies and guidelines describe a situation or a cohort and then identify the expected approach and relevant considerations. However, most decisions require some level of individual consideration and exercise of discretion. We have heard through our engagement how challenging it is for staff to maintain an up-to-date knowledge of these policies and how little training prepares staff to translate policies into action (for further discussion, see Part 3):

'Prison officer training is really rudimentary. I have to say it's fairly basic because our fundamental policies and procedures and the rules of the prison are our Deputy Commissioner Instructions and our Commissioner Requirements and they change. Every single day we come in and there's a change ... We follow those but we don't get trained to learn them.'

**Staff member**

We also heard how the exercise of discretion in decision-making within a command-and-control hierarchy can be challenging for staff, especially for those who may lack experience or confidence, feel unsupported by management, or be encountering a situation for the first time. In the absence of support, guidance and skills to exercise discretion lawfully and ethically, staff will tend to defer to local culture and custom or a compliance-based approach that may not consider individual circumstances or produce a fair or sensible outcome:

'Because of our lack of discipline, [people in custody] have a lack of discipline and if we're supposed to be setting a standard ... of non-resilience, that is what they will follow, and that lack of knowledge ... has actually disempowered [staff] particularly the prison officer rank because they defer to the next rank who defers to the next rank. In the last probably three or four years, I've noticed that supervisors are deferring to ops managers for almost every decision except for exceptions.'

**Staff member**

Where use of discretion is not genuinely supported, we observed disproportionate or nonsensical outcomes such as women being shackled during labour, or patients being shackled while they were on the operating table at a time when their flight risk was negligible:

'I've been escorted by two staff [between two prison locations], I was inside the whole time, [but I was] strip-searched, then I had to have a urinalysis done.'

**Person in custody**

We heard how experiences of inconsistent or unfair decision-making and a lack of accountability can directly influence the attitudes and perceptions of people in custody:

'Incarcerated people generally hold negative perceptions of staff as a result of inconsistency, and perceived lack of follow through and overall accountability mechanisms.'<sup>128</sup>

**RMIT Think Tank**

## **Custodial staff must balance complex and competing priorities when making decisions**

Our conversations with custodial staff at all levels of seniority made clear that making considered decisions is not always easy in a custodial setting – staff described the pressure of competing demands and trying to make the right decision in the heat of the moment; and, if that decision impacted the safety of their colleagues or people in custody, the risk of having their integrity or capability questioned. Some described feeling as though they are not empowered to make good decisions.

Staff also told us about the tension between making decisions that safeguard the immediate safety of an individual and others in the environment and the potential impacts on a person in custody's mental health and long-term rehabilitation. The decision to put a person in custody in seclusion if they are at risk of self-harming is an example of an imperfect decision in a context where staff are not supported to make a more therapeutic decision:

'We're the silent minority who are targets in the prison, especially from the OH&S perspective and from the union perspective. I think there are some inadequacies in how [DJCS] supports managers to do their role effectively, noting the importance and risk associated with decision-making.'

**Staff member**

During our engagement, we heard some examples of staff rigidly applying policy in an effort to make fair and equitable decisions and avoid any suggestion of favouritism or special treatment. However, this approach risks negating their obligations to consider the individual needs and rights of people in custody:

'You can keep it very clear-cut and black and white. To me that doesn't achieve the goals in regards to what we're trying to do, in regards to recidivism.'

**Staff member**

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<sup>128</sup> RMIT Beyond the Blue and Green Think Tanks, Submission to the Cultural Review (December 2021) 8.

It also highlights how important it is that staff are supported with a structured approach to decision-making and feel confident articulating how they reached their decisions. This is particularly important where staff may be challenged on why certain decisions may apply to particular groups of people in custody – for example, provisions for Aboriginal people in custody to access art supplies.

## Discretionary decision-making shapes many experiences for people in custody

While many decisions that staff make throughout the day may appear inconsequential, they have a cumulative impact on both the culture and the experiences of people in custody. The perceived fairness of decisions impacts an individual's sense of security, wellbeing and, ultimately, their preparedness to transition back into the general community following their release.

Competing operational and resourcing demands mean that there are few perfect decisions in a custodial context. However, when decisions are made fairly, transparently and in a way that attempts to reconcile security imperatives with the individual needs and long-term rehabilitation of people in custody, they can help build trust, respect and cooperation between staff and people in custody and lay the foundations for constructive, motivational relationships.

Ensuring that people in custody understand the reasons for taking or not taking action is also important to perceptions of fairness and legitimacy of the decision-making process:

'[Good staff] communicate with you properly, they address you; they follow up if you make a request. They're balanced. There's often inconsistency in how staff behave – they tolerate something one day, but not the next.'

**Person in custody**

Many people in custody experience unfair decisions and misuse of power. We also heard from people who felt decisions made as part of disciplinary processes were unfair and ineffective (see below). We have also heard about prison rules being applied inconsistently, delays in response to requests, and complaints and feelings of being discriminated against:

'When we move [between locations] we can have two 13–15kg tubs of property. [People in custody studying an education course] are entitled to apply for the third tub to transport paperwork but it must be pre-arranged. When I was moved at short notice the supervisor at [the] other location said it was too hard to organise and they can't do it. It was a definite no-go, I had to send out my university paperwork to my family then get it resent in to keep my workbooks and study paperwork safe.'

**Person in custody**

'Some officers don't know their roles – are they allowed to give you something or are they not? Some things you are entitled to, some things they are unsure if you can have.'

**Person in custody**



These experiences broadly reflect what the Howard League for Penal Reform describes as 'everyday unfairness', which can fuel a pervasive sense of injustice within the prison population.<sup>129</sup>

When people are heavily reliant on the custodial workforce to respond to their issues, needs and concerns, they are vulnerable to abuses of power and may feel powerless:

'In prison I felt helpless, worthless, like I can't do nothing about it. Whether officers were abusing or trying to bully. I felt like shit because I know I can't do nothing about it. If I did do something, then that's going to impact on me bad, no matter what happened. Even if they're in the wrong, they're still right.'

**Person formerly in custody**

This sense of helplessness and perception that some prison staff do not care about their rights or experiences is demotivating for people in custody and can contribute to instability in the custodial environment:

'One theme that is reflected is the inconsistency in the treatment by corrections officers, and the role of partiality, whether perceived or observed. It was raised that some women experienced or witnessed favouritism, and the granting of privileges, pay amount, and workload didn't seem fair. Often this would contribute to feelings of disunity and disagreement amongst the women in prison.'<sup>130</sup>

**Women and Mentoring**

### **Inaction, delays and deferral to others to make decisions**

One of the common experiences we heard about from people in custody was inaction in response to requests for everyday assistance. People in custody told us about having reasonable requests for information or assistance refused, experiencing long delays in receiving a response, or being deferred to another staff member:

'They're more worried about covering each other's arses, and not actually making a decision themselves, and worried about who's running the prison at the top of actually stirring the pot ... You're still treated like an idiot. And just little things like that and they don't give you a decent reason as to why.'

**Person in custody**

<sup>129</sup> Howard League for Penal Reform, *Justice does not stop at the prison gate: Justice and fairness in prisons – briefing one* (2020) 2 <https://howardleague.org/wp-content/uploads/2020/02/Justice-and-Fairness-in-Prison-briefing-one.pdf>.

<sup>130</sup> Women and Mentoring, Submission to the Cultural Review (February 2022) 1. The Cultural Review recognises that the submission from Women and Mentoring is directly informed by women with lived and living experiences participating in the Peer Advisory Group.

People in custody described some staff as being in high demand because of their willingness to respond to requests in a fair and timely manner, while other staff were avoided as they were expected to refuse to assist or deny a reasonable request.

We also heard about applications, complaints and other paperwork being 'lost' by corrections staff instead of being properly considered. Some people in custody felt these decisions constituted an abuse of power and deliberate obstruction of a reasonable request:

'We've been sentenced by a judge to do prison time. I'm not sentenced by a judge to be tortured and cruelty. We're not animals, we're people still. We should have the right to be able to ask a question at any time of the day and get an answer. This is the only jail that does that.'

**Person in custody**

Both people in custody and service providers working within the adult custodial corrections system perceive that some custodial staff play a gatekeeping role for access to health, education and recreational opportunities. In some instances, staff were inconsistent in their willingness to give people in custody access to services. We also heard about active interference from custodial staff. Some custodial staff also called out this conduct:

'Well, they do things like they shred requests to see the Independent Prison Visitor, they shred applications for visits, they don't follow through with applications for reclassifications and stuff if they're not one of the boys, if they don't like the prisoner.'

**Staff member**

### **People in custody do not receive information about or understand decisions that affect them**

During our engagement, people in custody shared how they regularly did not receive information about decisions affecting their daily lives in custody. We also heard how people in custody felt decisions about their case management, rehabilitation or care were frequently made without their input:

'Prisoners [are] completely shut out from the underlying expectation of all forms of valid decision-making – breeding discontentment, with a profound attitude, confirming that there is not utility having any meaningful dialogue with the system at all. Leaving two sides in their respective spheres upon which the community loses completely.'

**Person in custody**

In particular, people shared concerns about decision-making related to their movement between locations and the lack of communication about matters including their property and access to programs, education, training and employment.

We also heard how family members were similarly kept in the dark about critical decisions including the transfer of a person in custody to another location, leaving the family with no way to contact their loved ones:

'Another thing, in terms of communication, is sometimes they would move him, and they wouldn't tell you. I mean it's not their job, but this is our loved one, and you go to call or visit and they're not there anymore. It's extremely distressing because they also don't tell you where they've gone and so then you've got to figure out where could they be?'

**Family member of a person in custody**

### **'No communication, no planning ... Where is the logic in that? Where is the fairness?'**

Although operational responses to the COVID-19 pandemic were out of scope for the Cultural Review, we heard a lot about the impact of COVID-19 lockdowns on people in custody.

'There are plenty of times when we have been locked in here because of COVID so we are locked in for three or four days ... and you're locked in 24 hours, no phone call, nothing. We ask for some sort of fact sheet – why are we locked in? At least have the decency to tell us "Listen, guys, you are going to be locked in for three or four days. This is what's happening so we need to work out what's going on ... As that goes on, we will give you a bit more information". We are not getting that. We ask a question – "It's above my pay grade; I've only got one [pip]".

No communication, no planning – you'd think that lockdown would be a very foreseeable event given that we've got local cases near the jail, so what's the plan? If we were to go into a lockdown situation, how do we give the guys their basic needs and rights – a phone call to our families so they know that we are going into lockdown and that we are alright. Just so they know and that causes huge anxiety and stress.'

We also heard about inconsistency of decision-making and of communicating changes:

'I've only experienced it here. I have been at another location and, as soon as you get locked in, they'll give you a fact sheet by Corrections and you'll be notified on a daily basis with a bit more decency and a bit more respect.'

People in custody described inconsistency throughout the system that did not seem fair or practical to them:

'Corrections has the position of power. We all got handed a slip from jail to jail, saying if we were well behaved, you will get one for one [lockdown day for emergency management days]. We all toed the line, we all copped it. The next day we were locked down. The next day we were given another slip saying, "We are giving you 10 dollars and you will cop it". Now the attitude towards it was "Suck it up" and they know with their position of power that you can't do anything.'

*Focus group with people in custody*

### Decisions sometimes feel punitive or vengeful

As discussed in Chapter 7, integrity risks arise when staff perceive people in custody as being unworthy of dignity and care, or deserving of mistreatment due to their conduct in prison or offending in the community:

'There is still that old mentality, that you know, "They're just prisoners. They've broken the law, they're bad people, so we should treat them [badly]".'

**Person in custody**

In our analysis of excessive use of force incidents, we identified several examples where staff automatically and unnecessarily responded with force:

'[The staff] immediately physically assault the prisoner and handcuff the person, beat them – all while either in the absence of or while obscuring Body Worn Cameras or CCTV cameras in the units.'

**Person in custody**

We have heard several examples of people being sent to 'the slot' (separation) for punitive purposes. Participants told us that staff often used separation as a punishment or a default disciplinary action without considering fairness and the impact on the individual's wellbeing:

'The reality [of being in a management unit] is it's pretty depressing. You can imagine, when you suffer from anxiety issues and things like that you, you can understand how people go a bit bonkers, especially because in my situation my placement here is not even behavioural. I've been put into management, when I've done nothing wrong, so to speak, that's the way it feels. They said, "You're not on 'loss of privileges', but I spent the first four or five days in one of these cells which has no TV, nothing like that. So, you really feel like you are being punished, at that point. Even though they said you would be allowed to go down to [another cell in the unit] where there's a TV, but they said they're full at the moment. So, I've just got to cop that on the chin.'

**Person in custody**

As discussed in *Part 3. Workforce*, the job of corrections staff is demanding, and staff require more support to be able to consistently respond to complex and difficult situations in a professional and respectful way. At some locations, we observed corrections staff behind the control consoles in observation and management units making dismissive and trivialising comments about people in custody. We noted some staff defaulting to 'no' in response to reasonable requests from people in custody to use the phone, access a book, or have time out of their cells.

During our site visits, we heard many staff refer to people in custody using derogatory language such as 'crims', 'psychos' or 'druggos'. We also observed racial undertones in the way some staff talked about people in custody, including comments that Aboriginal people received more than other people and that this is unfair. In one instance, we were forced to end a staff interview due to a series of racist remarks made by the staff member in the presence of an Aboriginal member of the Cultural Review team. These comments suggest some staff still consider

people in custody to be less deserving of good treatment and suggest the possibility that bias and discrimination may influence decision-making.

## What is ethical decision making?

In a custodial context, ethical decisions are not only lawful, but also represent the best decision that can be made in the circumstances for the individual, other people in custody, staff and the community.

The power differential between corrections staff and people in custody means an ethical basis is crucial in prison management:

'Prison management needs to operate within an ethical framework. Without a strong ethical context, the situation where one group of people is given considerable power over another can easily become an abuse of power. The ethical context is not just a matter of the behaviour of individual staff towards prisoners. A sense of the ethical basis of imprisonment needs to pervade the management process from the top down. An emphasis by the prison authorities on correct processes, a demand for operational efficiency, pressure to meet management targets without a prior consideration of ethical imperatives can lead to great inhumanity. A concentration by the prison authorities on technical processes and procedures will lead staff to forget that a prison is not the same as a factory which produces motor cars or washing machines. The management of prisons is primarily about the management of human beings, both staff and prisoners. This means that there are issues which go beyond effectiveness and efficiency. When making decisions about the treatment of human beings there is a fundamental consideration; the first question which must always be asked is 'Is what we are doing right?'<sup>131</sup>

In other words, ethical decision-making is common-sense decision-making that does not lose sight of the fact that people in custody are human beings. Ethical decision-making is fair and transparent, recognising individual needs and vulnerability. It should also involve as far as possible, input from the person in custody:

We have identified several key elements that enable ethical decision-making:

- ▶ procedural fairness that prioritises transparency
- ▶ consistent, predictable and neutral decision-making that is perceived by others as fair
- ▶ clear understanding of the rules, the decision and any consequences, including how to make a complaint or seek a review of the decision
- ▶ participation of people in custody in the decision and/or process where appropriate
- ▶ consideration of human rights

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<sup>131</sup> A Coyle and H Fair, 'A Human rights approach to prison management, Handbook for prison staff', Third edition, *Institute for Criminal Policy Research at Birkbeck*, 14.

- ▶ consideration of any individual vulnerability and how this might affect the impact of the decision on the person in custody
- ▶ balanced consideration of risk and security imperatives, with attention to eliminating structural bias in decision-making
- ▶ consistency with the system purpose to support rehabilitation and reduce recidivism.

Collectively, these elements should form the basis for the proposed ethical decision-making framework.

## An ethical decision-making framework

The development of clear operational guidance on making ethical decisions will empower corrections staff to structure their decision-making and ensure they have considered the key issues.

Importantly, this type of structured discretionary decision-making tool is still intended to be responsive to the circumstances and would not require a corrections staff member to reach a specific 'right' decision. Rather, it is intended to act as a scaffold to help staff take into account the range of issues and considerations that should inform good decision-making, including the purpose and principles of the system. The framework would also focus on outcomes, prompting staff to consider whether the outcome is fair, proportionate, justified and consistent with the purpose of the adult custodial corrections system.

In Victoria, the building blocks for an ethical decision-making framework are already in place in the existing custodial standards for men and women, the Charter of Human Rights and Responsibilities, and the *Guiding Principles for Corrections in Australia*. A useful example of an outcomes-based application of standards is the Australian Capital Territory Standards for Adult Correctional Services.<sup>132</sup> This document records standards in plain language and includes indicators to assist people to understand what actions the standard might require at an operational level.

A principles-based or structured approach to decision-making also assists corrections staff to identify their process, considerations and reasons for making a decision and supports them to communicate the reasons for decisions to people in custody. As noted previously, this can assist a person to understand and accept the decision and to assess whether to take further action in response to the decision.

The decision-making framework will derive its authority from proposed reforms to the *Corrections Act 1986* set out in Part 2 and summarised below. A specific decision-making framework for Aboriginal people in custody should also be developed to enliven the cultural and other rights in the proposed legislation – see Part 5 for further discussion.

<sup>132</sup> ACT Inspector of Custodial Services, *Standards for Adult Custodial Correctional Services* (2019) [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services\\_final\\_web.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0016/1335013/ACT-ICS-ACT-Standards-for-Adult-Correctional-Services_final_web.pdf).

## Elements of the proposed legislative scheme that will support ethical decision-making

Recommendation 2.1 sets our recommendation for revisions to the *Corrections Act 1986* which will guide the delivery of a more modern approach to custodial services built on rehabilitation, safety and human rights.

Key elements of the legislation that should inform the ethical decision-making framework include:

- ▶ the purpose and objectives of the custodial response to criminal offending, including the primary purposes of safety and rehabilitation
- ▶ the connection to the administration of sentences and the purposes of sentencing, including rehabilitation and reintegration into the community
- ▶ principles and values
- ▶ the fact that the loss of a person's liberty is the punishment
- ▶ contemporary international human rights standards relating to people in custody including the United Nations Declaration on the Rights of Indigenous Peoples and Mandela Rules
- ▶ additional safeguards that prohibit and further restrict use of routine strip-searching and certain restrictive practices
- ▶ the factors contributing to over-representation of Aboriginal people in the criminal justice system
- ▶ the right to self-determination and positive duty to provide culturally responsive services for Aboriginal people.

## Importance of procedural fairness within prisons

A person's perceptions of fairness can shape their outlook and their behaviour. People are more likely to accept the decisions of police, courts and prison authorities where they feel they have been treated fairly, leading to greater respect and compliance with rules and directions.<sup>133</sup>

Procedural fairness relates to 'the perceived fairness with which one is treated by an authority figure'.<sup>134</sup> Where people feel as though they have been treated fairly by an authority or decision maker, they are more likely to see the person in the position of authority as 'legitimate' and more likely to respect and comply with their decision or direction, even where it may not be in their favour.<sup>135</sup>

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<sup>133</sup> Bottoms, A., & Tankebe, J., 'Beyond procedural justice: A dialogic approach to legitimacy in criminal justice', (2012) 102(1) *Journal of Criminal Law and Criminology*, 121; Her Majesty's Prison and Probation Service (HMPPS) (2019) *Procedural Justice*.

<https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/procedural-justice/>.

<sup>134</sup> Ryan, C & Bergin, M, 'Procedural Justice and Legitimacy in Prisons – A Review of Extant Empirical Literature', 49(2) *Criminal Justice and Behaviour*, 145.

<sup>135</sup> Jackson et al, 'Legitimacy and Procedural Justice in Prisons, Prison service journal' (2010) (191) 4-10, 5; <https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/procedural-justice/>.

This holds true in custodial contexts, too – there is a clear link between procedural fairness, transparent decision-making and the maintenance of order and safety within the custodial environment. People in custody who experience fair treatment are more likely to respect the prison regime, follow rules and directions, accept decisions and participate meaningfully if they believe they have been treated fairly. This extends to situations where the outcome may not be what the person in custody wanted.<sup>136</sup>

Where individual processes are applied fairly, people in custody will also be more likely to trust the authority of staff and be willing to develop constructive, motivational relationships that support their rehabilitation.<sup>137</sup>

'One would be surprised that an open, genuine and meaningful interactions [between staff and people in custody] can create. But the first thing that would have to take place in any such environment, is for the troops [staff] to be empowered to make decisions for themselves as well as be trained to indeed make decisions.'

### Person in custody

More broadly, research indicates that people in custody who feel treated fairly during imprisonment have better mental health outcomes<sup>138</sup> and are less likely to reoffend upon release.<sup>139</sup> In contrast, where people consider that treatment, processes or decisions are unfair, they are more likely to disengage or defy directions.<sup>140</sup> Use of force and other restrictive practices in unpredictable or excessive ways can also entrench disruptive and violent responses from people in custody.

Procedural fairness is usually understood to mean decisions that are consistent, transparent, made without bias, and enable a person to respond to any adverse findings about them before the decision is made. In the custodial context, procedural fairness relies upon voice, neutrality, respect and trustworthy motives, described in the framework below:<sup>141</sup>

<sup>136</sup> Flora Fitzalan Howard and Helen Wakeling, 'People in Prisons' Perceptions of Procedural Justice in England and Wales' (2020) 47(12) *Criminal Justice and Behavior: An International Journal*, 1655.

<sup>137</sup> Bierie, 'Procedural justice and prison violence: Examining complaints among federal inmates'(2000-2007)' (2013) 19(1) *Psychology, Public Policy, and Law*, 15-29. Day, Brauer and Butler, 'Coercion and social support behind bars. Testing an integrated theory of misconduct and resistance in US prisons' (2015) 42(2) *Criminal Justice and Behavior*, 133-155; Flora Fitzalan Howard and Helen Wakeling, 'People in Prisons' Perceptions of Procedural Justice in England and Wales' (2020) 47(12) *Criminal Justice and Behavior: An International Journal*, 1654-1676.

<sup>138</sup> Flora Fitzalan Howard and Helen Wakeling, 'People in Prisons' Perceptions of Procedural Justice in England and Wales' (2020) 47(12) *Criminal Justice and Behavior: An International Journal*, 1655.

<sup>139</sup> Beijersbergen et al, 'Reoffending After Release: Does Procedural Justice During Imprisonment Matter?' (2015) 43(1) *Criminal Justice and Behavior*, 63-82.

<sup>140</sup> Barkworth, J. M., and Murphy, K., 'Procedural justice, posturing and defiant action: Exploring prisoner reactions to prison authority' (2021) 38(3) *Justice Quarterly*, 537–564.

<sup>141</sup> Jackson et al, 'Legitimacy and Procedural Justice in Prisons, Prison service journal' (2010) (191) 4-10, 5; <https://www.justiceinspectors.gov.uk/hmiprobation/research/the-evidence-base-probation/models-and-principles/procedural-justice/>.





## Supporting decision-making that is consistent with system purpose and principles

In *Part 2. Systems*, we recommend a new legislative framework for the custodial system that sets out a clear purpose and principles to guide decision-making within the system. The purpose of the system should centre rehabilitation as a key foundation for reducing recidivism and improving community safety.

The application of these principles to decision-making within the system will be critical to ensuring that the conduct and approach of the workforce aligns with the system purpose. It will also support the workforce to apply the protections within the Charter of Human Rights and Responsibilities which are already referenced in operational policies and guidance, as discussed above.

Finally, it will also assist the adult custodial corrections system, to balance the emphasis on 'good order and security' with human rights and a more person-centred approach.

## Deepening consideration of human rights in custodial practice and decision-making

One of the benefits of providing structured guidance on discretionary decision-making will be the opportunity to further embed consideration of human rights to support compliance with existing statutory obligations:

'It is not sufficient for those responsible for prisons to be aware of and to refer to these international standards. If they are to implement the standards in their daily work, they must be able to interpret them and to apply them in real working situations.'<sup>142</sup>

People working within the adult custodial corrections system – including in private prisons – are already bound by human rights obligations under the Charter of Human Rights and Responsibilities.<sup>143</sup> These obligations are reflected in operational policies and guidelines and requires staff to consider human rights in their operational decisions. As one corrections leader noted, giving adequate consideration to human rights requires staff to balance security and safety demands with the needs of the individual person in custody:

'Human rights is a balancing of rights and the dilemmas of a prisoner are all about a balancing of rights. Control needs to be exerted for the safety and security of everyone in a prison ... but the way in which you create [control] in the least restrictive way for every individual prisoner, that's a human rights dilemma. Human rights has to be right in the middle of it.'

**Expert Interview**

The Victorian Equal Opportunity and Human Rights Commission noted the value of the Charter as a tool for decision-making within the custodial environment:

'The Charter's decision-making framework can be helpful for staff making split decisions every day in highly charged and very complex environments. When a person in prison makes a complaint about their human rights staff can panic. The Charter provides a rational decision-making framework for these situations.'<sup>144</sup>

**Victorian Equal Opportunity and Human Rights Commission**

A case study in the Victorian Equal Opportunity and Human Rights Commission's 2018 report on the operation of the Charter of Human Rights and Responsibilities shared the experiences of an operations manager at a maximum-security prison using the Charter as a basis for ethical decision-making:

<sup>142</sup> A Coyle and H Fair, 'A Human rights approach to prison management, Handbook for prison staff', 3<sup>rd</sup> edition, 10.

<sup>143</sup> *Charter of Human Rights and Responsibilities Act 2006*, s 38. Under section 38 of the Charter, decision-makers within the custodial system (with the exception of the Adult Parole Board) are required to take relevant Charter rights into account when making a decision. Section 38(1) of the Charter provides that it is unlawful for a public authority to act in a way that is incompatible with a human right or, in making a decision, to fail to give proper consideration to a relevant human right.

<sup>144</sup> Victorian Human Rights and Equal Opportunity Commission - Expert Interview with the Cultural Review.

'We need to consider human rights in our decisions and be able to demonstrate we've done that. If we're not considering human rights at all, with the Charter in mind, then we won't be making the best decisions ... People think you go to prison and you lose all your human rights, but that's not the case. We educate our staff to consider a prisoner's human rights while in jail, and to use empathy – what if it were you? How would you expect to be treated? The benefit is that you end up with better relationships with the prisoners. You end up with more positive outcomes when the prisoners know you see them as a person with human rights. We need to consider them as people regardless of what they've done.'<sup>145</sup>

**Victorian Equal Opportunity and Human Rights Commission**

Another stakeholder emphasised the critical need to ensure that human rights are embedded and integrated into the system at all levels in order to be most effective. Importantly, this should include specific attention to human rights at the point they are engaged.<sup>146</sup>

Despite this, we heard that the existing requirements to take into account the human rights of people in custody do not always result in a shift in operational practice and that human rights considerations are not always embedded in routine decision-making. This position was also reflected in feedback from the Victorian Ombudsman:

'The Commissioner's Requirements, Deputy Commissioner's Instructions, local operating procedures, and all the policy documents all expressly refer to human rights and the importance of human rights in decision making. That always has to be balanced against the practice and how it translates on the ground. Of course, you can have the best policy in the world, but if it doesn't translate into operations then that can be problematic.'

**Office of the Victorian Ombudsman**

There is a perception that human rights are ancillary to the core business of upholding safety and security, rather than a tool to guide staff decision-making:

'Never mind the therapeutic ... the security is so important. The fundamental job we do is to keep the community safe, and to keep our people safe.'

**Staff member**

The changing and dynamic environment inside prisons can also make it challenging for staff to apply human rights considerations to their decisions in high-pressure situations. Despite this, we heard that the right support can help staff grow their confidence and capability when considering human rights in their operational decision-making:

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<sup>145</sup>Victorian Human Rights and Equal Opportunity Commission, *2019 Report on the operation of the Charter of Human Rights and Responsibilities* (Report, 2019) <https://www.humanrights.vic.gov.au/resources/2019-report-on-the-operation-of-the-charter-of-human-rights-and-responsibilities-nov-2020>.

<sup>146</sup> Simon Katterl Consulting, Submission to the Cultural Review.

'During our training, leaders reported increased confidence in the decisions they were making. They were more able to express human rights as a balancing act where rights are sometimes balanced with other considerations. We've also seen participants actively looking for opportunities to reinforce human rights and improve practices when exercising their everyday duties. For example, thinking about the rights of families and children under the Charter and approving family visits that were previously denied.'<sup>147</sup>

### Victorian Equal Opportunity and Human Rights Commission

To provide this practical support and address the challenges, the Australian Capital Territory (ACT) has developed a set of specific resource for corrections staff. The Human Rights Principles for ACT Correctional Centres provide operational guidance to support corrections staff in complying with human rights obligations. The principles connect the legal framework for human rights with the experiences of people in custody and the daily work of staff, so that people in custody, their families and the community can be clearly informed about how human rights should be respected.<sup>148</sup>

## Human Rights Principles for ACT Correctional Centres

The Human Rights Principles for ACT Correctional Centres outline the importance of human rights principles in the custodial context:

'The observance of human rights is integral to good correctional centre management and the most effective and safest way of managing correctional centres. What this approach underlines is that the concept of human rights should not simply be another subject to be added to the training curriculum, but must be embedded in all aspects of good prison management.'

The principles are a tool to guide ACT Corrective Services and the ACT Government in the performance of functions under the *Corrections Management Act 2007* (ACT) and reflect the applicable rights enshrined under the Human Rights Act 2004 (ACT).

The principles provide guidance on the circumstances where staff may limit human rights and examples of human rights in action in the following domains:

- ▶ safety
- ▶ respect and dignity
- ▶ purposeful activity
- ▶ rehabilitation and release planning.

To illustrate, below is the guidance provided on 'Managing behaviour':

### 2. Managing behaviour

Discipline and order should be maintained with no more restriction than necessary to ensure safety, security and good order.

**2.1** The daily regime in a correctional centre should encourage and reward good behaviour.

<sup>147</sup> Victorian Human Rights and Equal Opportunity Commission - Expert interview with the Cultural Review.

<sup>148</sup> Justice and Community Safety Directorate, *Human Rights Principles for ACT Correctional Centres* (2019) [https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0005/1317236/ACT-Human-Rights-Principles-in-the-AMC-booklet.PDF](https://www.ics.act.gov.au/_data/assets/pdf_file/0005/1317236/ACT-Human-Rights-Principles-in-the-AMC-booklet.PDF).

**2.2** Disciplinary action must be carried out in a manner that is proportionate, fair and transparent. Detainees have the right to natural justice in relation to disciplinary decisions that affect them.

**2.3** Use of force must only be carried out in a legal manner, as a last resort where strictly necessary and with the minimum amount of force necessary and should be reasonable and proportionate to the circumstances. Medical restraint, whereby a drug is used to restrict the movement or freedom of a patient, must not be used.

**2.4** Staff must be appropriately trained in de-escalation techniques and appropriate use of force. All uses of force and restraint should be recorded and monitored for appropriate application.

**2.5** Practices that isolate detainees, including separate confinement, should only be used for the shortest time that is proportionate to a legitimate objective. Separate confinement should be subject to safeguards including contact with the outside world and regular review.

*Source: Human rights principles for ACT correctional centres*

The Human Rights Principles for ACT Correctional Centres provide useful examples to assist corrections staff to translate human rights into operational practice. DJCS should consider adopting a similar approach to guide corrections staff in Victoria's adult custodial corrections system to embed human rights considerations in their operational decision-making.

## Ethical decision-making and vulnerable cohorts

### People with disability, including cognitive impairments and acquired brain injuries

As discussed in Chapter 18, custodial populations are complex and diverse and include individuals with high needs. This complexity is further exacerbated by the lack of appropriate accommodation and support for individuals with high needs.

Most custodial staff who responded to our workforce survey did not feel they had received adequate training in meeting the mental health<sup>149</sup> and disability<sup>150</sup> needs of people in custody, and stakeholders have supported expanded training on these specific needs.<sup>151</sup> Training on behaviours that may be associated with disability and trauma is critical for staff to build empathy, make ethical decisions and appropriately manage difficult behaviours in a way that builds trust and avoids escalating the situation or requiring use of force and restrictive practices.

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<sup>149</sup> Only 19 per cent of custodial staff told us they feel they have been 'mostly' or 'fully' trained to deal with the needs of people in custody in relation to their mental health: Cultural Review, Corrections workforce survey (2021).

<sup>150</sup> Only 15 per cent of custodial staff told us they feel they have been 'mostly' or 'fully' trained to deal with the needs of people in custody in relation to disability: Cultural Review, Corrections workforce survey (2021).

<sup>151</sup> Victorian Disability Worker Commission, Submission to the Cultural Review (November 2021) 3.

People with disability may struggle to adapt and thrive within the rules-based regime typical of custodial environments. People with cognitive and or/psychosocial disability are at particularly high-risk of experiencing criminalisation or punitive consequences for behaviour directly linked to their disability, and they may not have the cognitive functioning to respond to some rules and disciplinary outcomes.<sup>152</sup> The Victorian Disability Worker Commission described the tendency for institutions to criminalise this behaviour:

'Criminalisation of disability is when criminal justice agencies treat behaviours which may be related to a person's disability as dangerous and offensive.'<sup>153</sup>

**Victorian Disability Worker Commission**

The Office of the Public Advocate and Caraniche made similar observations about the harsh consequences for people with disability in custody:

'Prisoners with disability are charged with prison offences that may have occurred as a result of their disability. The most common contraventions relate to offences of aggression and property damage. [Corrections independent support officers] report prisoners who have been charged with these types of offences despite having little understanding of the impact of their behaviours, or that they may be violating prison regulations.'<sup>154</sup>

**Office of the Public Advocate**

'Prisoners with a disability [physical, mental health or cognitive] are generally more vulnerable in custody, less likely to access treatment and services, more likely to become the targets of standover, and have more negative experiences whilst in custody.'<sup>155</sup>

**Caraniche**

Stakeholders and service providers told us that people in custody with cognitive impairment often present with deficits in behaviour regulation and decision-making skills which impede their ability to communicate and make decisions.<sup>156</sup>

Caraniche advised that its providers often observe people in custody with cognitive impairment may indicate they understand instructions from corrections staff when they do not – for example, they may:

- ▶ nod in agreement to suggest they understand when they have not
- ▶ change the subject during a discussion
- ▶ spend time with other cognitively impaired people to avoid speaking with others.<sup>157</sup>

<sup>152</sup> Victorian Disability Worker Commission, Submission to the Cultural Review (November 2021) 1.

<sup>153</sup> Victorian Disability Worker Commission, Submission to the Cultural Review (November 2021) 2-3.

<sup>154</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021) 29

<sup>155</sup> Caraniche, Submission to the Cultural Review (December 2021).

<sup>156</sup> Caraniche, Submission to the Cultural Review (December 2021); Prison Disability Support Initiative, Expert interview with the Cultural Review; Office of the Public Advocate, Expert interview with the Cultural Review.

<sup>157</sup> Caraniche, Submission to the Cultural Review (December 2021).

In custodial settings, staff may misunderstand a person's impairment as resistance, aggression or frustration, which can increase the vulnerability of people with these particular traits in custodial environments.

Decisions including disciplinary outcomes that punish the behaviour of people who do not have the cognitive or intellectual ability to understand rules, control their response or understand the consequences may be unfair and ineffective. Outcomes such as separation may have additional impacts of people with disability which could further escalate behaviours of concern and cause unjustifiable impacts on their wellbeing.<sup>158</sup>

The Victorian Ombudsman's report surrounding 'Rebecca', a woman with significant disabilities who was found to be unfit to stand trial, concluded that it was unlawful for the prison to place her in solitary confinement for 18 months because of behaviours related to her disabilities. A Forensicare psychologist quoted in the Victorian Ombudsman's report noted that Rebecca's 'aggressive behaviours during her admission resulted in prolonged periods of being locked down, which likely contributed to problems with compliance and responsiveness to treatment'.<sup>159</sup>

This example highlights the need for disciplinary hearings involving people with cognitive disability to consider whether:

- ▶ their behaviour was linked to their disability
- ▶ there are relevant circumstances or a trigger for the conduct or contributed to the escalation
- ▶ the person had the cognitive function to understand the process and reason for the disciplinary outcome
- ▶ the outcome will contribute to behaviour reform or further exacerbate their behaviour
- ▶ there is an alternative process available to achieve the same outcome without causing additional harm to the individual.

The decision may also consider that a person should have a support person such as their in-unit mentor with them during the hearing as well as independent disability advocate. The decision should also consider the impact of the time between incident and decision (or consequence) and be informed by disability experts and others who have an understanding of the person's needs and challenges.

Ethical decision-making requires staff to consider the balance between achieving the required level of security, proportionate to the risk presented and maintaining respect for the dignity and rights of the individual. An informed risk assessment and risk management based on the individual circumstances should always be carried out and reviewed regularly.

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<sup>158</sup> RMIT Changing Faces Think Tank, Submission to the Cultural Review, (December 2021); Office of the Public Advocate, Submission to the Cultural Review (December 2021).

<sup>159</sup> Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial* (Report, 2018) 26.

Ethical decision-making also requires consideration of structural bias in decision-making and whether the consideration and response to risk may have disproportionate impacts on particular cohorts within the custodial environment. As part of the implementation of changes to decision-making, we support close consideration of whether the tools and approaches for managing of risk and balancing security considerations are free from bias.

**Recommendation 6.4**  
**A framework for fair, transparent and ethical decisions concerning people in custody**

The Department of Justice and Community Safety should develop and implement an ethical decision-making framework to help corrections staff ensure they make decisions that are fair, transparent and compatible with the system purpose, principles and human rights.

This should include examples of best practice decision-making and include prompts for corrections officers to consider individual circumstances, ensure procedural fairness and reflect on their decision-making to support continuous improvement.

The framework should incorporate:

- a) an assessment of any decision that limits the human rights of a person in custody against the requirements in Victoria's Charter of Human Rights and Responsibilities
- b) consideration of a person's cognitive disability or other attribute that may limit their understanding of a decision or have a disproportionate impact on their wellbeing
- c) tools to identify and address unconscious bias, racism and any potential, perceived or actual conflicts of interest
- d) transparency, record-keeping and good communication with people in custody.

## Providing clear guidance and accountability processes for use of restrictive practices and strip-searching

As part of their core duties, custodial staff are responsible for making and administering decisions that affect the liberty and living conditions for people in custody including the use of restrictive practices. We recognise that restrictive practices such as separation, the use of force and the application of instruments of restraint are generally used to respond to violent and unsafe behaviour, including self-harm, and that they can form a legitimate part of a broader behaviour management strategy aimed at ensuring the safety of both people in custody and staff. They represent some of the more complex decisions that staff need to make every day.

In Chapter 12, we discuss integrity concerns when these practices are used unlawfully and recommend additional audits and oversight. In this section, we explore the need for further guidance and accountability to ensure decisions to use restrictive practices and strip-searching are not only lawful but ethical in the



circumstances. We also identify alternatives to the routine or regular use of these practices.

This is important as we know that when these practices are over relied on or normalised as a routine feature of the custodial environment, they can have long-term consequences for individuals and undermine any broader rehabilitative efforts. People may feel unsafe, retraumatised or otherwise triggered by the experience of cell searches, strip-searches, pat-downs and any restrictions on movement or activity associated with these decisions and action. These practices can have disproportionate impacts on women and people with backgrounds of trauma and abuse.

We note that work has already commenced within the system to introduce body scanners to reduce the reliance on strip-searching. We support extending access to this technology but support a broader shift that recognises that restrictive practice and strip-searching should be exceptional rather than routine features of the adult custodial corrections system.

In Chapter 4, we set out recommendations for the legislative framework to contain additional safeguards and accountability processes for the use of strip-searching and restrictive practices in the adult custodial corrections system. Recommendation 2.1 routine strip-searching and certain restrictive practices through safeguards including that they must only be used as a last resort and not be punitive or used for improper purposes and requirements for the public reporting of data relating to the use of restrictive practices and use of force.

### Further safeguards for instruments of restraint

The application of restraints, other than during escorts or where the person in custody is subject to a handcuff regime, is 'notifiable' and must be reported to the Assistant Commissioner, Custodial Operations, the Deputy Commissioner, Custodial Operations, or the duty director within 30 minutes, and entered onto the PIMS (Prisoner Information Management System) incident module within 24 hours.<sup>160</sup> Prisons are also required to maintain a paper-based Use of Restraint Register to record the details of when instruments of restraints are used on people in custody, unless restraints are used for 'routine internal escorts'.<sup>161</sup>

While the application of handcuffs for those people subject to a handcuff regime is not notifiable or recorded in the Use of Restraint Register, people in custody may only be placed on a handcuff regime with the approval of the prison general manager, deputy general manager, senior operations manager, Deputy Commissioner, Custodial Operations (or duty director) or the Commissioner, Corrections Victoria, and must be reviewed weekly at a minimum.<sup>162</sup>

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<sup>160</sup> Department of Justice and Community Safety (Corrections Victoria), *Commissioner's Requirement 1.1.5 - Application of Instruments of Restraint* (August 2019) 3;

<sup>161</sup> Corrections Victoria, *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018) 6.

<sup>162</sup> Department of Justice and Community Safety (Corrections Victoria), *Commissioner's Requirement 1.1.5 - Application of Instruments of Restraint* (August 2019) 3.

Other types of restraints (such as restraint belts, escort belts, velcro leg and arm restraints) pose minimal integrity risks as they may only be applied on the authority of the general manager or operations manager, where it is 'necessary to restrict a prisoner's hand and arm movement to a greater extent than that allowed by the application of handcuffs alone or necessary to restrict a prisoner's leg movements'.<sup>163</sup>

Similarly, while spitter hoods can be degrading to people in custody they may only be applied following a risk assessment and the duty operations manager must be notified as soon as possible.<sup>164</sup> Our review of a sample of Use of Restraint Registers indicates that spitter hoods are used rarely and, where authorised, are generally to protect corrections staff from an occupational health and safety risk.<sup>165</sup> Nevertheless, the impact of these practices and less restrictive alternatives should be considered in the development of the legislative framework.

The proposed ethical decision-making framework will also direct decision-makers to consider the appropriateness of restraints in particular circumstances and the need to balance security imperatives.

Further safeguards and ethical decision-making will help avoid unnecessary use of restraints on people for routine reasons without a proper individual risk assessment that considers the individual circumstances of the person and alternative options. This should eliminate unacceptable situations such as women experiencing childbirth in shackles.

## Elimination of routine strip-searching

When strip-searching is used routinely, there is a risk that searches will be conducted too frequently, for inappropriate reasons, unnecessarily or at the expense of a person's dignity, psychological wellbeing and safety. Conducting strip-searches also arguably presents a risk to the wellbeing of staff and their relationships with people in custody.

We found that strip-searching is experienced differently by women, LGBTIQ+ people, transgender people and people who have backgrounds of domestic violence, sexual trauma and victimisation. Where such vulnerabilities are known or suggested, corrections staff should only conduct strip-searches in exceptional circumstances and with additional sensitivity.

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<sup>163</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018) 4.

<sup>164</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018) 5.

<sup>165</sup> Melbourne Assessment Prison had a comparatively high rate of spitter hood use, which the Cultural Review understands is the likely result of the number of people in custody with acute mental health challenges housed in this location.

The Victorian Ombudsman has recommended that the routine use of these practices be discontinued,<sup>166</sup> and DJCS has taken steps to further reduce reliance on strip-searching through updates to the Commissioner's Requirement in 2021.

Despite this updated guidance and an expectation that less restrictive approaches should be adopted, we heard clear examples during our engagement which indicate that strip-searching continues to be a default response in circumstances where there is no identified risk. People in custody told us that strip-searches were often performed unnecessarily where there was little or no risk of trafficking contraband:

'I understand that sometimes you need to strip-search people when appropriate, but I had to go to another prison for an X-ray, so when I leave the prison I'm strip-searched. Now, not just strip-searched, but bend over and look up your bum as well. All right, in case I take something I shouldn't to the other prison, right? Now I get in the van, and they drive me there. And as soon as I get out they say, "We're going to strip-search you again." Do the whole lot. Look up your bum, and that. "What do you think I've done? You've driven me to the prison. And you come in and stand with me".'

**Person in custody**

We also heard about strip-searches being performed in a way that is intended to be undignified, humiliating and threatening:

'I've had staff strip-search me and tell me if I didn't comply with instructions, they would stick the attack dog onto me ... I have seen them actually do this to another inmate at [a maximum-security prison] ... Male officers asked me once to pull back my foreskin on my penis during a strip-search, I complied and then the two male staff laughed and clapped each other and said to me "I can't believe you did that idiot".'

**Person in custody**

Another older man told us about his degrading treatment during a strip-search while in hospital:

'I've personally been strip-searched and put on show in front of two male officers and a female laughing at the size of my penis.'

**Person in custody**

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<sup>166</sup> Recommendation 5 of the Victorian Ombudsman's 2017 report 'Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre' recommended that the general manager at DPFC: immediately cease the practice (by whatever name) of strip searching all women before and after contact visits and following external appointments; and replace it with a Charter-compliant practice of strip searching based on intelligence and risk assessment.

Corrections staff we interviewed also described examples of staff commenting on a person's genitals, identified as a particular concern for young men in custody:

'The other thing is they all make sexual comments about their – this is more when strip-searches were – they would make sexual comments about their penises and things, or a prisoner would walk past, and an officer would go – they sit in the post and talk about what shape his is and how long his is.'

**Staff member**

During our site visits, we were also very concerned to hear examples of infants being subjected to searches when meeting parents in custody. We also heard, on multiple occasions, of women being strip-searched in front of their young children. We also heard examples from people in custody of visiting family members being strip-searched as a way to punish the person in custody. This would be clearly inappropriate.

In 2017, the Victorian Ombudsman recommended that the practice of strip-searching women before and after contact visits and following external appointments be immediately ceased and replaced with a process in which strip-searching is only used in response to specific intelligence and risk assessment, in compliance with the Charter of Human Rights and Responsibilities.<sup>167</sup> It was not clear from our engagement if this change has been fully operationalised.

One participant spoke about impact of strip-searching on dignity and as a form of sexual assault. Family members also shared the personal toll of knowing that the person they were visiting would be strip-searched when they visit:

'They strip -search him every time I visit ... That was really hard for me because I felt like I was the cause of him being sexually assaulted. Because to me, that's what it is. If you force someone to remove their clothes and force them to expose themselves, that's what that is to me. I just disagree with it. I don't think that we should be doing this in this day and age. It really bothers me. It's unnecessary and I felt like I was the cause of it, because I visited.'

**Family member of a person in custody**

Such conduct presents a significant integrity risk as, over time, it can lead to the dehumanisation of people in custody and eventing cross the boundary into mistreatment. In other words, a culture that tolerates or, worse, normalises disrespectful behaviour will be one that more easily forgives misconduct and mistreatment of people in custody, creating a slippery slope.

<sup>167</sup> Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017), Recommendation 5.

The routine use of strip-searching was also evident in data samples supplied by DJCS. In the sample for July 2021, public prisons conducted 9,258 strip-searches of people in custody during that month. The most common reasons for strip-searching during this period was to search people in custody upon reception into prison, or before a urine test.<sup>168</sup>

We heard that continued use of strip-searching in the women's system may be due to changes in policy across the men's system:

'[From] working in the women's prison system I think the trauma-informed approach needs to be pushed more ... Unfortunately due to some things that have happened with the men, a central policy has come out that – depending on previous drug history and drug use – that the women should have to go back to urine analysis [and strip-searches]. It's become a written policy [already for the women].'

**Staff member**

While the purpose of strip-searching people in custody is to prevent contraband – for example, illicit drugs or weapons – from being brought into prisons, data provided by DJCS indicates that strip-searching is not necessarily an effective detection strategy. Of 578 strip-searches of women in custody at DPFC in January 2020, contraband was found in only two cases – a 0.3 per cent 'hit rate'.<sup>169</sup> Similarly, data provided by Ravenhall Correctional Centre indicates that contraband was found in only 0.2 per cent of strip-searches conducted between July 2019 and December 2021.<sup>170</sup>

Ensuring contraband or anything else that may pose a risk to the safety of people living and working in the adult custodial corrections system is paramount. However, there are less invasive, intelligence-based approaches that would mitigate the risks involved in routine strip-searching and be more in step with contemporary custodial practice. We are pleased to see this approach reflected in updated operational guidance but urge DJCS to take further action ensure staff understand the policy and put it into practice.

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<sup>168</sup>Strip search data provided by the Department July 2021- Approximately 51 per cent all strip searches conducted in public prisons in Victoria were part of the reception process. 20 per cent related to urine tests – both general and intelligence-led.

<sup>169</sup> Department of Justice and Community Safety (Corrections Victoria), 'DPFC Strip search data', Data provided to the Cultural Review.

<sup>170</sup> Department of Justice and Community Safety (Corrections Victoria), 'Ravenhall Strip search data', Data provided to the Cultural Review. Note: In January 2020, only five of 2,622 strip searches of people in custody uncovered contraband. This is consistent across the time period provided (July 2019 – December 2021), during which 54,400 strip searches were conducted of people in custody, resulting in only 120 contraband findings.

The Mandela Rules and the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules) encourage states to utilise alternatives to strip-searching<sup>171</sup> and, in many Australian and international jurisdictions, a transition to intelligence-based searches and the introduction of body-scanning technology has significantly reduced the need for strip-searching.<sup>172</sup>

We support an approach that will ensure that routine strip-searching is no longer the default approach in the custodial environment. Now that non-invasive methods are available to regulate the entry of contraband into custodial settings – including the use of body scanners – DJCS should reconsider the routine use of strip-searching and reassess the balance between security and human rights. We favour a risk-based assessment consistent with recommendations from the Victorian Ombudsman and aligned with recent changes to the operational guidelines provided to custodial staff.

#### Recommendation 6.5

##### Routine strip-searching phased out and replaced with technology

The Department of Justice should phase out routine strip-searching of people in custody and replace this process with technology (such as advanced body scanners already available at some locations), enhanced intelligence capability and risk assessment, as part of proposed reforms to the *Corrections Act 1986*.

The phasing-out of routine strip-searching should ensure this practice:

- a) is only used as a last resort when it is absolutely necessary and where less intrusive measures have been exhausted
- b) is not used as a deterrent, punishment or for any other improper purpose
- c) should be informed by a specific and reasonable intelligence-based risk assessment
- d) considers any individual circumstances that may mean strip-searches pose additional wellbeing risks to the individual – for example, because of their age, disability or history of sexual victimisation or violence.

<sup>171</sup> Rule 52 of the United Nations Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules'), states that 'intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary. Prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches'. Similarly, rule 20 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('Bangkok Rules') states that 'alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches.'

<sup>172</sup> Tasmania Government, 'Tenders called for body scanning technology in correctional facilities', (Media Release, 20 August 2022) [https://www.premier.tas.gov.au/site\\_resources\\_2015/additional\\_releases/tenders-called-for-body-scanning-technology-in-correctional-facilities](https://www.premier.tas.gov.au/site_resources_2015/additional_releases/tenders-called-for-body-scanning-technology-in-correctional-facilities).

## Ensuring that decision-making about separations and management responses is fair, transparent and made for proper purposes

There has been significant attention by integrity bodies and others to the use of separation and the experiences of people who are held in isolation away from the general prison population.<sup>173</sup> In Victoria, the Corrections Regulations describe this as the ‘separation of a prisoner from some or all other prisoners’.<sup>174</sup>

The Corrections Regulations allow for people in custody to be separated from others in the prison if the Secretary of DJCS believes on reasonable grounds that the separation is necessary for the safety and protection of the person in custody, the safety or wellbeing another person in custody or for the management, good order or security of the prison.<sup>175</sup>

For the purposes of this report, we adopt the term ‘separation’ to reflect the language already used within the system. However, we note that some of the experiences and examples shared during the Cultural Review are likely to also meet the definition of solitary confinement at international law. The potential for separation to meet the threshold of solitary confinement is also acknowledged within the Deputy Commissioner’s Instruction on separation regimes.<sup>176</sup>

### What is solitary confinement?

The Mandela Rules describe solitary confinement as the physical isolation a person ‘for 22 or more hours a day without meaningful human contact.’

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<sup>173</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019). The report made the following recommendations directed to the Victorian Government;

Recommendation 1 - Recognising the significant harm caused by the practice, that it is not unreasonable for detaining authorities to provide meaningful human contact even when a person is isolated, and that separation and isolation do not invariably amount to ‘solitary confinement’, establish a legislative prohibition on ‘solitary confinement’, being the physical isolation of individuals for ‘22 or more hours a day without meaningful human contact.’

Recommendation 3 Ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in prisons, youth justice centres and secure welfare services.

The report also made the following recommendation to Corrections Victoria.

Recommendation 8 Recognising the ‘extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement’ as described in the Royal Commission into Aboriginal Deaths in Custody, ensure that detaining authorities are required to notify Aboriginal support workers of each instance of separation or isolation of Aboriginal or Torres Strait Islander peoples, and to give proper consideration to their cultural advice, including advice about relevant recent or upcoming sorry business and other sensitivities.

<sup>174</sup> *Corrections Regulations 2019* (Vic) reg 32.

<sup>175</sup> *Corrections Regulations 2019* (Vic) reg 32(1).

<sup>176</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner’s Instruction 1.17 – Separation Regimes* (11 July 2022).

We note that the term ‘solitary confinement’ is not otherwise used in Victorian legislation or policy. Some stakeholders noted the risk that use of the term ‘separation’ across the system and within the enabling legal and policy framework may underplay the reality of practices occurring in Victorian prisons and may de-emphasise the harms associated with this practice which can result in ‘solitary confinement’ as defined under international human rights conventions.<sup>177</sup>

During our engagement, we heard about and observed concerning numbers of people experiencing separation – long-term management and isolation – for the stated purpose of protection. For example, the LGBTIQ Legal Service shared experiences of clients who experienced long periods of separation and isolation:

‘Our clients report that they have been subjected to excessive periods of separation or isolation against their wishes. Our clients instruct that this practise is often used by Corrections officers when they cannot adequately manage or protect [trans and gender-diverse] people in prison from other people in the prison.’<sup>178</sup>

**LGBTIQ Legal Service**

We understand that separation is often adopted as a risk-management practice in maximum-security locations for the safety of people who have a public profile which could result in additional risk for them while they are in custody. While there are additional governance processes relating to these decisions, we encourage DJCS to consider of how the adult custodial corrections system can deliver a more person-centred response rather than relying on separation regimes and limitation of individual human rights to manage these risks. Key stakeholders support this view and have recommended additional safeguards for the use of separation and management regimes.<sup>179</sup>

A person in custody we spoke to reflected upon how prolonged separation regimes can impact the physical and psychological wellbeing of people in custody:

‘No, I don’t feel safe, because the sentence management manual of Corrections Victoria acknowledges that long term solitary confinement does harm to people. It’s a well-documented phenomenon that long term, high security or management unit, or control unit isolation does physical and psychological harm to people. So, in the name of safety, I’m being harmed ... sentence management manual agrees in writing that holding people in prolonged solitary confinement causes mental and physical harm.’

**Person in custody**

<sup>177</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021) 12; Fitzroy Legal Service, Submission to the Cultural Review (January 2022) 6.

<sup>178</sup> LGBTIQ Legal Service, Submission to the Cultural Review (December 2021) 15.

<sup>179</sup> Jesuit Social Services, Submission to the Cultural review (December 2021) 28



We are particularly concerned with the lack of appropriate placements and management options for vulnerable cohorts such as those with acute mental illness and disability, and human rights concerns in relation to long-term management for people in custody who are transgender or otherwise separated for their own protection.

Our site visits and engagement confirmed that prisons continue to use behavioural management practices and separations to respond to behaviours and conduct of people in custody associated with health-related issues, including cognitive impairment and mental health conditions. In particular, during our visit to Swan 2 at DPFC, we observed the same issues that prompted the Victorian Ombudsman to recommend that the unit be closed and replaced with a fit-for-purpose facility.<sup>180</sup>

DJCS recently advised the Victorian Ombudsman that the closure of Swan 2 would be considered as part of the Women's System Reform Project.<sup>181</sup> DJCS advised the us that these plans are progressing, with new infrastructure under construction and expected to replace the existing facilities in 2023.

Given the potential impacts of separation on people in custody, we support DJCS's updates to operational guidance for corrections staff to recognise:

- ▶ that people in custody should be managed through the least restrictive means available, for the least amount of time needed to resolve an immediate threat to safety
- ▶ that staff must act compatibly with their existing human rights obligations and consider the human rights of people in custody when making decisions.<sup>182</sup>

In the case of separation, the updated guidance explicitly acknowledges the need to balance the safety and security of the prison with the human rights of people in custody.

However, we heard from external stakeholders, people in custody and staff that the treatment of people in custody does not always reflect the operating principles outlined in these policy documents. As noted by the Victorian Ombudsman, 'you can have the best policy in the world, but if it doesn't translate into operations then that can be problematic'.<sup>183</sup>

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<sup>180</sup> Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017), recommendation 3.

<sup>181</sup> In response to recommendations from the Victorian Ombudsman's 2017 report, *Implementing OPCAT in Victoria: Report on inspection of the Dame Phyllis Frost Centre*, the Department of Justice and Community Safety advised: 'A funding submission has been developed for a 40 bed Management Unit to replace Swan 1 and Swan 2 as well as a 100-bed reception/orientation unit. Part of the Women's System Reform Project (WSRP) will involve the development of strategies to effectively manage the changing profile and growth in the women's prison population. This includes future planning around appropriate infrastructure, women's programs and services as well as an operating model configured to meet the complex needs of the Victorian women's prison system. A working group has been established and meetings commenced in March 2018': Victorian Ombudsman, *Ombudsman's recommendations - second report* (Report, 4 July 2018).

<sup>182</sup> See for example Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 1.17 – Separation Regimes* (11 July 2022); Corrections Victoria, *Deputy Commissioner's Instruction 1.13A – Application of Instruments of Restraint* (7 August 2018); Corrections Victoria, 'Separation Regimes' *Sentence Management Manual* (12 July 2022).

<sup>183</sup> Victorian Ombudsman - Expert interview with Cultural Review.

We heard how this can directly affect people in custody and contribute to longer-term harms associated with imprisonment:

'If [people placed in a management unit] don't have a good mindset, they can lose their marbles a bit. You picture yourself sitting in a room for 24 hours a day, not being able to get out and not even being able to sit down to eat dinner, you know what I mean? Like you've got to stand up or kneel down to eat your dinner. If you're not pretty strong up here, it will get the best of you, that's for sure.'

**Person in custody**

Sadly, we heard from multiple people in custody who had experienced prolonged separation and conditions that are not likely to meet minimum human rights standards – frequently due to a lack of alternative placement options. People described feelings of isolation and hopelessness that can accompany time in management units and the perception that some decisions about the use of these restricted conditions can be punitive or capricious:

'I was locked into a cell when I first came into prison custody because I was crying and I said "I need help with this," and the officer replied "Well, it's too late, can't help you," and so I responded "Okay, I'll find someone that will," and I was crying and I was like, "Can you please help me?" and the officer I was talking to came up and I was getting yelled at so I started yelling back and they said "Nope, you're locked down. Take everything out of your cell, you're locked down for the night". That was the moment where I thought, "I can't go to them to get help. I can't go to different officers. No one's going to help me. I'll just do it on my own".'

**Person in custody**

The process of separation can be particularly unsafe for Aboriginal people – see *Part 5. Aboriginal cultural safety* for further discussion.

We heard many examples where separation had interfered with a person's access to essential services, programs and supports, including medical care – resulting in disproportionate impacts on people who already have acute needs:

'For people who are in segregation of various kinds and solitary confinement, accessing medical care is a big issue. It is a greater risk for people who have already got existing psychiatric issues, cognitive disabilities, people who are transgender, those sorts of groups who are seen as "behaviour management" issues. They end up in segregation/solitary confinement and that also reduces access to health care and health services.'

**Flat Out**

We also heard examples where people in custody did not understand the reasons behind decisions about placement or separation or did not know how to raise concerns about their custodial conditions. We heard that people in this position are frequently out of reach for services that may be able to provide support and advice:

'The sad fact is that if somebody is in isolation and subject to violence, we're not going to hear from them. Sometimes a person who's in a cell nearby might try to talk to somebody, their lawyer or they might contact us, but it's very difficult if the person is not in a position to identify or contact a lawyer or recognise that a lawyer might be able to assist them. We're talking about really vulnerable people.'

Flat Out

There is also a risk that separations and other responses are used disproportionately against people who may find a rule- and routine-based environment very challenging – such as people with disability, cognitive impairment or mental health issues or people who experience challenges regulating their behaviour. People who experience barriers to communication may also find the use of separation to be isolating and disempowering.

There is work already underway within Corrections Victoria to more closely examine the use of separations within the system and ensure they are used appropriately.

### Improving the use of separation in custodial environments – the Separation Reform Project

Corrections Victoria has commenced work to improve operational practice relating to the use of separations in the adult custodial corrections system. This work was prompted by recommendations from the Victorian Ombudsman's 2019 report *OPCAT in Victoria: A Thematic Investigation of Practices Related to Solitary Confinement of Children and Young People*.<sup>184</sup> According to project material provided to the Cultural Review, the project aims to:

- ▶ educate staff and stakeholders of the harms associated with separation
- ▶ provide a new structure for the authorisation and oversight of separation regimes in prison facilities in Victoria
- ▶ ensure use of separation regimes in both the men's and women's systems considers:

<sup>184</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019). The report made the following recommendations directed to the Victorian Government:

Recommendation 1 – Recognising the significant harm caused by the practice, that it is not unreasonable for detaining authorities to provide meaningful human contact even when a person is isolated, and that separation and isolation do not invariably amount to 'solitary confinement', establish a legislative prohibition on 'solitary confinement', being the physical isolation of individuals for '22 or more hours a day without meaningful human contact.'

Recommendation 3 – Ensure that culturally supportive therapeutic spaces as an alternative to separation, isolation or seclusion rooms are established in prisons, youth justice centres and secure welfare services.

The report also made the following recommendation to Corrections Victoria:

Recommendation 8 – Recognising the 'extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement' as described in the Royal Commission into Aboriginal Deaths in Custody, ensure that detaining authorities are required to notify Aboriginal support workers of each instance of separation or isolation of Aboriginal or Torres Strait Islander peoples, and to give proper consideration to their cultural advice, including advice about relevant recent or upcoming sorry business and other sensitivities.

- alignment with the Charter of Human Rights and Responsibilities and the United Nations conventions and protocols governing the treatment of people in custody adopted by Australia
- the appropriateness of isolating people in custody from contact with others, including details of that isolation and what they have access to
- the management of violence without long-term separation, considering the safety of staff and other people in custody
- opportunities for people who are separated to address the reasons for their separation
- the complexities of the Victorian adult custodial corrections system, particularly the need to balance safety with other obligations, such as the human rights of people in custody
- the effect of separation on groups identified as having diverse or complex needs, including Aboriginal people and people with disability.
- develop and implement appropriate changes including a communications and change management strategy.

We urge DJCS to reconsider the appropriateness of using seclusion as an outcome of a disciplinary process. The absence of independent review processes to assess the use of separation and other management practices limits opportunities for scrutiny of decision-making.

The Victorian Ombudsman has also made recommendations on better record-keeping and decision-making in relation to the use of separations. This included specific recommendations about the use of separation for Aboriginal people in custody.<sup>185</sup>

There is clear understanding that separating Aboriginal people may result in additional risk. Corrections staff and leaders should specifically consider and document the social, emotional and cultural wellbeing impacts of separation for Aboriginal people before deciding to separate them. In essence, there should be a higher threshold for Aboriginal person to be subjected to a separation regime.<sup>186</sup>

<sup>185</sup> See, for example, Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019) (Recommendation 10 Require each prison to establish and maintain a register of separations; Recommendation 16: Remind staff of the need to give proper consideration to the medical and psychiatric condition of a person before separating them, and adequately record that assessment. For Aboriginal and Torres Strait Islander prisoners, this should include consideration of social and emotional wellbeing)

<sup>186</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019) (Recommendation 16: Remind staff of the need to give proper consideration to the medical and psychiatric condition of a person before separating them, and adequately record that assessment. For Aboriginal and Torres Strait Islander prisoners, this should include consideration of social and emotional wellbeing).

**Recommendation 6.6**  
**Clear guidance on the use of separations**

The Department of Justice and Community Safety should create clear guidance for corrections staff on the use of separations with a focus for staff on understanding the harmful effects of separation and the requirement to ensure the human rights of people in custody are not unnecessarily limited.

This guidance should require that separation:

- a) is not used where less restrictive options are available
- b) considers any individual circumstances that may mean separation creates additional wellbeing risks to the individual – for example, because of their age, disability, mental health or history of trauma
- c) should not amount to solitary confinement
- d) should not interfere with a person's access to services and supports, including family and community-based supports
- e) should be subject to regular independent review to assess whether it continues to be necessary
- f) where deemed necessary, its use and the reason is recorded.

Specific consideration should also be given and recorded in relation to the use of separation for Aboriginal and Torres Strait Islander people in custody.

Where a decision is made to separate a person in accordance with the updated decision-making guidance, the human rights and impact of the separation on the person should be actively considered and monitored. At a minimum, a person should be actively supported to access:

- g) regular medical and psychological care
- h) daily wellbeing visits from peer mentors, corrections staff, disability support staff, Elders and Respected Persons and others
- i) independent review of the decision
- j) ongoing connection to programs, services and family and community-based supports

Management units should be adequately resourced to enable people to be escorted to and supervised while accessing these supports and services.

## Increasing the fairness and transparency of disciplinary processes

Disciplinary processes in the adult custodial corrections system respond to alleged conduct that contravenes prison rules. In Victoria, prison offences include behaviours such as acting in a disruptive manner, smoking or using a tobacco product, disobeying a custodial officer's instruction, and assaulting or threatening staff or other people in custody.<sup>187</sup>

The *Victorian Prisoner Disciplinary Process Handbook* describes the purpose of prisoner disciplinary processes as:

- ▶ ensuring all staff, contractors, visitors and people in custody are protected from intimidation, threats, assaults, harassment and bullying
- ▶ protecting prison property and property of people in custody
- ▶ preventing drug use
- ▶ providing a safe and secure prison environment to encourage people in custody to engage in activities that reduce the likelihood of reoffending and prepare them for release.<sup>188</sup>

At all stages of the disciplinary process, corrections staff are required to accord procedural fairness to people in custody, through the application of two broad rules – the fair hearing rule and the bias rule.<sup>189</sup>

The importance of procedural fairness is reflected in the requirements of the *Corrections Act 1986*, the Corrections Regulations and the relevant Commissioner's Requirement for the conduct of disciplinary hearings.<sup>190</sup> The Commissioner's Requirement provides that while the rules of evidence do not apply to disciplinary proceedings, broader principles of procedural fairness are to be upheld.

As noted above, ensuring that these processes are fair and transparent is important to the legitimacy and acceptance of prison disciplinary outcomes. For people in custody, disciplinary processes can also have tangible outcomes – for example, people may lose their privileges or may be required to pay a fine from limited prison funds. We heard from people in custody that the fines can be challenging to pay given low prison wages:

<sup>187</sup> *Corrections Regulations 2019* (Vic) reg 65(1).

<sup>188</sup> Department of Justice and Community Safety (Corrections Victoria), 'Prisoner Disciplinary Process Handbook v2' (December 2020) 7, Data provided to the Cultural Review.

<sup>189</sup> NSW Ombudsman, *Good Conduct in Administrative Practice*, (2017, 3rd Edition) 67; Department of Justice and Community Safety (Corrections Victoria), 'Prisoner Disciplinary Process Handbook v2' (December 2020) 7, Data provided to the Cultural Review.

<sup>190</sup> Corrections Victoria, *Commissioner's Requirement 2.3.3 - Disciplinary Process and Prisoner Privileges* (1 July 2022).

'I had a Governor's Hearing but was not provided any legal support. If you plead not guilty, they get officers to come in and give evidence. If you plead guilty, no officers are asked to give evidence. You normally get fined. The fines are expensive. We earn \$6 a day. It's ridiculous to ask prisoners to pay such large fines on wages like that.'

**Person in custody**

There are also a number of indirect consequential penalties that can result from a finding of guilt in a disciplinary hearing, including relating to parole, classification and placement, separation, suspension from work programs, and loss of access to contact visits and pharmacotherapy programs.

Fair disciplinary hearings rely on penalties that are just and proportionate to the alleged offence. The Mandela Rules prohibit the use of prolonged solitary confinement as a punishment arising from a disciplinary hearing, except in exceptional circumstances (rules 43 and 44), and it is also generally accepted that punishments should not restrict contact with family, friends or visitors.<sup>191</sup>

Despite the current requirements of procedural fairness, through our research and engagement we found that people are not experiencing these processes to be fair and transparent. As one person in custody described it:

'Governor's hearings are kangaroo court where a guilty verdict is always the outcome no matter the circumstances.'

**Person in custody**

These reflections are broadly compatible with the observations and findings of the Victorian Ombudsman following an investigation into prison disciplinary processes.

To increase the independence and fairness of prison disciplinary hearings, some other jurisdictions draw upon the expertise of external adjudicators. Hearings for serious matters in English and Welsh prisons may be heard by a judge acting as an 'independent adjudicator'.<sup>192</sup>

Another key concern identified by people during our engagement and reported by the Victorian Ombudsman is the lack of understanding, support and advocacy available to ensure procedural fairness during disciplinary hearings:

'There's no one to advocate. Who can we have in a governor's hearing, or who can we have...[The Sentence Management Unit] when they come and we're in the slot and we're saying, "That's not how it was; it was like this". We have nobody to advocate for us.'

**Person in custody**

<sup>191</sup> Coyle. A & Fair. H, *A Human Rights Approach to Prison Management Handbook for Prison Staff* (2017) 86.

<sup>192</sup> Coyle. A & Fair. H, *A Human Rights Approach to Prison Management Handbook for Prison Staff* (2017) 86.

Below, we recommend that additional advice and support for people in custody including in relation to their full participation in disciplinary hearings.

### **Building on recommendations made by the Victorian Ombudsman**

DJCS specifically requested that we consider recent recommendations by the Victorian Ombudsman in relation to the fairness and transparency of prisoner disciplinary hearings. We support the implementation of these recommendations.<sup>193</sup>

In the investigation into good practice when conducting prisoner disciplinary hearings, the Victorian Ombudsman found that prisoner disciplinary hearings are often ‘carried out in the dark with insufficient scrutiny, oversight or transparency’ and that ‘the potential for unfairness remains rife’.<sup>194</sup>

The investigation by the Victorian Ombudsman found several issues with the existing disciplinary processes, including:

- ▶ perceptions of bias arising from involvement of unit supervisors in the investigation of an alleged offence
- ▶ limited or insufficient information being provided to people in custody about the alleged conduct, often using broad descriptions of the relevant offence provided in the ‘notification of charge’ form rather than detailing the alleged conduct
- ▶ undocumented pre-hearing discussions, in which people in custody allege custodial officers discuss the likely outcome of the disciplinary hearing with them before the hearing takes place, which may influence their plea
- ▶ limitations on the right to call witnesses, including instances where people in custody had been transferred to different locations, causing delays in and limiting access to witnesses
- ▶ lack of written reasons for the hearing officer’s decision, creating challenges in the judicial review process and provision of independent advice
- ▶ inconsistent application of penalties depending on the prison location, the identity of the person in custody and the custodial officers involved.
- ▶ inconsistent consultation with relevant health/psychiatric professionals to assist in determining the degree to which the prisoner’s psychiatric condition may have contributed to the offence and whether it is appropriate to proceed with the hearing
- ▶ limited independent support available for people in custody with a psychiatric condition or other cognitive impairment and inconsistent use of corrections independent support officer (CISO) volunteers for people with a registered intellectual disability.

<sup>193</sup> Victorian Ombudsman, *Good practice when conducting prison disciplinary hearings* (Report, 2021)

<sup>194</sup> Victorian Ombudsman, ‘Hidden prison disciplinary hearings lack scrutiny, Victorian Ombudsman finds’ (2021) <https://www.ombudsman.vic.gov.au/our-impact/news/hidden-prison-disciplinary-hearings-lack-scrutiny-victorian-ombudsman-finds-1>.



The Victorian Ombudsman made six recommendations to DJCS. Three of these recommendations were supported in principle, subject to budget deliberations. The remaining three recommendations were specifically referred to the Cultural Review for consideration:

<b>Recommendation 1</b>	Recognising that robust merits review of decisions is likely to substantially mitigate the risk of unfair outcomes, develop and implement an internal review mechanism for disciplinary hearings, including, if necessary, through amendment to the <i>Corrections Act 1986</i> (Vic).
<b>Recommendation 2</b>	Establish and invest in a dedicated team within DJCS to be responsible for conducting prison disciplinary hearings and related internal reviews, including staff with relevant operational and administrative decision-making expertise.
<b>Recommendation 3</b>	Recognising the benefits in prisons conducting fewer and better quality disciplinary hearings, develop and implement a strategy to reduce the number of minor offences that proceed to the hearing stage, including through a formalised and consistent minor offence process, behaviour management plans and other alternatives to disciplinary hearings.

In December 2021, we provided advice to DJCS supporting the implementation of the recommendations from the Victorian Ombudsman. Since that time, our engagement with staff and people in custody has confirmed the need to increase transparency in these processes.

We have not sought to duplicate the detailed work undertaken by the Victorian Ombudsman when specifically investigating these issues. What we have observed, however, are the cultural influences that shape the use and approach to disciplinary processes.

The recommendations below provide guidance to DJCS on responding to the recommendations of the Victorian Ombudsman. Implementing these recommendations will increase fairness and transparency of decision-making within the adult custodial corrections system.

### Improving ethical decision-making in disciplinary processes

Over the course of the Cultural Review, we observed clear differences between locations in the approach and conduct of disciplinary hearings. People in custody shared their own experiences of participating in processes across different locations and a lack of consistency across the system.

Unlike other jurisdictions and Victoria's private prisons, policy and operational material for Victoria's public prisons does not clearly express that a key purpose of disciplinary processes is to ensure that people in custody are treated fairly in the determination of penalties for prison offences. Instead, there is a focus on safety and control in internal policy documents and limited principle-based guidance to shape disciplinary responses.

This lack of clarity creates space for varying understandings of the purpose of disciplinary proceedings and fosters an environment in which there is an over-reliance on formal disciplinary processes. There is a tendency for corrections staff to focus on rote procedure at the expense of ensuring substantive fairness for people in custody and seeking opportunities to promote meaningful behavioural change.

Corrections staff are required to conduct disciplinary hearings with limited support and without any legal or administrative decision-making expertise or experience. Training provided to hearing officers is limited to general pre-service training and intermittent refresher training. The Victorian Ombudsman has supported improvements to training provided to staff conducting these hearings to improve disciplinary processes.<sup>195</sup> We also support building staff capability as part of the package of reforms to support ethical and fair decision-making.

Despite the serious nature of penalties imposed through disciplinary processes, there is currently no option for people in custody to seek an internal review of disciplinary hearing outcomes. The only option that is currently available to people in custody is judicial review through the Supreme Court of Victoria. However, as noted earlier, judicial review is not a realistic pathway for most people in custody to assert their rights. Other Australian jurisdictions offer a more accessible internal review process involving more senior staff or a visiting tribunal or judicial officer.

Given the potential consequences for people in custody, we support access to a merits review process to increase procedural fairness and the quality of decision-making. This is consistent with research that has found that adjudications in prison work best when they are swift, transparent, fair and used alongside rewards for good behaviour and efforts to reform.<sup>196</sup>

Some people in custody have additional vulnerabilities that may require further scrutiny of disciplinary processes. The Victorian Ombudsman has recommended that prisons specifically consider whether a person's mental illness or disability may have contributed to their conduct and record their assessment of this possibility.<sup>197</sup>

This expectation already exists in the checklist for hearing officers when exercising these functions; however, increased scrutiny through more independent processes will ensure that this happens in practice.<sup>198</sup>

<sup>195</sup> Victorian Ombudsman, *Good practice when conducting prison disciplinary hearings* (Report, 2021).

<sup>196</sup> Karin Beijersbergen et al, 'Procedural justice and prisoners' mental health problems: A longitudinal study' (2014) 24(2) *Criminal behaviour and mental health*; David Bieri, 'Procedural justice and prison violence: examining complaints among federal inmates (2000 – 2007)' (2013) 19(1) *Psychology, Public Policy and Law* 15-29; Butler & Maruna, 'The impact of disrespect on prisoners' aggression: outcomes of experimentally inducing violence supportive cognitions' (2009) 15(2-3) *Psychology, Crime and Law* 235-250.

<sup>197</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019).

<sup>198</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 1.16 - Disciplinary process* (1 July 2022), sch 1.16(7) 'Checklist for Disciplinary Officers'.

**Recommendation 6.7**  
**Improved fairness, transparency and oversight of prison disciplinary processes**

The Department of Justice and Community Safety should update prison disciplinary processes to make them fairer, more consistent and more transparent.

The department should:

- a) include specific guidance on the purpose of prison disciplinary processes in proposed reforms to the *Corrections Act 1986*, including the requirement for procedural fairness
- b) include a merits review process for all disciplinary penalties (including those outside of the disciplinary hearing process) in proposed reforms to the *Corrections Act 1986*
- c) ensure there is a dedicated team within the Department of Justice and Community Safety to conduct prison disciplinary hearings and related internal reviews, including staff with relevant operational and administrative decision-making expertise
- d) ensure that custodial and departmental staff with duties and responsibilities relating to disciplinary hearings have access to specific training on ethical decision-making, procedural fairness and restorative justice practices.

## Development of a more proportionate response to minor conduct issues

There is a spectrum of conduct that might result in a person being charged with a prison offence. The current approach to resolving disciplinary issues does not clearly differentiate between seriousness of offences or the seriousness of outcomes and penalties. While there is some discretionary decision-making at key decision points, this discretion can be applied in different ways with inconsistent outcomes.

The Victorian Ombudsman highlighted concerns about poor and inconsistent use of discretion by hearing officers and found that there was an over-reliance on formal disciplinary processes.<sup>199</sup>

There is potential for prisons to respond to minor conduct 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.

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<sup>199</sup> Victorian Ombudsman, *OPCAT in Victoria: a thematic investigation of practices related to solitary confinement of young people and children* (Report, 2019) 5.

In its submission to the Cultural Review, Jesuit Social Services supported the introduction of restorative justice practices more generally, observing their potential to prevent conflict and promote a healthy prison environment and prosocial behaviours:

'Working restoratively offers an alternative pathway for promoting healthy environments by proactively supporting relationships before conflict arises, and facilitating healing and wellbeing.'<sup>200</sup>

**Jesuit Social Services**

Opportunities for restorative conversations in response to conduct issues would improve outcomes for both people in custody and the system more broadly.<sup>201</sup> This approach would be consistent with research that found 'fast-track adjudications' with new, more rehabilitative sanctions can be more effective in encouraging people in custody to take personal responsibility for their actions – while reducing delays and lengthy administrative processes. An example provided in the United Kingdom's Prisons Strategy White Paper is allowing a person in custody to repair damage to a cell instead of a formal disciplinary outcome.<sup>202</sup>

While the Victorian Ombudsman's investigation heard about instances of custodial officers electing to pursue informal and restorative approaches to dealing with conflict, the investigation found that these approaches are ad-hoc and dependent on the motivation of the individual officers involved.

We recommend the development of a new process to respond to minor conduct issues. This process for responding to minor matters should be developed alongside the new legislative scheme (see Recommendation 2.1) and ensure there is a differentiated approach that means disciplinary processes are focused on more serious allegations of drug use and physical violence.

As part of this recommendation, we also support the development of a restorative process to provide opportunities for reflection, resolving conflict and repairing interpersonal relationships within the custodial environment.

Importantly, this recommendation should not be interpreted as suggesting that there should be no consequences when people in custody do not follow the rules. Our interest is in ensuring that the response is proportionate and provides opportunities for constructive approaches that advance system goals through therapeutic and rehabilitative approaches.

<sup>200</sup> Jesuit Social Services, Submission to the Cultural review (December 2021)10-11.

<sup>201</sup> Jesuit Social Services recommended the external facilitation of structured group conversations between staff and people in custody to serve as a preventative measure and also as an important means of building positive relationships: Jesuit Social Services, Submission to the Cultural review (December 2021) 12.

<sup>202</sup> UK Government, *Prison Strategy White Paper* (2020) 28. See also, Flora Fitzalan Howard and Helen Wakeling, 'Evaluating "rehabilitative adjudications" in four English prisons' *Ministry of Justice Analytical Series*.

**Recommendation 6.8**  
**Proportionate responses and outcomes in disciplinary processes**

The Department of Justice and Community Safety should accept and implement the Victorian Ombudsman's recommendation to develop and implement a strategy to reduce the number of minor offences that proceed to hearing stage, including through a formalised and consistent minor offence process, behaviour management plans and other alternatives to disciplinary hearings.

The Cultural Review recommends that the minor offence strategy should include:

- a) clear differentiation between minor and serious prison offences, including a framework of penalties proportionate to the seriousness of the prison offence – this could include a suspended penalty option with requirements to participate in diversionary approaches (see below)
- b) diversionary case management and restorative justice approaches for responding to minor prison offences, focused on resolving conflicts and promoting positive interpersonal relationships – this could include external facilitators leading dispute resolution conversations and the development of participant-led solutions
- c) opportunities to limit indirect impacts of prison offences on parole, prison placement, segregation and access to visits, particularly for minor offences
- d) appropriate training for all corrections staff in conflict resolution, trauma-informed practice and exercising fair and ethical discretionary decision-making in relation to the behaviour of people in custody.

## Increasing independent advice and support for people in custody

As noted throughout this report, there is a significant power imbalance within the custodial environment which creates challenges for people in custody to complain about unfair decision-making and seek support to exercise their rights.

Fitzroy Legal Service described some of these challenges for people in custody:

'In our experience, the closed nature of prisons encourages not only a persistence of degrading treatment, but also an opaque culture characterised by ambiguity, unfairness, and illogical bureaucracy. People in prison are often in the dark about processes and their rights. Those who can self-advocate and make request and/or complaints, often do not receive a response or experience extensive wait times. The lack of knowledge and transparency of the bureaucratic systems that control their lives is a significant cause of distress.'<sup>203</sup>

**Fitzroy Legal Service**

<sup>203</sup> Fitzroy Legal Service, Submission to the Cultural Review (January 2022) 15.

### People in custody do not always know or understand their rights

While there is a requirement that people in custody receive information about their rights and complaints pathways when they enter the adult custodial corrections system,<sup>204</sup> research shows that people in custody will often be unaware of their rights and how to exercise them.

We heard that there is not a strong organisational culture of supporting people in custody to understand and assert their rights to resolve individual issues and support improvements in custodial practice:

'I don't know what the parameters are around a strip-search. So in a way, whatever you want me to do, I'll just do.'

Person in custody

### People in custody fear there will be consequences for making a complaint

We heard clear examples of people in custody with legitimate issues being actively discouraged from reporting via complaints pathways or integrity agencies. In some examples, we heard that people in custody were told there would be consequences if they complain to integrity agencies:

'Even for us to speak, if we gather together and said "hey, this is not right", they know as soon as a couple would meet up, those heads would be taken, they'd be put in solitary ... For a lot of us, that's where we started our sentences and to go back there after doing half a decade or a decade or more is unthinkable. The attitude from staff, they know they have the power, why say anything, you can't say anything.'

Person in custody

We also heard from people in custody that they were discouraged from speaking to the Cultural Review team and other integrity body visits and investigations:

'I was surprised to be honest that you guys have come, because every time someone like you guys come, they usually slot me, so that I can't talk to these people.'

Person in custody

People from culturally and linguistically diverse backgrounds with experiences as refugees and people who are not permanent residents or citizens may choose not to challenge authority for fear of adverse consequences. We also heard that women might feel frightened or unsafe providing feedback or lodging a complaint as there can be personal ramifications – including targeted violence, harassment and bullying.<sup>205</sup> Another person in custody told us:

<sup>204</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 4.01 - Requests and Complaints* (24 April 2022).

<sup>205</sup> RMIT Changing Faces Think Tank, Submission to the Cultural Review, (December 2021).

'I'll be honest, I haven't [reported any inappropriate behaviour of officers]. I probably should have, but there's always that fear of repercussion if you report things like that because they always back their officers.'

**Person in custody**

Corrections staff also observed the consequences for people in custody who report staff conduct or make complaints:

'We've got one prisoner who actually reported one of the officers because she did something inappropriate, and now nobody does anything for him. And if I do, then I'm a "crook lover", not me just doing my job. I'm a crook lover.'

**Staff member**

### **There are cultural norms that disempower people from making complaints**

From what we heard from people in custody, most are unlikely to report issues or conduct related to other people in custody or corrections staff due to a pervasive culture of silence, and fear of being labelled a 'dobber':

'The rule in prison is that you don't lag. And that goes right across the board. Depending on how bad you're bashed, and whether you've got to be hospitalised or whatever, a lot of it is swept under the carpet. Because if you go and report it, well the next time happens, it's going to be ten times as bad. I don't know how they're going to fix that because it's pretty much endemic right through the whole system.'

**Person in custody**

### **People in custody may not know how to access legal advice and support**

Even when a person in custody does want to make a complaint or seek advice, complaint and support pathways may not be easily understood. There is limited, if any, guidance on the role of different complaints pathways alongside the exempt call list. Victoria Legal Aid noted the challenges for making complaints for people in custody:

'There are multiple challenges for people in custody to make a complaint or report misconduct, compounded by the high numbers of people in custody with cognitive impairments or other barriers to understanding processes or feeling safe enough to participate.'<sup>206</sup>

**Victoria Legal Aid**

Victoria Legal Aid noted the limited access to advice or assistance to raise issues about experiences in custody. They also noted that the transparency and independence of the complaints process is essential.<sup>207</sup> They suggested that the process needs to take account the inherent difficulties in making a complaint while in custody.<sup>208</sup>

<sup>206</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 13.

<sup>207</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 14.

<sup>208</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 14.

Our engagement emphasised the need for people in custody to have access to independent advice and support to reduce the power imbalance and support increased agency. In addition, multiple studies identify the complex and evolving legal needs of people in custody. Identifying and responding to those needs has been identified as an important feature for access to justice for people in custody.<sup>209</sup>

## Existing advice and support for people in custody is limited in scope and accessibility

While people in custody can access legal advice in relation to their substantive criminal matter, there is no funded and comprehensive program for them to access advice, assistance and support regarding their conditions or treatment in custody – including any disciplinary processes. As noted above, this support is crucial for procedural fairness and ensuring people in custody can have disciplinary decisions reviewed.

The Human Rights Law Centre described the current legal assistance arrangements as providing a 'patchwork of coverage that largely involves the provision of legal advice over the phone'.<sup>210</sup>

There are number of legal services that provide targeted assistance to people in custody but there is no dedicated service that works across the whole system. For example, the Djirra Prison Support Program is a legal assistance service hub that provides after-hours support for Aboriginal women and focuses on the prevention of family violence. The Mental Health Legal Centre provides civil legal services and other support services to people with cognitive impairment and mental health issues at DPFC and Ravenhall Correctional Centre.<sup>211</sup>

Service providers recognise the limitations of existing arrangements. Fitzroy Legal Service noted:

'People in prison have very limited avenues to legal assistance ... We receive an enormous number of enquiries and know that we cannot and do not reach most people who need our assistance'.<sup>212</sup>

**Fitzroy Legal Service**

<sup>209</sup> Victorian Legal Assistance Forum, 'A sector-wide approach to the legal needs of Victorian Prisoners' (Discussion paper, 2015) [http://www.vlaf.org.au/cb\\_pages/files/Attachment%204%20-%20Unmet%20legal%20need%20in%20prisons%20FINAL.pdf](http://www.vlaf.org.au/cb_pages/files/Attachment%204%20-%20Unmet%20legal%20need%20in%20prisons%20FINAL.pdf); Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking justice into custody: the legal needs of prisoners – summary report' *Justice Issues* (Issues paper, 2 June 2008).

<sup>210</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021) 21. We also heard from other stakeholders that this continues to be an issue for their clients.

<sup>211</sup> Mental Health Legal Centre 'Inside Access' <https://mhlc.org.au/inside-access/>.

<sup>212</sup> Fitzroy Legal Service, Submission to the Cultural Review (January 2022) 6



Similarly, Victoria Legal Aid reflected on the limitations of the current Prisoner Legal Help phone advice service:

'Our contact with callers is fleeting [limited to a maximum of 12 minutes] and not available at all custodial facilities across the state [only available in five prisons]. The primary focus of the service is to provide legal advice, rather than assisting with complaints.'<sup>213</sup>

### Victoria Legal Aid

Victoria Legal Aid supported expanding access to legal support to help people to understand and participate in the complaints system.<sup>214</sup> They currently refer most callers to other services to support the resolution of issues relating to their time in custody, including complaints about treatment or possible misconduct.<sup>215</sup> Giving people in custody more timely access to legal services within the adult custodial corrections system is likely to increase scrutiny on routine decision-making and improve conditions for people in custody.<sup>216</sup>

Currently, legal services give priority to the primary criminal legal issue connected to the person entering custody. As a consequence, other related or unrelated legal needs or issues may not be identified. Many people will not have continuing access to legal support once their primary legal issue is finalised. This is particularly relevant to people who may be serving lengthy custodial sentences.

The Productivity Commission has observed that the legal needs of people in custody are not easily understood or measured.<sup>217</sup> In the *Final Report of the Inquiry into Access to Justice*, the Productivity Commission recommended that the legal needs of people in custody be the subject of focused research by the Australian Bureau of Statistics through a regular survey.<sup>218</sup> This recommendation seeks to remedy concerns that the needs of certain groups, including people in custody, are not reflected in legal needs surveys of the general population.

There is also analysis supporting early intervention to prevent ordinary legal issues from escalating into criminal issues and a recognition that early intervention can avoid additional costs and impacts across the justice, health and community services sectors.<sup>219</sup> This includes ensuring people are supported to access community and human service interventions to avoid police contact, court appearances, legal processes, custody and community corrections interventions, and ambulance use.

<sup>213</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 14.

<sup>214</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 13.

<sup>215</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 14.

<sup>216</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 14. Victoria Legal Aid notes that a legal or non-legal service that visits prisons regularly to assist people in custody seeking to make complaints could contribute to informal monitoring of the custodial environment.

<sup>217</sup> Australian Government Productivity Commission *Access to Justice Arrangements* (Report, 2014).

<sup>218</sup> Australian Government Productivity Commission *Access to Justice Arrangements* (Report, 2014).

<sup>219</sup> Law and Justice Foundation of New South Wales, *Legal Australia Wide Survey (LAW Survey)* [http://www.lawfoundation.net.au/ljf/site/templates/LAW\\_AUS/\\$file/LAW\\_Survey\\_Australia.pdf](http://www.lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf).

Related to this, Financial Counselling Victoria noted the difficulties people in custody may face in communicating and self-advocating with creditors while in custody.<sup>220</sup> They noted the range of different debts that may escalate while a person is in custody which contribute to their risk of recidivism. While there are some roles within the adult custodial corrections system - such as the support provided by Assessment and Transition Coordinators when people enter custody - that may help people in custody to address these issues, bolstering access to dedicated and independent services will better support people in custody to resolve such issues.

### Advice and support for people in custody during disciplinary processes

As noted above, prisoner disciplinary processes have little external scrutiny. A person in custody may enter a guilty plea which will likely impact any privileges they have access to and their sentence management. This is done without access to advice or an accessible pathway for review.

We understand that people are made aware of their right for a support person or an independent support person from the Office of the Public Advocate, but people in custody do not routinely take up this option.<sup>221</sup>

The Victorian Ombudsman noted some of the challenges people in custody may face when participating in disciplinary processes.<sup>222</sup> We also identified that fair and equal participation in disciplinary and other decision-making processes may be hindered by a lack of information, independent specialist advice and assistance for people in custody.

There is limited advice available for disciplinary processes through existing advice pathways. This is not unique to Victoria – access to advocacy for disciplinary hearings is not a routine feature of disciplinary processes in other jurisdictions.<sup>223</sup>

There are also specific needs for people in custody who may not understand the disciplinary processes, may not be able to effectively participate or may struggle to understand or comply with the outcomes of a disciplinary process.

CISOs are experienced volunteers engaged by the Office of the Public Advocate to support people in custody who have an intellectual disability during disciplinary hearings in Victorian prisons. CISO volunteers explain what rights prisoners have and check that they understand them prior to and throughout the hearing process. CISOs will also support prisoners to exercise these rights if they wish to.

<sup>220</sup> Financial Counselling Victoria Inc., Submission to the Cultural Review (December 2021).

<sup>221</sup> Victorian Ombudsman, *Investigation into good practice when conducting prison disciplinary hearings* (Report, 2021).

<sup>222</sup> *Ibid*, 33.

<sup>223</sup> See, for example, NSW where a person in custody *may* have access to representation at a governors hearing conducted by a Visiting Justice if the governor is satisfied that the prisoner does not sufficiently understand the nature of the inquiry or does not understand English or is otherwise unable to represent himself or herself.

The presence of a CISO can prevent unfair outcomes for prisoners with intellectual disability, which may have the potential to adversely affect the prisoner's prospects of obtaining parole.<sup>224</sup>

The Victorian Ombudsman identified inconsistent use of CISOs across the system and limited independent support available for people in custody with a psychiatric condition or other cognitive impairment.<sup>225</sup> The Victorian Ombudsman found that 'while the CISO program provides support to prisoners with a registered intellectual disability, there is currently no similar program available to prisoners with a psychiatric condition or other cognitive impairment. Overall, there appears to be a lack of independent support available to these people in custody to assist them to understand the process and advocate for their rights.'<sup>226</sup>

We support the Victorian Ombudsman's recommendation that additional independent support be made available to people in custody who have conditions that may influence their ability to participate in disciplinary processes.<sup>227</sup> This includes a broader group of people that may be more vulnerable to unfairness in these processes. DJCS must ensure that people that are eligible for the CISO service are able to access this support and that funding is provided to ensure that the support from the Office of the Public Advocate is available when required across all locations.

### **Cultural support for Aboriginal people during disciplinary processes**

There is an expectation that Aboriginal people in custody will receive cultural support during disciplinary processes.<sup>228</sup> Staff must consider enabling Aboriginal people in custody to be supported by an Aboriginal wellbeing officer (AWO) or Aboriginal liaison officer (ALO) during a disciplinary process.<sup>229</sup>

There is also provision for corrections staff to work with Naalamba Ganbu and Nerrlinggu Yilam (Yilam), to discuss culturally appropriate support for Aboriginal people in custody involved in disciplinary processes.

Despite this requirement, we heard that AWOs, ALOs and the Yilam are not routinely contacted to provide support to Aboriginal people during disciplinary processes despite this being an existing operational requirement.

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<sup>224</sup> Office of the Public Advocate, Submission to the Cultural Review (December 2021) 27.

<sup>225</sup> The Memorandum of Understanding between OPA, Corrections Victoria and Justice Health regarding the CISO program limits the program to prisoners with a registered intellectual disability.

<sup>226</sup> Victorian Ombudsman, *Investigation into good practice when conducting prison disciplinary hearings* (Report, 2021) 61.

<sup>227</sup> The Ombudsman recommended – In consultation with the Office of the Public Advocate (OPA), developing and implementing measures to improve prisoner understanding and experiences of the disciplinary hearing process and available supports, including through: development of plain English materials explaining the disciplinary hearing process and available supports; expansion of the CISO program to provide assistance to prisoners with other forms of cognitive impairment; improved integration of the CISO program into pre-hearing processes, including during the notification of charge; identification of further opportunities to promote the CISO program within prisons and relevant specialist units: Victorian Ombudsman, *Investigation into good practice when conducting prison disciplinary hearings* (Report, 2021) 61, recommendation 5.

<sup>228</sup> Corrections Victoria, *Deputy Commissioner's Instruction 1.16 - Disciplinary process* (1 July 2022).

<sup>229</sup> Corrections Victoria, *Deputy Commissioner's Instruction 1.16 - Disciplinary process* (1 July 2022).

We heard of examples of AWOs not being given any notice of disciplinary hearings – or sometimes being contacted during the hearing – and not being able to attend or provide cultural support and advice as a result. On other occasions, AWOs were not contacted at all.

Access to cultural support is essential to support fairness and safety for Aboriginal people in these processes. In addition, including AWOs and other cultural supports in these processes will assist to understand conduct issues and identify culturally informed responses. We do not support disciplinary processes proceeding when cultural support has not been made available to a person in custody.

Given the significant cultural and workload demands on AWOs, outlined in *Part 5. Aboriginal cultural safety*, DJCS should adopt a broad approach to providing cultural support and advice when responding to conduct issues involving Aboriginal people in custody. This should include an option for the involvement of Elders and Respected persons, family and other community supports in disciplinary processes.

**Recommendation 6.9**  
**Access to cultural support during disciplinary processes**

The Department of Justice and Community Safety must ensure that independent cultural support is provided to Aboriginal people in custody for disciplinary processes in accordance with existing requirements. This should include the option for support to be provided by an Aboriginal wellbeing officer, Elder or Respected Person, family member or community member.

## Assistance in relation to integrity and misconduct processes

As discussed in Chapter 12, people in custody are sometimes alleged victims of integrity breaches and misconduct but are not always involved or supported in investigations and staff disciplinary processes. We understand that DJCS rarely interviews people in custody and that they may not be offered the opportunity to share their experience. There is also no formal process to communicate the outcome of an investigation to an impacted person in custody.

We are concerned that the lack of involvement and consideration of people in custody during these processes not only raises issues of procedural fairness and can result in insufficient evidence to substantiate a claim, but also means that people in custody may not receive the appropriate checks and support they need in relation to their physical and mental health and wellbeing, including their ongoing safety at the location.

In Part 4, we recommend that complaints and reporting policies, including corrections policy, set out a process that must be followed when DJCS becomes aware that a person in custody is the alleged victim of an integrity or misconduct report.

We envision that an expert in trauma-informed investigations, independent of the location, would ensure this procedure is followed and facilitate access for the person in custody to independent advocates and lawyers, as required. The proposed independent advisory and support service should play a significant role in ensuring people in custody have a voice in misconduct matters and do not experience victimisation or any detriment as a result of the incident or complaint.

### **Supporting people in custody when they are the alleged victim of an integrity or misconduct report – Recommendation 4.17**

In Part 4, Recommendation 4.17 proposes a procedure for ensuring people in custody receive appropriate support if they have made a complaint or are the alleged victim in a staff misconduct matter.

In such instances:

- ▶ a person trained in trauma-informed responses, independent of the prison, makes contact with the person in custody to:
  - provide relevant information about the complaints process
  - offer support and an opportunity to provide their testimony to an investigator independent of the prison
  - discuss risks of victimisation and options to mitigate those risks and ensure their safety.
- ▶ if the person in custody agrees to provide evidence, they are offered a support person or legal representative to attend the interview with the investigator
- ▶ proactive psychological support and counselling is offered to the person in custody, in a way that maintains their confidentiality if there is risk of victimisation
- ▶ follow-up support is offered to the person in custody to ensure their wellbeing and safety during the investigation and afterwards, including:
  - providing information about the outcome of the investigation
  - an assessment of their placement and whether or not their rehabilitative goals can continue to be met in their current placement.

## **Other jurisdictions provide access to independent legal advice and support for people in custody**

Stakeholders we engaged with – including Victoria Legal Aid and the Human Rights Law Centre – supported expanded access to legal assistance for people in custody.<sup>230</sup> The Victorian Aboriginal Legal Service also supported expanded community legal education, including for people in custody.<sup>231</sup>

<sup>230</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 13-14; Human Rights Law Centre, Submission to the Cultural Review (December 2021) 21.

<sup>231</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 10.

These supports are available in other jurisdictions – for example, the Prisoners Legal Service in New South Wales provides support for people in custody on a range of issues, including representation at prisoner hearings.

In the United Kingdom, the Prisoners' Advice Service provides advice to people in custody regarding their human and legal rights, conditions of imprisonment and the application of prison law and prison rules.<sup>232</sup>

We support additional advocacy support being provided to people in custody, through a multidisciplinary and integrated approach that includes a combination of legal and non-legal service providers.

**Recommendation 6.10**  
**Independent advice**  
**and support service for**  
**people in custody**

The Department of Justice and Community Safety should establish a dedicated and independent advice service for people in custody, to give them access to timely independent advice and support in relation to their rights and legal issues.

The service should provide a combination of legal advocacy and non-legal referrals. To meet the diverse and intersecting needs of people in custody, it should:

- a) be available at all prison locations
- b) deliver multidisciplinary and integrated advice, support and referrals
- c) provide advice and advocacy in relation to prison processes, including disciplinary hearings
- d) include culturally informed and responsive services for Aboriginal people in custody
- e) support people to understand their rights and relevant complaint pathways
- f) undertake research and advocacy based on the assistance it provides to people in custody.

The Department of Justice and Community Safety should convene a working group to oversee the development of the service. The working group should include services working within the adult custodial corrections system, including Aboriginal and non-Aboriginal legal services, the Office of the Public Advocate, community services, and the Victorian Ombudsman. The needs and experiences of system users should also be included in the development of the service model.

<sup>232</sup> See further <http://www.prisonersadvice.org.uk/>.

## Opportunities to use technology to support increased access to justice

People in custody have limited access to independent information, and there are constraints on the methods of communication with service providers. For example, one legal assistance provider has reported that 50 per cent of the correspondence from people in custody relates to requests to print information that they had been unable to access themselves.<sup>233</sup>

Other jurisdictions have explored ways to use technology to enable better access to legal information. Corrective Services New South Wales, for example, has developed secure online platforms to share legal materials with people in custody.<sup>234</sup> Other jurisdictions provide access to in-cell technology for people in custody, enabling them to build connections with service providers and access news about the world outside the prison walls.

In response to COVID-19 public health restrictions, Victorian prisons made technology available to assist people in custody to communicate with their lawyers through audiovisual technology. Overall, the COVID-19 pandemic saw a substantial shift toward digital delivery of many services, and this has become embedded in justice institutions, with many court processes continuing to operate in a fully remote court environment. This shift provides an opportunity to consider how technology could help people in custody access independent legal support, particularly for those who have been sentenced and may not have access to ongoing assistance. Audiovisual technology has also been used to help people in custody attend court events, receive virtual visits from family and friends and access other services.

Embedding access to technology will help to open up the custodial environment to the outside world and ensure that people in custody can remain connected to the people, supports and services that are important in their lives. We anticipate that expanded access to technology could overcome some of the previous challenges associated with providing advice and services directly to people in custody.

## Robust complaint processes for people in custody support accountability and continuous improvement

There is limited accountability and oversight in the way the system responds to complaints from people in custody. Current complaints processes differ across each location and are recorded using paper-based systems that provide very limited details relating to the nature and outcome of individual complaints.

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<sup>233</sup> The Law Council of Australia, *The Justice Project*, (Final Report, 2018) 37.

<sup>234</sup> Corrective Services NSW, 'Legal information portal' (Web page) <https://correctiveservices.dcj.nsw.gov.au/csnsw-home/resources/research-and-reports/legal-information-portal.html>.

Complaints and feedback from people in custody are integral to improving the adult custodial corrections system and monitoring trends, risks and issues within particular prisons and across the custodial system.

When a person in custody wishes to make a request or a complaint, they submit it in writing to custodial staff. This process presents a number of accessibility issues and barriers to people in custody.

There is a need for a more transparent and reliable requests and complaints processes. However, during our engagement, we heard accounts of custodial officers using the lack of accountability and rigour in the current system to exercise power over people in custody – including requests and complaints being destroyed or ignored:

'I made a complaint to the supervisor and another senior prison officer, and they also looked through my file notes and things like that, and there was nothing there. So, I ended up having a go at my case worker in front of the supervisor about it, and a couple of hours later I spoke to the prison officer that I also made a complaint to, and he turned around and he said they had a conversation with my case worker, and he said that my case worker told him that he didn't believe that it happened in the first place. So, nothing was documented.'

**Person in custody**

While there are some examples of requests and complaints being collated into spreadsheets at individual locations, this is not a system-wide process, and no centralised database is used to collate this information. The impact of this is that there is no central point to identify and analyse complaint themes and trends and track responses in a systematic way.

We recommend that DJCS discontinue the use of paper-based system for request and complaints. There are other models operating within the custodial and hotel quarantine systems that might be adapted to support the making of requests and complaints from people in custody, tracking their progress and managing responses.

In 2016, the South Australian Department of Corrective Services implemented a prisoner self-service system known as the Kiosk Express System (KEX). KEX enables people in custody to submit requests, view visit bookings and obtain information through a fixed electronic kiosk located in the prison common area.



We also note that the roll out of in-cell technology provides a timely opportunity to pilot a default electronic process for requests and complaints. This is already available at some locations within Victoria. For example, the Community and Public Sector Union identified the in-cell technology used at Ravenhall – where people in custody can access details about visits, book education classes, request employment and review personal budgets – as a function that should be available across the system.<sup>235</sup>

**Recommendation 6.11**  
**Access to electronic request and complaints processes for people in custody**

The Department of Justice and Community Safety should implement a centrally monitored electronic process for requests and complaints from people in custody, to increase efficiency and accountability. This should include resourcing the use of in cell technology solutions and communal kiosks to support people in custody to log requests or make an electronic complaint.

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<sup>235</sup> Community and Public Sector Union, Submission to the Cultural Review (November 2021).

## 21 Improving health outcomes for people in custody

While international laws and standards are unequivocal that people in custody have a right to quality healthcare that meets their needs without discrimination,<sup>236</sup> these rights and standards are not currently reflected in Victoria's corrections legislation.

This gap is not only a legislative one. Across the adult custodial corrections system, we heard consistent accounts of the current deficiencies in the provision of healthcare for people in custody. Systemic issues with service delivery, accessibility and infrastructure are causing unnecessary suffering that is impacting the on the health and wellbeing of people in custody. We emphasise that a prison system that does not sufficiently meet the mental and physical healthcare needs of people in custody, increases the risk that they will reoffend on their return to the community.<sup>237</sup>

The provision of healthcare in custody should reflect the services available in the community – including primary mental health care, dental care, and reproductive and pregnancy care. These services should be resourced in a way that anticipates that most people come into the adult custodial corrections system with higher and more complex healthcare needs than the broader community, driven by what has often been a lifetime of disadvantage.<sup>238</sup>

Improving the quality and accessibility of prison healthcare will strengthen the rehabilitative focus of the adult custodial corrections system, ensure that the human rights of people in custody are protected, address the significant health inequality experienced by people in custody, and support the healthy release and reintegration of people when they exist custody.

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<sup>236</sup> Principle 9, United Nations, *Basic Principles for the Treatment of Prisoners*, Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990.

<sup>237</sup> Ibid.

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Public Health Association of Australia, *Prisoner health background paper* (Report, 2017) <https://www.phaa.net.au/documents/item/2579>.

In this chapter, we consider the current system for the provision of healthcare and recommend legislative reform to ensure that the right to equivalent healthcare is reflected in legislation. We emphasise that equivalent healthcare must focus on equivalent outcomes to address the significant vulnerability and high healthcare needs of people in custody. Supporting people in custody to achieve equivalent health outcomes will require additional investment in custodial healthcare.

We recommend reforms to the governance and delivery of custodial healthcare in accordance with public health approaches. This should be supported by a 'settings approach' to custodial healthcare that consistently promotes the health and wellbeing of people in custody.

Increased data collection will be critical for understanding the current health profile of people in custody and ensuring the system can respond to their needs. We recommend that this work is supported by an outcomes-focused framework to increase accountability for custodial healthcare.

It will also be critical for the adult custodial corrections system to address the serious and systemic gaps in the current delivery of healthcare, particularly for Aboriginal people, people with disability, women, LGBTIQ+ people, people from culturally and linguistically diverse backgrounds and older people.

## Key findings – Improving health outcomes for people in custody

- ▶ People in custody have higher and more complex healthcare needs than the wider Victorian community yet do not currently receive equivalent healthcare or achieve equal health outcomes while in custody.
- ▶ Custodial healthcare is delivered by DJCS rather than the Department of Health and is contracted out to private healthcare services. The delivery of custodial healthcare through a private health model approach is not consistent with international and Australian best practice and does not provide sufficient independence and oversight.
- ▶ The current systems for collecting and analysing health data do not provide adequate insight into the health of people in custody. This limits the ability of the adult custodial corrections system to respond to their complex and changing health needs.
- ▶ People in custody experience multiple barriers and disruptions to their access to healthcare. These barriers including discrimination and bias are perpetuated by a culture within the system that does not always prioritise access to health and wellbeing support.
- ▶ People with particular needs and experiences – such as people with disability, transgender and gender-diverse people, older people and women – face additional barriers to accessing care available within the system or may find that the care they require is not available.
- ▶ The use of management regimes and restrictive practices to respond to behaviours associated with disability and mental health-related issues undermines the health and wellbeing of people in custody.
- ▶ People in custody experiencing trauma, health and mental health issues may be impacted by environmental factors within a custodial setting, including through the physical design of prisons. We observed significant deficiencies in the infrastructure at some locations.
- ▶ There are opportunities to improve the capability of corrections staff and healthcare staff and the outcomes of people in custody through increased training and processes to foster a more collaborative and coordinated approach to healthcare.

# What people in custody told us about **ACCESS TO HEALTHCARE**

**It takes a long time to access healthcare and prescription medication.**

👤 [There are] delays with the medical system - I [am older] and I've also got cancer. The medical system here is very limited ... I've got a lump on my arm that's taken three months for them even to look at and this could be a secondary cancer ... I really believe the medical system here should be addressed.'

👤 I have been on antidepressants since the age of 17, for over 30 years, and after more than two weeks [of being in prison] I have still not been given my medication, despite filling in two forms with my doctor's details - I have heard nothing.'

**There is very limited access to quality dental care.**

👤 There's not safe medical care. Aboriginal people have massive issues with their teeth and you just can't access dental on remand, you have to wait until you're sentenced.'

👤 [my loved one] had really bad teeth, which I'm assuming lots of drug users also have really bad teeth... [and] they just offered to pull his teeth out.'

**There are delays and barriers to accessing mental health treatment.**

👤 I thought as soon as I get in there, I want to start working on myself. I didn't end up seeing a psychologist until about eight months prior to me being paroled, so there's this huge gap.'

👤 I explained to the psych nurse I've been asking for help. This hasn't happened. It has been a month since I put in the form. I'm suffering psychologically... My support network [has been taken away] that psych nurse was like, "I'm happy for you to go back onto the medication that you were taking ... two years ago." I'm like, "Yeah, well I would appreciate that", but there's no doctor here to script it.'

**Healthcare is not appropriate or safe for vulnerable cohorts.**

👤 We don't have psychological services in general, and there's no specialised services for LGBTIQ+ people or trans women that are in the men's system. There is nothing. I can't even get access to counselling for sexual assault or sexual harassment and that type of stuff anyhow. I can't get anything.'

**Health services are limited at regional locations, often requiring transfer to maximum security sites.**

👤 Maybe there's a disadvantage for people like ourselves who are a bit older with more health problems in coming to [regional prisons] as you really don't have much access or very little access to surgery - so you have to go back to [a metropolitan prison] and that's a set back to our rehabilitation.'

👤 I was walked underground in shackles and chains to be told when I got to the ward that I was not required there because the surgery was cancelled because the prison didn't get my medications right. I [refused] to go back via that prison to be put in the same position again. I am prepared to put my health at risk so I don't go back there. If I had of been at a regional prison I would have been transferred in the passenger seat of the vehicle and driven casually to a specialist appointment [locally], why the hell am I treated so much differently at [the metropolitan prison]? And at a huge cost - not only to my mental wellbeing - but a huge cost to the taxpayer. I just think that it's absurd.'

**Food quality impacts the physical and mental health of people in custody.**

👤 I know you can't go and have this clean whole foods diet because of the cost, and just in terms of what we know about health and mental health, your nutrition and mental health, [my brother] had really bad depression, I know you're really inactive in prison, but he got so big, he is [tall], but he was so overweight when he came out. His diet in there was pretty average, nothing fresh, there was no fresh food.'



## Ensuring the law protects and promotes the health of people in custody

It is a clearly accepted principle in international human rights law that people in custody have a right to and should receive health care services equivalent to those provided to the broader community. The principle creates an important minimum standard for measuring whether the health services provided in custody are adequate, as set out in the Mandela Rules:

'Prisoners should enjoy the same standards of health care that are available in the community and should have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status.'<sup>239</sup>

**Mandela Rules**

Equivalency of healthcare recognises that people in custody have a fundamental right to good physical and mental health which cannot be abrogated by them being in custody.<sup>240</sup> The principle also reflects the lack of autonomy and choice available to people in custody, where access to healthcare depends entirely on the accessibility of available facilities and the staff running the prison.<sup>241</sup>

The principle of equivalence is reflected in the Guiding Principles for Corrections in Australia,<sup>242</sup> and was also recommended by the Royal Commission into Aboriginal Deaths in Custody more than thirty years ago as a key measure toward ending the deaths of Aboriginal people in custody.<sup>243</sup> Ensuring that healthcare for people in custody is equivalent to the healthcare available in the community was a critical issue raised by stakeholders who contributed to the Cultural Review.<sup>244</sup>

Increasingly, it is recognised that standards for healthcare in prisons must also include equity of health outcomes.<sup>245</sup> While equivalence of care focuses on whether the resources, facilities and staff providing healthcare in prisons are adequate,<sup>246</sup> equivalence in outcomes recognises that the prison population are more

<sup>239</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) UN Doc E/CN.15/2015/L.6/Rev (17 December 2015) rule 24.

<sup>240</sup> World Health Organisation, *Health in Prisons: A WHO guide to the essentials in prison health* (Report, 2007) 7.

<sup>241</sup> Gerard Niveau, *Relevance and limits of the principle of "equivalence of care" in prison medicine* (2007) *Journal of Medical Ethics* 33(10) 610-613

<sup>242</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018)

<sup>243</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991) Recommendation 150.

<sup>244</sup> Forensicare, Submission to the Cultural review (December, 2021); Fitzroy Legal Service, Submission to the Cultural review (January, 2022) 10; Human Rights Law Centre, Submission to the Cultural Review (December 2021) 14; Liberty Victoria, Submission to the Cultural Review (December 2021) 11-3; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 98-103.

<sup>245</sup> Royal Australian College of General Practitioners, 'Custodial health in Australia: Tips for providing healthcare to people in prison' (2019) 7; Niveau G., 'Relevance and limits of the principle of "equivalence of care" in prison medicine'. (*Journal of Medical Ethics* 2007) 33(10) 610-613; Charles, A., & Draper, H. (2012). 'Equivalence of care' in prison medicine: is equivalence of process the right measure of equity?'. *Journal of Medical ethics*, 38(4), 215-218; Jotterand, F., & Wangmo, T. The principle of equivalence reconsidered: assessing the relevance of the principle of equivalence in prison medicine. (*The American journal of bioethics : AJOB*, 2014) 14(7), 4-12.

<sup>246</sup> Alex Gatherer, Stefan Enggist, Lars Møller, *The essentials about prisons and health* in World Health Organisation, *Prisons and health* (2014) 1.

disadvantaged and come into prison with significantly poorer health and more unmet health needs than the general community.<sup>247</sup> Consequently, a focus on equivalence of health outcomes for people in custody also recognises that achieving better health and wellbeing outcomes for people in custody is critical for rehabilitation and lowering the rate of recidivism.<sup>248</sup>

Recent research has established that people who continue to experience poor health after release are more likely to reoffend and return to prison.<sup>249</sup> The health of people existing custody becomes a public health issue, which is increasingly relevant given the high rates of remand and short sentences served by the custodial population.<sup>250</sup>

We emphasise that to help people in custody reach equivalent health outcomes, healthcare in custody needs to be more targeted, specialist and comprehensive because of the significantly lower physical and mental health of most people in custody.<sup>251</sup>

There is no legislative guidance on the standard of care or the healthcare outcomes for people in custody in Victoria and the *Corrections Act 1986* does not adopt the standard of equivalency of care or outcomes. Currently, the law protects the right of people in custody to:

- ▶ access reasonable medical care and treatment necessary for the preservation of their health – this includes options for people in custody to pay for treatment from a private registered medical practitioner, dentist, physiotherapist or chiropractor of their choosing, if approved by the principal medical officer
- ▶ if they have an intellectual disability or mental illness, access within the prison or, with the general manager's approval, access outside the prison to any special care and treatment the medical officer considers necessary
- ▶ access reasonable dental treatment necessary for the preservation of dental health.<sup>252</sup>

<sup>247</sup> Australian Institute of Health and Welfare, *Health of prisoners* (Web page, July 2022) <https://www.aihw.gov.au/reports/australias-health/health-of-prisoners>; Andrew Shepherd, Tom Hewson, Jake Hard, Russell Green and Jennifer Shaw, *Equivalence, Justice, Injustice – Health and Social Care Decision Making in Relation to Prison Populations* (2021) Public Health Association Australia, *Prisoner health background paper* (2017) 3.

<sup>248</sup> Paul Hayton, *Protecting and promoting health in prisons: a settings approach* in World Health Organisation, *Health in Prisons: A WHO guide to the essentials in prison health* (2007) 15-20

<sup>249</sup> Nathan Link, Jeffrey Ward and Richard Stansfield *Consequences of mental and physical health for reentry and recidivism: Toward a health-based model of desistance* (2019) *Criminology* 57:3 pp 544-573.

<sup>250</sup> Australian Institute of Health and Welfare, *Health of prisoners* (Web page, July 2022) <https://www.aihw.gov.au/reports/australias-health/health-of-prisoners>.

<sup>251</sup> Lines, R, *From equivalence of standards to equivalence of objectives: The entitlement of prisoners to health care standards higher than those outside prisons*, *International Journal of Prisoner Health*,; 2(4): 269-280, 277.

<sup>252</sup> *Corrections Act 1986* (Vic) section 47.



The Victorian provisions fall short of other Australia jurisdictions. For example, ACT protects the right to equivalent healthcare in its *Corrections Management Act 2007* alongside a directive that conditions in custody should 'promote the health and wellbeing of detainees'.<sup>253</sup>

Further, the existing legislative right to reasonable medical care is narrowly prescribed and contemplates reactive healthcare rather than an approach that supports improved health and wellbeing outcomes or the broader goal of health promotion.

The standard of equivalency of healthcare access, quality and outcomes should be reflected in the legislative scheme. This will provide clearer guidance on the standard of healthcare that people in custody should expect and the standard of care and outcomes to which the custodial system should be held accountable.

**Recommendation 6.12**  
**Recognising the right to equivalent standard of healthcare in the legislative framework**

The Victorian Government should include the right to equivalent healthcare and health outcomes as a minimum standard in the proposed reforms to the *Corrections Act 1986*.

The revised legislation should adopt relevant international standards for the delivery of healthcare and specify that:

- a) people in custody should enjoy the same standards of healthcare that are available in the community
- b) the adult custodial corrections system should aim to achieve the same healthcare outcomes for people in custody as in the community
- c) healthcare services should be provided free of charge to people in custody
- d) people in custody should have access to necessary healthcare services whether they are sentenced or on remand
- e) people in custody should have access to continuity of care, to the greatest extent possible.

The right to equivalent healthcare and health outcomes should be reflected in all relevant operational policies, procedures and guidelines.

<sup>253</sup> *Corrections Management Act 2007* (ACT) s 53.

## Current arrangements for the delivery of custodial healthcare

International principles suggest health services in custodial settings should be integrated into regional and national health systems and that health staff have complete independence, preferably employed by a health authority in accordance with their professional codes of conducts and public health standards.<sup>254</sup> The World Health Organization also supports governance of custodial healthcare that aligns with public health agencies.<sup>255</sup>

We heard consistent evidence from stakeholders, DJCS, staff and people in custody at every prison location that the current delivery of healthcare has significant systemic problems.<sup>256</sup> DJCS should adopt a new public health approach to the delivery of healthcare across the adult custodial corrections system as a matter of urgency.

## Current governance, accountability and service delivery arrangements

The State of Victoria through the Secretary of DJCS has a duty of care to meet the basic needs of people in custody, including ensuring their health and wellbeing. This duty of care is shared between DJCS as the detaining authority and those delivering healthcare in prisons. The duty of care to people in custody is not delegable and cannot be 'contracted out'.

Internationally agreed principles on good governance for custodial health services include that the 'management and coordination of all relevant agencies and resources contributing to the health and well-being of people in prison should be a whole-of-government responsibility'.<sup>257</sup>

DJCS currently outsources the delivery of healthcare services to a number of contracted providers, with oversight from Justice Health, a unit of DJCS.<sup>258</sup> There are also a number of community partnerships that support the healthcare needs of

<sup>254</sup> United Nations Office on Drugs and Crime and World Health Organization. 2013. Good governance for prison health in the 21st century: a policy brief on the organization of prison health. Copenhagen: WHO Regional Office for Europe.

<sup>255</sup> Ibid.

<sup>256</sup> For example, Human Rights Law Centre, Submission to the Cultural Review (December 2021) 14-5; Liberty Victoria, Submission to the Cultural Review (December 2021) 12-3; Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021) 100-1.

<sup>257</sup> World Health Organization, Regional Office for Europe, 'The WHO prison Health Framework: A framework for assessment of prison health system performance' (Report, 2021) 17.

<sup>258</sup> Current contractual providers of healthcare in the public custodial system include Correct Care Australasia (CCA) which provides primary health services (including some dental care services) at all public prisons and the Judy Lazarus Transition Centre; Forensicare, which provides secondary mental health services at all public prisons;; Caraniche, which provides alcohol and other drug (AOD) treatment programs at all public prisons. In private prisons; G4S (the operator of Port Phillip Prison), sub-contracts St Vincent's Correctional Health Services to provide primary health services, outpatient mental health services and secondary residential mental health services (through St Paul's Psycho Social Unit); and GEO Group Australia provides primary health and mental health services, and alcohol and drug treatment programs, at Fulham Correctional Centre. St Vincent's Correctional Health Services also provides state-wide secondary inpatient health services delivered through St John's (40 beds) at Port Phillip Prison and secondary and tertiary inpatient services from St Vincent's Hospital.

people in custody through direct service delivery – these include dental services and women’s health clinics delivered periodically by Aboriginal community-controlled health organisations at some locations.

### **The responsibilities and functions of Justice Health (DJCS)**

Currently, Justice Health develops the policies and standards for healthcare in public and private Victorian prisons. Justice Health is responsible for the management of the contracts and service agreements, and monitoring and reviewing the performance of health service providers.

Justice Health also:

- ▶ oversees the delivery of physical health services
- ▶ provides clinical governance oversight and auditing against the Justice Health Quality Framework
- ▶ deals with complaints and incident management
- ▶ has responsibility for responding to emerging health issues for people in custody.

Justice Health reports to a joint committee consisting of major stakeholders in the justice sector including Corrections Victoria, the Department of Health and Victoria Police.

The delivery of custodial healthcare by contracted service providers is guided by the Justice Health Quality Framework.<sup>259</sup> This framework aims to support consistent, safe, quality and evidence-based healthcare for people in custody, by setting practice standards that apply to all contracted health services within the adult custodial corrections system. The framework is designed to align with Victorian health service quality and clinical governance frameworks.<sup>260</sup>

### **What we heard about the delivery of healthcare in the custodial system**

Despite the intention of the Justice Health Quality Framework, we found that there is a significant disconnect between the policy standards, operational service delivery and how people in custody are receiving and experiencing healthcare. We heard that Justice Health is overly focused on contract management, is significantly under-resourced, and may not have the capability to provide sufficient support and oversight of these arrangements to enable improvements to health outcomes for people in custody.

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<sup>259</sup> The current version of the Justice Health Quality Framework was developed in 2014. A revised version of the Justice Health Quality Framework will be implemented from 2023 and compliance with the updated Framework is included as a requirement in the recontracting of custodial healthcare services in 2022.

<sup>260</sup> Department of Justice and Community Safety, Justice Health Quality Framework (2014), Data provided to the Cultural Review. The Framework is intended to align with related Victorian policies including the Victorian Safety and Quality Framework and the Victorian Department of Health Clinical Governance Policy.

Unlike public health services provided through the Department of Health, custodial healthcare services do not have the same default clinical oversight and standard settings that apply to other health services provided on behalf of the government.

The oversight of publicly funded health services in Victoria is a combination of individual agency oversight, oversight by registration bodies and public health regulation. In contrast, oversight of the quality and standard of custodial healthcare is largely the responsibility of DJCS.

People in custody consistently told us that they experience significant delays in accessing healthcare, including obtaining prescription medication, seeing a doctor, receiving mental health support, receiving dental treatment and receiving referrals to specialist medical practitioners:

'There are medical delays like seeing a doctor, sometimes our prescriptions run out, because we are only given a six-month window. I mean, this is a personal thing that actually happened to me, was that my [blood] pressure medication had actually run out, and I didn't actually realise because I taken a few tablets. Then finally the nurse said to me one of the days, say three days later, "[\*\*\*], your medication has run out". I immediately put a request in, but it didn't come through for about another four days. For about a week or 10 days, I didn't have my medication and my [blood] pressure shot up.'

**Person in custody**

We also heard that processes for complaining about the delivery of health services are opaque. This limits the understanding that the system has of the current barriers to accessing healthcare in the custodial system. The Law and Advocacy Centre for Women described the difficulty of raising complaints about healthcare in prison:

'Where do you go with [a complaint about access to healthcare?] There's no relationship with Justice Health. And we know that you're entitled to the same level of medical treatment as you would be if you're in the community. So how do you as a criminal lawyer, how do you then leverage that kind of a complaint? There's also that sense of, from our point of view, a sense of helplessness by the time you penetrate the behemoth of the prison complex.'

**Expert interview**

## **A public health approach to the delivery of prisoner health services**

Victoria is somewhat of an outlier in its current provision of custodial health services. In the majority of jurisdictions in Australia – New South Wales, Queensland, Tasmania, South Australia and the ACT – government health departments provide healthcare to prisons. Many countries in Europe are also moving prison healthcare from justice ministries to health ministries.<sup>261</sup> The World Health Organization and the United Nations Office on Drugs and Crime have strongly supported this development:

<sup>261</sup> World Health Organization, *Good Governance for prison health in the 21<sup>st</sup> century: A policy brief on the organization of prison health*, (Report, 2013) 17.

'Health ministries should provide and be accountable for health care services in prisons and advocate healthy prison conditions'.<sup>262</sup>

This view is based on the importance of equivalence of care and the professional independence of health care providers from prison authorities.<sup>263</sup>

In England, responsibility for healthcare in prisons transferred from the justice ministry to the National Health Service (in effect, the Department of Health) in 2006. An immediate assessment found that benefits of a public health approach included greater transparency, evidence-based assessment of health needs, opportunities to tackle professional isolation, improved quality of care and integration of prison populations into wider public health programs.<sup>264</sup> A more recent review identified a range of further improvements to quality, accountability and transparency as well as the delivery of more responsive healthcare.<sup>265</sup>

We consider that a public health approach to custodial healthcare will deliver a range of benefits in Victoria including:

- ▶ deeper understanding of how to manage complex health conditions and support treatment and recovery
- ▶ greater alignment between community standards of healthcare and prison standards of healthcare
- ▶ greater alignment of professional standards between those working in prisons and those working in the community
- ▶ easier movement of staff between community and prison settings
- ▶ closer alignment with clinical governance standards and frameworks for the delivery of health and human service, including approaches to cultural safety within health and human services
- ▶ greater likelihood of medical records passing efficiently between the adult custodial corrections system and the community
- ▶ access to clinical expertise and information on systems and approaches that support effective service delivery, health administration and governance
- ▶ expertise in identifying and developing service responses to meet complex health needs across the community, including intersectional needs and working with diverse communities
- ▶ experience identifying, benchmarking and monitoring health outcomes to support service delivery and continuous improvement.

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<sup>262</sup> United Nations Office on Drugs and Crime and World Health Organization, *Good governance for prison health in the 21st century: a policy brief on the organization of prison health* (2013) viii.

<sup>263</sup> Council of Europe, *Organisation and management of health care in prison* (Report, 2019) 30.

<sup>264</sup> Paul Hayton and John Boyington. *Prisons and Health Reforms in England and Wales*, *American Journal of Public Health* 96(10) (2006) 1730-3.

<sup>265</sup> Leaman, Jane et al. 'Improving health in prisons – from evidence to policy to implementation – experiences from the UK.' 13(3/4) (*International Journal of Prisoner Health*, 2017) 139-167.

We support a public health approach for the delivery of custodial healthcare. Specifically, this means the immediate moving away from current contracts with private health providers and instead developing clear arrangements for the provision of public and community health services at each prison location across Victoria.

These new arrangements should:

- ▶ include strong oversight mechanisms and system governance for contracts and service delivery, to ensure that people in custody receive quality services delivered in accordance with public health standards, additional and specific custodial health outcomes and the clinical model of care
- ▶ enable continuous monitoring of the health needs of people in custody and ensure information-sharing and data management supports the delivery of quality, responsive services and improved outcomes
- ▶ facilitates open, collaborative relationships between corrections staff and healthcare providers as set out in Recommendation 6.19.

**Recommendation 6.13**  
**A public health approach to custodial healthcare**

The Victorian Government should urgently implement an adequately resourced public health model for delivery and oversight of health services across the adult custodial corrections system.

In line with other Victorian public health services, these new arrangements should:

- a) adopt best practice clinical oversight
- b) respond to the particular physical and mental health vulnerabilities of people in custody
- c) enable better continuity of care between the community and custodial environment.

**Ongoing monitoring of access to healthcare, system performance and healthcare outcomes**

While we support a public health approach to the delivery of healthcare to support equivalent health outcomes for people in custody, this will only be achieved if DJCS adopts a system-wide or 'settings' approach to health and wellbeing. This will rely on a cultural shift within DJCS and across government to ensure that access to healthcare is recognised as critical to safety, rehabilitation and wellbeing within the custodial environment. This will require DJCS to:

- ▶ identify cultural and structural barriers to the delivery of healthcare
- ▶ commit to eliminating those barriers
- ▶ recognise an entrenched stigma that assumes that people in custody are 'less deserving' of quality health care.

In this chapter we identify cultural factors that are creating barriers to quality and timely access to healthcare for people in custody.

## A settings approach for measuring custodial health and wellbeing

We support a holistic understanding of health and wellbeing within custody that is shaped by a broader range of factors than delivery of medical services. This is often referred to as a settings approach and recognises that culture, positive relationships and community connections, health education and prevention, environment and access to green space, and exercise and nutrition influence a person's health and wellbeing.<sup>266</sup>

A settings approach aims to build the physical, mental, social and spiritual health of people in custody and help them to adopt healthy behaviour patterns that can be taken back into the community.<sup>267</sup>

### Influential frameworks for healthcare in custodial settings

The settings approach draws from:

- ▶ **an ecological model of public health** – where health is understood as a holistic concept shaped by environmental, organisational and personal factors
- ▶ **a systems perspective** – which acknowledges that the various parts of the prison system (and not solely the healthcare service) work together over a wide range of health and social issues and across the person's pathway through the criminal justice system before, during and after prison
- ▶ **a whole-organisation focus** – using organisational development to ensure living and working environments within the custodial system:
  - promote health and effectively rehabilitate people in custody
  - integrate health and wellbeing within the culture and core business of the prison
  - forge connections to the wider community.

These frameworks contribute to a prison culture that is safe, secure and reforming, is underpinned by a commitment to participation, equity, partnership, human rights, respect and decency.<sup>268</sup>

The settings approach is consistent with the World Health Organization's Healthy Prison model which has been adopted by other Australian states to measure the overall health and culture within a prison. The Healthy Prison model focuses on four pillars – safety, respect, purposeful activity, and rehabilitation and preparation for release – to support better outcomes for staff and people in custody.<sup>269</sup>

<sup>266</sup> Michael Baybutt and Khadoudja Chemlal, 'Health-promoting prisons: theory to practice' in *Global Health Promotion 1757-9759*; Vol 23 68.

<sup>267</sup> Michael Baybutt, Enrique Acin, Paul Hayton and Mark Dooris, Chapter 21 'Promoting health in prisons: a settings approach'.

<sup>268</sup> Michael Baybutt, Enrique Acin, Paul Hayton and Mark Dooris, Chapter 21 'Promoting health in prisons: a settings approach'.

<sup>269</sup> In *Part 2. Systems*, we recommend consideration of the Healthy Prisons approach to benchmark the performance of the custodial system. We also recommend the implementation of a regular Healthy Prison Survey based on this model to support feedback from people in custody about their experiences.

The Healthy Prison model recognises that where system operators prioritise the health and wellbeing of people in custody and relationships between staff and people in custody are mutually respectful, all system users will experience enhanced health and wellbeing.

### The World Health Organization's Healthy Prison model

The World Health Organization launched the Health in Prisons Project (HiPP) in 1995 with the aim of embedding and monitoring health promotion in prisons within member states. The objectives of the project were based on the WHO's 'healthy settings' model introduced in the early 1990s which highlighted the benefit of a whole-systems or environmental approach to improving health through a focus on the broad determinants of health as opposed to a singular focus on disease management and prevention.<sup>270</sup>

This broader approach to health in prison settings positions safety, personal fulfilment, and dignity as important prerequisites for health. The approach to measuring and evaluating 'healthy prisons' has been widely adopted in other jurisdictions including the ACT, Queensland and the United Kingdom.

As an example, the HM Inspectorate of Prisons in the United Kingdom carries out inspections of custodial settings based on four areas of focus adopted from the World Health Organization's original monitoring framework:

Test	Healthy prison outcome
<b>Safety</b>	Prisoners, particularly the most vulnerable, are held safely.
<b>Respect</b>	Prisoners are treated with respect for their human dignity.
<b>Purposeful activity</b>	Prisoners are able and expected to engage in activity (education, skills development and work) that is likely to benefit them.
<b>Rehabilitation and release planning</b>	Prisoners are supported to maintain and develop relationships with their families and friends. Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively. Prisoners are prepared for their release back into the community. <sup>271</sup>

<sup>270</sup> Viggiani, N, *A new approach to prison public health? Challenging and advancing the agenda for prison health*, Critical Public health, December 2006; 16(4): 307-316, 308.

<sup>271</sup> HM Inspectorate of Prisons, *Inspection Framework*, (Report, 2022) 8 ([justiceinspectorates.gov.uk](https://www.justiceinspectorates.gov.uk)).



Corrections Victoria currently administers an annual survey that was originally modelled on the Healthy Prisons model. The survey was administered for the eighth time in 2021, and the results benchmarked Victorian prisons against key categories including safety, culture and respect.

Other jurisdictions in Australia and overseas have adopted the Healthy Prisons model into their overarching operational practice. For example, the ACT Inspector of Custodial Services undertakes a regular review of the prisons in the ACT against the Healthy Prisons Framework which includes an assessment of primary healthcare under Pillar 2 'Respect and dignity of individuals':

'Conditions in detention promote the health and wellbeing of detainees, the health care service evaluates, promotes, protects and improves the physical and mental health of detainees, paying particular attention to detainees with special health-care needs or with health issues that hamper their rehabilitation. The standard of health care is equivalent to that available to other people in the ACT in the public health system.'<sup>272</sup>

ACT has also established a specific standard for monitoring provision of health services for Aboriginal people (ACT Monitoring Standard 74):

'Physical and mental health services are responsive to the needs of Aboriginal and Torres Strait Islander detainees. A holistic definition of health is adopted when working with Aboriginal and Torres Strait Islander detainees. This means health status includes attention to physical, spiritual, cultural, emotional and social well-being.'<sup>273</sup>

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<sup>272</sup> ACT Inspector of Custodial Services, 'Healthy Prison Review' (November 2019), standard 65, p 109.

<sup>273</sup> ACT Inspector of Custodial Services, 'Healthy Prison Review' (November 2019), standard 74, p 110.

Scotland's model of 'health-promoting' prisons has been widely recognised as providing a positive model for supporting health and wellbeing within custodial environments.

### **The health-promoting prison – A framework for promoting health in the Scottish Prison Service**

The World Health Organization's European network for promoting health in prisons was built on a recognition that while imprisonment results in a loss of personal freedom, it should have minimal negative effects on a people's health and, in fact, it could create the right conditions to help improve the health for some of the most vulnerable and disadvantaged people in the community.<sup>274</sup>

This principle underpins the Scottish Prison Service's Framework for Promoting Health, which outlines broad priorities for action for the Scottish Prison Service including, eating for health, active living, cutting down tobacco use and improving mental health and wellbeing.

Under each priority area, the framework highlights actions to assist prisons' health promotion committees to identify new opportunities for promoting health through changes to infrastructure and the physical environment, establishing partnerships with community organisations, improving data collection and updating policies in line with best practice health standards.<sup>275</sup>

The framework emphasises that health promotion activities should be considered across the whole of the prison service, including staff, and be founded on monitoring, benchmarking and appropriate auditing.

While acknowledging the necessary limitations within the custodial context, we found there are significant opportunities to provide a more therapeutic and health-promoting environment for people in custody, while operating a safe and secure prison. This approach should be embedded into how the adult custodial corrections system measures its performance and outcomes.

<sup>274</sup> World Health Organisation, *Mental Health Promotion in Prisons: The WHO health in prisons project*. (The Hague, 2000).

<sup>275</sup> Scottish Prison Service, 'The Health Promoting Prison: a framework for health in the Scottish Prison Service', (Health Education Board for Scotland, 2002).

# What participants told us about **ACCESS TO HEALTHCARE**

**It takes a long time to access healthcare and prescription medication.**

☁ [There are] delays with the medical system - I [am older] and I've also got cancer. The medical system here is very limited ... I've got a lump on my arm that's taken three months for them even to look at and this could be a secondary cancer ... I really believe the medical system here should be addressed.'

☁ I have been on antidepressants since the age of 17, for over 30 years, and after more than two weeks [of being in prison] I have still not been given my medication, despite filling in two forms with my doctor's details - I have heard nothing.'

**There is very limited access to quality dental care.**

☁ There's not safe medical care. Aboriginal people have massive issues with their teeth and you just can't access dental on remand, you have to wait until you're sentenced.'

☁ [my loved one] had really bad teeth, which I'm assuming lots of drug users also have really bad teeth... [and] they just offered to pull his teeth out, which is gross as well.'

**There are delays and barriers to accessing mental health treatment.**

☁ I came into prison custody and didn't get to see a psychologist until eight months before my release. I put in a request, because I thought as soon as I get in there, I want to start working on myself. I didn't end up seeing a psychologist until about eight months prior to me being paroled, so there's this huge gap.'

☁ I explained to the psych nurse I've been asking for help. This hasn't happened. It has been a month since I put in the form. I'm suffering psychologically... My support network [has been taken away] that psych nurse was like, "I'm happy for you to go back onto the medication that you were taking ... two years ago." I'm like, "Yeah, well I would appreciate that", but there's no doctor here to script it.'

**Healthcare is not appropriate or safe for vulnerable cohorts.**

👤 We don't have psychological services in general, and there's no specialised services for LGBTIQ+ people or trans women that are in the men's system. There is nothing. I can't even get access to counselling for sexual assault or sexual harassment and that type of stuff anyhow. I can't get anything.'

**Health services are limited at regional locations, often requiring transfer to maximum security sites.**

👤 Maybe there's a disadvantage for people like ourselves who are a bit older with more health problems in coming to [regional prisons] as you really don't have much access or very little access to surgery - so you have to go back to [a metropolitan prison] and that's a set back to our rehabilitation.'

👤 I was walked underground in shackles and chains to be told when I got to the ward that I was not required there because the surgery was cancelled because the prison didn't get my medications right. I [refused] to go back via that prison to be put in the same position again. I am prepared to put my health at risk so I don't go back there. If I had of been at a regional prison I would have been transferred in the passenger seat of the vehicle and driven casually to a specialist appointment [locally], why the hell am I treated so much differently at [the metropolitan prison]? And at a huge cost - not only to my mental wellbeing - but a huge cost to the taxpayer. I just think that it's absurd.'

**Food quality impacts the physical and mental health of people in custody.**

👤 I know you can't go and have this clean whole foods diet because of the cost, and just in terms of what we know about health and mental health, your nutrition and mental health, [my brother] had really bad depression, I know you're really inactive in prison, but he got so big, he is [tall], but he was so overweight when he came out. His diet in there was pretty average, nothing fresh, there was no fresh food.'



## Improving how the system responds to the health needs of people in custody

### Improving data collection to better understand the health profile of people in custody

In Victoria, there is inadequate understanding about the health profile and needs of people in custody due to limited collection of data on their health and wellbeing. The lack of data and analysis means it is impossible to fully understand the changing needs of the prison population, properly develop targeted services to respond to their health concerns or evaluate the efficacy of particular health interventions.

Over the past decade, the demographics and related health issues of prison populations have changed. For example, as in many other jurisdictions, in Victoria people in prison are living longer which necessitates more appropriate geriatric and palliative care. The increase in the incarceration of women also requires a specific and targeted response to the health and wellbeing concerns for women as well as clear monitoring systems to evaluate health responses over time.

Accurate and complete information about the health profile of people in custody also assists to identify changing requirements for system infrastructure and staff capability.

Without access to comprehensive health data, we relied on proxy indicators including 'risk ratings' and 'flags' recorded in PIMS to build a partial picture of the health issues and needs within the custodial population.

This information provides a snapshot of some measures of the health of people in custody – for example, that 48 per cent of people in custody were flagged with a psychiatric risk rating indicating the presence of any psychiatric condition that requires immediate treatment or diagnosis. However, this information is risk-oriented and only provides a 'point-in-time' illustration of overall health needs. It has limited utility for providing a deeper understanding of the health and healthcare needs of people in custody and the system more broadly.

Currently, Justice Health does not collect or disseminate comprehensive, system-wide data on the health profile of people in custody, or the availability and uptake of healthcare services offered in Victorian prisons. For example, comprehensive data about the dental health, substance use history, cognitive disability and transgender, gender diverse or intersex status of people in custody is not available.<sup>276</sup>

### **Enhanced data capability can improve service delivery, system planning and outcomes monitoring**

A lack of system-wide and comprehensive data relating to the profile of people in custody limits the how effectively the system can respond to identified health needs. Relevant to this issue, in Recommendation 2.5, we recommend enhancing the data

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<sup>276</sup> The Expert Panel acknowledges that some people in custody may choose to withhold aspects of their health status or history.

capability of the custodial system to support clear and accurate information about the circumstances and needs of people in custody.

One of the challenges for integrating and coordinating healthcare within the custodial setting is the different information systems that record information about a person in custody and their individual circumstances. For example, through our engagement, we heard about limitations with the use of the electronic medical record system JCare. Justice Health reported that the current system does not have the reporting and monitoring functions needed to assess quality of services or inform future service delivery and design. It also fails to facilitate a clear understanding of a person's journey through the system.

**Recommendation 6.14**  
**Improved data systems and information management to support access to appropriate healthcare and better measurement of health and wellbeing outcomes**

The Department of Justice and Community Safety should upgrade its data systems for managing health information to improve integration and facilitate access to current and accurate health information.

These upgrades should ensure the department can track, assess and validate equivalency of health outcomes for people in custody in accordance with the outcomes framework and the measurement of health outcomes under the future public health model for custodial healthcare delivery.

The data systems should also support overall system monitoring and reporting on:

- a) health profile and needs of people in custody
- b) completion rates for health assessments
- c) missed appointments or disrupted access to medical care due to transfer between locations
- d) assessment of health outcomes based on a broad concept of health and wellbeing across the system.

The Department of Justice and Community Safety should also consider the development of technological capability and systems to enable people in custody to contact health providers directly, including scheduling appointments and requesting medication.

In line with our recommendation, we also note that the Victorian Parliament's recent Inquiry into Victoria's Criminal Justice System recommended that DJCS include in its annual report information on healthcare services offered in Victorian prisons, de-identified statistics about access to and use of these services by people in custody (Recommendation 73). We support this recommendation.

## Measuring the health outcomes of people in custody

As part of the development of a renewed approach to healthcare for people in custody, DJCS should closely consider the intended outcomes of the model of care and how it will monitor and assess these outcomes. As we have noted above, the objectives set out in the Justice Health Quality Framework are not supported by

information systems, data monitoring and reporting processes that can ensure accountability of the custodial healthcare system. We also note that the framework is not a public document, limiting public scrutiny of the health outcomes of people in custody.

We support the development and publication of an outcomes framework to increase accountability and communicate DJCS's commitment to equivalent healthcare for people in custody. The outcomes-based framework should be modelled on international measures to improve the oversight and monitoring of prison healthcare services and be anchored to the new statutory right of people in custody to equivalent healthcare and outcomes.

### **A framework for healthier prisons –the World Health Organization's Prison Health Framework (WHO Framework)**

The WHO Framework is an example of a health system framework that is designed to monitor and measure the delivery of healthcare in prisons, assess the performance of the prison's healthcare system and support strong data systems.<sup>277</sup>

The WHO Framework identifies five priority areas:

- ▶ strengthen prison information systems to enhance surveillance and response capacity
- ▶ monitor health service provision in prison
- ▶ track performance
- ▶ obtain valid and reliable measures of the health status of people living in prison
- ▶ conduct intersectoral work for better performance and outcomes.

The WHO framework recognises the importance of information about the health status of people in custody supported by outcomes monitoring.

Development of a health-focused outcomes framework for the adult custodial corrections system should consider:

- ▶ the Victorian Government's Outcomes Reform model to ensure a long-term, shared direction toward improving the health and wellbeing of people in custody<sup>278</sup>
- ▶ the Department of Health's Public Health and Wellbeing outcomes framework to ensure that the health outcomes of people in custody are the same as for people in the general community.<sup>279</sup>

We also emphasise that a separate framework should be developed to monitor the health outcomes of Aboriginal people in custody, with design of the framework developed in consultation with the Aboriginal community and led by Aboriginal people.

<sup>277</sup> The World Health Organisation, 'WHO Prison Health Framework' (Report, 2021).

<sup>278</sup> See Victorian Government, *Outcomes Reform in Victoria* (Web Page, 2020) <https://www.vic.gov.au/outcomes-reform-victoria>.

<sup>279</sup> Department of Health and Human Services, *Victorian public health and wellbeing outcomes framework* (Report, 2017).

**Recommendation 6.15**  
**Outcomes framework to support monitoring and reporting on equivalent health outcomes for people in custody**

The Department of Justice and Community Safety should develop an outcomes framework to monitor and report on health outcomes for people in custody, as part of the development of a new public health model.

The outcomes framework should:

- a) align with the integrated understanding of health and wellbeing in the Healthy Prison model and include clear accountability for defined health and wellbeing outcomes within the custodial system
- b) be developed in consultation with people in custody, their families and carers, healthcare service providers, and the Victorian Aboriginal Community-Controlled Health Organisation
- c) draw on the Victorian Public Health and Wellbeing Outcomes Framework as a starting point and should include goals, measures, strategies, accountabilities and resources required for successful implementation of the public health model for the adult custodial corrections system
- d) recognise and respond to the specific health needs of women, older people, Aboriginal people, people from culturally and linguistically diverse backgrounds and LGBTQI+ people.

The Department of Justice and Community Safety should report publicly against the outcomes framework and compare outcomes for people in custody with those of the Victorian community.

Results of the self-reported experiences of people in custody through the Healthy Prison Survey should be included in the assessment of outcomes.

## Improving processes for identifying and recording health and wellbeing needs of people in custody

People in custody have much higher levels of social disadvantage than the broader Australian community and are in poorer physical and mental health.<sup>280</sup> They have higher rates of risky behaviours, communicable and noncommunicable diseases and mental health conditions. These relate to significant social determinants of health that affect them throughout their lives before, during and after incarceration.

<sup>280</sup> Australian Institute of Health and Welfare, 'The health of Australia's prisoners 2018'. (Web Page, 2019) <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/table-of-contents>.



A person's safety in custody can be influenced by whether their health needs and risks are identified when they enter custody and through access to regular health screening and preventative healthcare.

Currently, the Deputy Commissioner's Instructions require assessment of the physical and mental health of all people in custody within 24 hours of reception. The process includes an assessment of the person's current healthcare needs and medications, alcohol and other drugs, and chronic health. People in custody can also undertake voluntary blood testing to identify infectious diseases. An integrated healthcare plan and a mental health plan may also be developed for a person in custody.<sup>281</sup>

To ensure the adult custodial corrections system identifies the health needs of people entering custody, it is essential that screening processes are effective and can identify complex or additional needs. We heard from both service providers and people in custody that more must be done to develop a comprehensive assessment of people's health needs as they come into custody, including better processes for determining when screening and assessment should take place and how it should be reviewed.

For example, we heard that health screenings sometimes take place when people are withdrawing from alcohol and other drugs, which limits their usefulness. According to New South Wales data, about 60 per cent of people in custody were 'high' or 'stoned' at the time of committing the offence for which they were imprisoned,<sup>282</sup> and a similar number of new custodial entrants said they thought drugs and/or alcohol had contributed to their arrest.<sup>283</sup> There is no equivalent Victorian data.

'Everybody goes through hell coming off the streets. I drink alcohol out there. I drink four or five litres sometimes – when I get bad, I drink four, five litres of vodka a day. I never get drunk but my system depends on it. Inevitably, I'll go straight off into the cells and they don't even provide me with a withdrawal pack. You're sick as a dog for the first part, and that's when your mental health is really at its lowest.'

Person in custody

<sup>281</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner Instructions 1.11, Reception, Care and Control of Prisoners*

<sup>282</sup> NSW Justice Health and Forensic Mental Health Network. 2017. 2015 Network Patient Health Survey. <https://www.justicehealth.nsw.gov.au/publications/research-publications>.

<sup>283</sup> Howard, D. 2020. *Special Commission of Inquiry into crystal methamphetamine and other amphetamine-type stimulants*. NSW Government, s. 20.2, 858.

We also heard that the screening processes were particularly poor in relation to identifying the needs of people with a disability and cognitive impairment:

'One of the key issues is identifying people with disability and their supports. On entry into prison, there's a pretty comprehensive mental health assessment but for any other form of disability there is not the same level of assessment. If you don't do the assessment, you don't know what the supports are that people need.'

**Expert interview**

'The system should implement or review practices and procedures to identify and screen prisoners with cognitive impairment to ensure assessments are carried out by staff with specialist knowledge. That's the starting point. If your disability is not assessed appropriately when you enter prison everything flows from that.'

**Expert interview**

A 2020 overview of responses to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability identified that people with a disability are significantly over-represented in the justice system, with as many as one in three people in custody having a reported cognitive disability.<sup>284</sup> The submission of the Australian Human Rights Commission to the Royal Commission emphasised that many of these conditions will remain undiagnosed during a person's time in custody.<sup>285</sup>

Screening processes are a critical mechanism for understanding and responding to a person's individual healthcare needs. Increased and improved screening will provide an opportunity to increase understanding of the needs and behaviours of a person with a cognitive disability while they are in custody.<sup>286</sup>

### **Preventive health checks**

The Royal Australian College of General Practitioners (RACGP) has developed evidence-based guidelines on the preventive health and screening activities that should take place over a person's life. These guidelines consider the specific risks attaching to some cohorts in the community, including those at risk of chronic and communicable disease, and age-related risks. For example, the guidelines recommend that Aboriginal people have an additional regular health check in recognition of the particular health risks they face. We address the specific healthcare needs of Aboriginal people in custody in *Part 5. Aboriginal cultural safety*.

<sup>284</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Overview of responses to the Criminal justice system issues paper* (2020).

<sup>285</sup> Australian Human Rights Commission, *People with Disability and the Criminal Justice System* (2020) 29-30.

<sup>286</sup> Australian Human Rights Commission, *People with Disability and the Criminal Justice System* (2020) 30.

We note that there are higher risks of these diseases for disadvantaged cohorts,<sup>287</sup> and emphasise the benefit of preventive health measures to support the rehabilitation and successful transition back into the community for people in custody.

**Recommendation 6.16**  
**Enhanced reception processes to identify individual needs and risks**

The Department of Justice and Community Safety should ensure that appropriately qualified and trained health practitioners perform rapid assessments of all people entering custody within 24 hours of their arrival, including screening for cognitive impairment and intellectual disability. A full preventive health check – based on Royal Australian College of General Practitioners guidelines – should be performed within a week of entry into the adult custodial corrections system.

## Developing a model of care to reduce existing gaps in health services and increase safety

As noted above, there is a critical need to strengthen the overall processes for identifying and responding to the health needs of people in custody. We have also observed particular issues with the health responses for custodial populations that have specific and intersectional needs.

In particular, DJCS can take steps improve the safety of people in custody by providing health responses that ensure:

- ▶ older people in custody have access to facilities that accommodate age-related illness and mobility issues and support them to perform daily tasks such as showering and toileting
- ▶ transgender, gender-diverse and intersex people in custody have access to physical and mental health care that supports their safety and affirms their gender identity
- ▶ people with disability are supported with appropriate screening processes to identify their needs when entering custody and ensure they have access to the disability supports and adjustments they require
- ▶ preventive and holistic mental health support and treatment is provided to people with or at risk of developing mental illness
- ▶ women have access to trauma-informed and gender-responsive services that include access to reproductive, pregnancy and post-partum support
- ▶ healthcare is culturally responsive and accessible for Aboriginal people and people from culturally and linguistically diverse backgrounds.

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<sup>287</sup> Australian Institute of Health and Welfare, *Health of Prisoners* (2022).

## Access to support for older people in custody

The number of people in Victorian prisons aged 50 years and over has almost doubled in the past 10 years.<sup>288</sup> Reflecting on this increase, Jesuit Social Services told us that there is a distinct lack of age-appropriate programs and services to meet the needs of older people in prisons across the system and that they are not designed or operated to accommodate the health and wellbeing needs of older adults.<sup>289</sup>

There was acknowledgement across the system that more needs to be done to meet the needs of older people in custody. This concern was articulated by Justice Health and observed in our engagement across custodial sites:

'We do not have the infrastructure to support ageing prisoners.'

**Expert interview**

We engaged with many ageing and elderly people in custody who told us about the challenges they experienced accessing support for basic needs, medication and environments that catered to their physical health. Many said that the only option for access to care was being transferred to another location which was an unpalatable option for many:

'Maybe there's a disadvantage for people like ourselves, who are a bit older with more health problems, in coming to [regional prisons] as you really don't have much access or very little access to surgery – so you have to go back to [a metropolitan prison to receive care] and that's a setback to our rehabilitation.'

**Person in custody**

Some older men in custody told us that they were not being provided with timely treatment for serious health conditions. Some of them had experienced significant delays in receiving surgery and urgent care, including treatment for cancer.<sup>290</sup> Other older people conveyed to us their concern that they would not be provided with the medical treatment required while on remand.

We also heard that some older people in custody experienced delays accessing or replacing essential items such as glasses or hearing aids.

'I got my new hearing aid yesterday and it took me four months to get a new one in here ... I spoke to ... one of the nurses ... when I was going through my hearing aid and I got frustrated and I basically said "Look, you guys don't have the right one", and he pretty much said to me that "Well, you shouldn't come to jail".'

**Person in custody**

We also heard that older people in custody often have to rely upon other people in custody to support their daily needs:

<sup>288</sup> Corrections Victoria, 'Profile of people in prison 2020'. (Web Page, 2021) [https://files.corrections.vic.gov.au/2021-06/Infographic\\_Profile\\_of\\_people\\_in\\_prison2020.pdf](https://files.corrections.vic.gov.au/2021-06/Infographic_Profile_of_people_in_prison2020.pdf).

<sup>289</sup> Jesuit Social Services, Submission to the Cultural review (December 2021).

<sup>290</sup> Confidential interview - person in custody.

'The government put you in a prison, they should also provide the care, proper qualified carers. Prisoners are not carers for another person. They are not there to wash their bums and help them to cook and whatever ... I have seen [situations] where prisoners are actually helping other prisoners wash in the shower, because they had no help.'

**Person in custody**

There are some people in custody employed as prison support workers to assist people with a disability to participate in the prison routine and perform certain tasks (such as cooking and cleaning). However, the scope of these roles does not include supporting people in custody with personal care.

Research undertaken by Catholic Social Services Victoria also highlighted the unmet needs of older people in custody – including support with everyday activities such as showering, toileting and managing continence aids. In addition to inappropriate hygiene supports, the research also identified the lack of support for age-related mobility issues and conditions such as dementia.<sup>291</sup>

Forensicare raised concerns for people in custody experiencing age-related cognitive decline and illness<sup>292</sup> and identified the need for specialist aged care units with personal attendants as well as nursing staff, general practitioners and other specialist health staff.<sup>293</sup>

We observed in a number of settings that while palliative care for older people was provided, custodial staff working in those units did not receive any particular training to help them understand the health needs and age-related cognitive conditions of the people in their care.

## Access to specialist women's healthcare

During our engagement, women in custody described consistent challenges in accessing appropriate specialist care. This included accessing medication, postpartum care, and proactive and preventative healthcare. Women told us of a particular need for specialist mental health care, including better understanding by custodial staff of the impact of trauma on their mental health.

'Medical care is absolutely atrocious. I've spoken to the manager here, they seem to be very slow and, when you call them, they don't bother coming. The nurse makes a decision whether you're urgent or not.'

**Person in custody**

<sup>291</sup> Catholic Social Services Victoria, Submission to the Cultural Review (November 2021)

<sup>292</sup> Forensicare, Submission to the Cultural Review (November 2021).

<sup>293</sup> Forensicare, Submission to the Cultural Review (November 2021).

Women in custody have not had access to the same level of specialist health support and facilities as men in custody.<sup>294</sup> The consequences of this disparity were exposed in the Victorian Ombudsman's 2018 report detailing the treatment of 'Rebecca', a woman with pervasive developmental disorder and other diagnosed intellectual disabilities, who was imprisoned for 18 months at a maximum-security location. In lieu of a specialist disability unit, Rebecca was placed in the prison's mental health unit and her disability-related behaviours were managed by isolating her for 22–23 hours a day in conditions that 'compromised her dignity and health'.<sup>295</sup>

While there has been recent investment in health and wellbeing services for women, including the piloting of a facility for women with an intellectual disability, gaps remain in the support available for women with disability and in access to acute mental health care.

The Victorian Ombudsman recommended:

- ▶ considering options for specialist units and services for women with an intellectual disability or cognitive impairment in Victorian prisons<sup>296</sup>
- ▶ engaging the Victorian Equal Opportunity and Human Rights Commission to review how policies and practices regarding behavioural management, separation, strip-searching, use of restraint and personal care support were being applied to people in custody with mental impairment at DPFC<sup>297</sup>
- ▶ ensuring that health services at DPFC are adequate to meet the women's needs now and into the future<sup>298</sup>
- ▶ devising a system to notify women of the date and time of medical appointments
- ▶ trialling allowing women to self-administer over-the-counter medication
- ▶ ensuring doctors regularly review expiring prescriptions<sup>299</sup>
- ▶ ensuring training for all custodial officers at DPFC about women with disability, mental health conditions, personality disorders, transgender prisoners, working with mothers and children.<sup>300</sup>

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<sup>294</sup> We note there has been recent investment into the construction of a Health and Wellbeing Precinct within DPFC that includes additional facilities for women with complex needs. Further infrastructure upgrades are also underway.

<sup>295</sup> Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial*, 2018, 42.

<sup>296</sup> Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial*, 2018, Recommendation 2.

<sup>297</sup> Victorian Ombudsman, *Investigation into the imprisonment of a woman found unfit to stand trial*, 2018, Recommendation 4.

<sup>298</sup> Victorian Ombudsman (2017), *Implementing OPCAT in Victoria: report and inspection of DPFC*, Recommendation 9.

<sup>299</sup> Victorian Ombudsman (2017), *Implementing OPCAT in Victoria: report and inspection of DPFC*, Recommendation 10.

<sup>300</sup> Victorian Ombudsman (2017), *Implementing OPCAT in Victoria: report and inspection of DPFC*, Recommendation 19.

Despite these recommendations for change over a number of years, work underway through the Women's System Reform Project and the development of the Women's Health and Wellbeing Precinct at DPFC, significant gaps in the provision of gender-sensitive healthcare and support for women in custody remain.

We also heard that women in custody might not have access to consistent reproductive, menstrual, pregnancy and post-partum healthcare and may be subject to highly restrictive conditions when giving birth.

### **Giving birth in prison**

We spoke with two women in custody about their experiences giving birth while in prison both of which highlighted the lack of birthing and post-partum support available for women in custody. Their experiences describe treatment that is inconsistent with the right to health and to be treated with humanity, dignity and respect while in detention.

One woman told us:

'When I went into labour, they took me to the hospital and the staff that I had with me were fine – they didn't handcuff me. The staff who took over from that shift weren't sure of my security rating so they handcuffed me and then I was starting to have complications and they uncuffed me. It just depended on who was there at the time, whether they uncuffed me or had me cuffed.

I went into labour and when I was ready to give birth, I had fairly bad complications and they rushed me down for a caesarean and the doctor said only one person can come in and the officers said no family [could attend] and the doctors fought that ... The officers ended up saying that my family could come and then when my daughter was born, she got rushed off [due to complications].

She wasn't breathing or anything. [We had to fight for] a photograph [to be taken of her] and they were saying, "No, you can't take a photo of her", and [the doctors were] saying, "She could die. She's getting taken now to the Royal Children's", and the [officers] wouldn't let me see her. They wouldn't let me near her and then finally, head office rung through to say, "She can have one photo with her before she goes away. That whole ordeal, the different officers, their opinions on what should be happening, it was very hard".

Another woman told us that she returned to custody after giving birth, she struggled to receive pain relief following an emergency caesarean section:

'When I got back to [the prison] I had a caesarean section so I had to walk with my pram through the compound ... I was so sore and then once the medication that the hospital had given me for pain relief wore off, I was in so much pain. I just remember just burning up and trying to sterilise [the baby's] bottles ... You can't take your baby to medical ... I had to leave her there and hobble like this from the [post-partum unit] to go and line up to get Nurofen and Panadol. It was horrible.'

*Women in custody*

## Access to appropriate supports for people with disability

Corrections Victoria has a responsibility to identify people with physical disability, intellectual disability, cognitive impairment and acquired brain injuries and provide safe and appropriate accommodation and disability supports, treatments, programs and referrals.<sup>301</sup>

We spoke with a high number of participants who were living in custody with a disability, including physical, cognitive and intellectual disabilities. Most raised issues with their experience of healthcare while in prison – we heard repeated concerns about barriers to accessing support and care, the timeliness of care, and the adequacy of the support provided.

Despite this, we heard that there is no comprehensive disability assessment upon entry into custody and few staff trained in disability support. This represents a missed opportunity to identify the needs of people with disability and connect them with supports and programs that will support safety and wellbeing.

The Office of the Public Advocate expressed concern about the current approach to managing people with disability within the custodial environment, noting that people with an intellectual disability are over-represented in custody:

'You've got more prisoners with a disability than can access the specialist units. So, they end up in the general prison population, where they are very vulnerable and often subject to bullying and other unwanted behaviours. They really shouldn't be there. What we end up with are measures being taken for punishing them or they end up on protection where they're isolated. It's very difficult.'

**Expert interview**

It was clear from our engagement and discussions with people across the system that the demand for specialist disability support exceeds the available specialist units within the system. For example, there is only one dedicated unit for men with cognitive disability across the adult custodial corrections system.

## Access to healthcare for transgender people

We spoke with transgender women in custody who raised significant issues with access to appropriate healthcare and support for their needs. The women told us about experiences of discrimination, trouble accessing appropriate medication to support transition, and little to no access to appropriate psychological supports for LGBTIQ+ people. These experiences were particularly difficult for women who had begun their transition within custody, many of whom told us that they couldn't access basic care for their specialist needs:

<sup>301</sup> Corrections Victoria, *Deputy Commissioner's Instruction – 2.08 Prisoners with Disability*.



'We don't have psychological services in general, and there's no specialised services for LGBTIQ people or trans women that are in the men's system. There is nothing. I can't even get access to counselling for sexual assault or sexual harassment and that type of stuff anyhow ... And then, going from one punitive environment to self-medicating with drugs and alcohol, to offending, to another punitive environment, it took such a long time to be able to find the right supports in the right area, and to be able to have the confidence to be able to come out.'

**Person in custody**

We spoke to a group of transgender women at one site who told us about ongoing challenges to accessing healthcare that met their needs.

### **Accessing appropriate and safe healthcare – Challenges for transgender women in custody**

We met with transgender women to discuss their experiences living in the adult custodial corrections system and heard accounts of their access to healthcare. We were told that accessing appropriate and safe healthcare, including mental health support, was particularly difficult in custody:

'One-on-one counselling is near impossible here – you might get it in the last few weeks of you being here, if you're lucky.'

'Transgender people have a higher risk of self-harm, and I'm not able to access counselling or support services. Here they only assist with suicide or at-risk.'

We asked about the external and specialist support for transgender people in the custodial system:

'It's always talked about that there's external services – we'll ask on multiple occasions for access to a list, what's available for trans/gender-diverse people but we're never told or given anything that we're supposed to be.'

The women described long delays – two years for one participant, 14 months for another – in receiving medication and treatments specific to their needs such as hormone replacement therapy.

We heard that there are issues with accessing appropriate health services at their location and that treatment options meant they needed to be transferred elsewhere, to a location where they felt unsafe as trans women:

'There's people that are refusing medical care and would prefer to die than go to [a metropolitan prison for healthcare].'

'I'm at that stage too. I went to [the same metropolitan prison] for four weeks, I didn't get my procedure, so I would consider not getting treatment rather than going back there.'

The women perceived that custodial staff did not receive enough training in supporting complex cohorts such as transgender and gender-diverse people, including understanding their health needs:

'I feel sorry for officers that come in here because they're not equipped to deal with [transgender or gender-diverse people].'

*Transgender women in custody*

Other transgender women shared similar hesitation about accessing health services and concern that the services available will not meet their psychological needs:

'I have lost a lot of confidence in this place. I feel quite untrusting. I feel that I've had to constantly justify myself and I do take anti-anxiety and anti-depressant medications, because some days it's so hard to deal with. It's hard to explain. You just wake up and you just don't want to get out of bed, don't want to do anything, don't want to talk to anybody. I know, because I can't get it in here, and I'm hoping I can get something outside – I need post-traumatic stress disorder counselling because of the things I've experienced. But in saying that, I feel that if I didn't transition, I wouldn't be here today.'

Person in custody

## Access to culturally responsive healthcare for culturally and linguistically diverse people

Culturally and linguistically diverse people in custody shared a number of challenging experiences accessing healthcare. This included people with chronic health conditions not being able to access routine pathology tests, inability to access radiography to assess potential broken bones and a person waiting 28 months to access an X-ray when recovering from a serious accident.

People attributed their experiences to language and cultural barriers and a lack of respect toward culturally and linguistically diverse people in custody.

### Healthcare that responds to the needs of people from culturally and linguistically diverse backgrounds in custody

We spoke to a number of people in custody from culturally and linguistically diverse backgrounds and heard about the difficulties they experienced in accessing healthcare including experiences of discrimination:

'There is illogical prioritising of appointments, and medical professionals' reluctance to test or investigate health concerns when we report them.'

Participants also highlighted problems with the systems for seeking medical treatment that were exacerbated by technology, which was often confusing and inaccessible to them. They described having appointments scheduled when they are due to be locked down in their cell and expressed frustration with having to start the medical request process again.

Though the expectation is that they will see a nurse within three days of making a request, they estimated the average wait time to receive medical attention is around four weeks. Participants were also frustrated at having to repeat their medical history and health concern to each nurse or doctor, despite having provided the necessary detail when requesting the appointment.

When asked about how staff respond to requests, participants questioned the adequacy of staff training, explaining the inconsistent way in which staff apply rules and processes for dealing with questions and requests:

'It is not uncommon to receive different answers to the same question, depending on which staff member you spoke to.'

*People in custody from culturally and linguistically diverse backgrounds*

## Further opportunities to improve health outcomes

### Access to primary mental health care and psychological support

One of the most significant gaps identified by people in custody, staff, service providers and the families of people in custody was access to psychological support and counselling through increased access to primary mental health care. Many people told us about the barriers they encountered in accessing appropriate support for their mental health concerns and diagnosed mental illnesses. Service providers shared their concerns about the limited options to support early intervention and preventative mental health care.

A number of people in custody also identified the connection between access to psychological and counselling support to assist rehabilitation and reducing the risk of reoffending. Some people reported benefiting from services that helped them to understand the impact of trauma on their lives and their behaviour.

'After engaging in many programs, I soon learnt and developed an understanding of trauma, triggers, and the impact it had on me and others there after the symptoms started to reduce. I can now manage my emotions, self-care when I need to, and I have learnt how to make great choices for myself. I can say with confidence I am truly on the road to long term recovery with newfound dreams, talents, love for myself and others, with a fresh healthy perspective for life.'

Person in custody

Others identified that this was an ongoing gap in the support provided by the system and that people might be less able to achieve positive change without better access to counselling and psychological support:

'If you could look at the underlying issues with psychological counselling programs and have psychologists, trained psychologists who can actually start drilling into the reasons why and their background [and all the other] factors that they have. Behaviours that were encouraged or they've seen while they were growing up, developing ... environmental factors that have caused it from peers or other issues. Look at the underlying issues. So we can ultimately look at ways of developing and changing, helping the individuals change so they don't reoffend and [we then] have prisons the purpose of rehabilitation.'

Person in custody

Our research and engagement confirmed that early intervention and non-acute mental health care are important elements which are largely missing from the current healthcare response. Many people described how their requests for access to counselling were denied or delayed by significant waitlists.

'For me, for example, I came into prison custody and didn't get to see a psychologist until eight months before my release. I put in a request, because I thought I want to start – as soon as I get in there, I kind of want to start working on myself. And so yes, I didn't end up seeing a psychologist until about eight months prior to me being paroled. And so there's this huge gap.'

**Person formerly in custody**

We heard that people at risk of self-harm and suicide were able to access services, albeit through a heavy-handed 'at risk' assessment process which resulted in some being separated or placed in a wet cell. However, for people who were suffering the effects of trauma, depression and anxiety as a result of prior experience and undiagnosed mental illness or situationally acquired in prison, there is very limited support and treatment available.

We heard from custodial staff that their training did not adequately prepare them to support and care for people with mental illness in custody. Multiple respondents to our workforce survey detailed their concerns about providing care to people with complex mental health needs and voiced a strong appetite for more specialist training:

'Prison officers are not mental health professionals. There is too much expected from them in this regard ... I am not a mental health nurse. I know how to refer a prisoner to a psychologist, but I do not have any mental health training... We don't get any mental health training.'

'I do not understand all the mental health issues that the prisoners have.'

**Staff member**

### **Access to specialist appointments and community-based supports**

A model of care for people in custody that meets their varying needs should consider community-based responses and partnerships to support access to appropriate care.

It is not reasonable to expect that all specialist health services can be made available within the custodial environment. The current service delivery model contemplates shared service delivery across primary, secondary and tertiary settings. There is also direct service delivery for some specialist care – such as disability and palliative care.

### **Increasing connections and coordination with the broader social services system**

We also heard that there can be challenges associated with the intersecting needs of people in custody across different service systems. For example, support for people with disability may be affected by NDIS funding arrangements:

'If you don't identify that a person has a disability, you're not going to be able to identify the supports needed to support them transition out of prison. Access to the NDIS and other appropriate supports might assist to end the vicious cycle of people with disability cycling in and out of prison. These issues are interlinked. It is a fundamental human right for people with disability to be able to access the supports that they need .... The Interface Principles outline what the Commonwealth [through the NDIS] is responsible for and what the state is responsible for, but these principles are open to interpretation. Broadly, while the state is responsible for dealing with criminal behaviour, the NDIS is responsible for providing disability support. There is often a fine line between the two, however the reality is that it is hard for prisoners with disability to get access to the supports they need.'

#### Expert interview

We were pleased to hear about active steps being undertaken to support people with disability through the Better, Connected Care Reform (formerly Common Clients). We encourage DJCS to prioritise this progress toward a joined-up and collaborative response to meet the complex and intersecting needs of people in custody across different services systems.

#### **Recommendation 6.17** **Model of care and clinical standards for people in custody**

The Department of Justice and Community Safety should work with the Department of Health to develop and publish a model of care and clear clinical standards for custodial healthcare, to ensure that people in custody receive timely, appropriate healthcare that meets their needs and supports public health outcomes identified in the outcomes framework.

The model of care and clinical standards should be developed in consultation with people in custody, service providers and stakeholders with understanding of the specific health needs, experiences and considerations for different cohorts.

The model of care and clinical standards should support people in custody with particular and intersectional needs, including:

- a) older people, including those with age-related conditions such as dementia or mobility
- b) transgender people in custody
- c) people with intellectual disability, acquired brain injury or other cognitive impairment
- d) women.

## Addressing cultural barriers to healthcare in the custodial system

We considered how the culture of the custodial system impacts the healthcare received by people in custody. Across the adult custodial corrections system, we heard multiple examples of corrections staff advocating for and supporting the healthcare needs of people in custody. At some sites, people in custody shared positive experiences of feeling supported by corrections staff to make appointments and staff following up on behalf of people in custody about any delays to appointments or issues with the healthcare they were receiving.

We also heard that there are specific barriers to accessing healthcare that can be directly linked to the culture and orientation of the custodial system and the systems and processes for the management of people in custody. Staff, people in custody and stakeholders told us about punitive approaches to healthcare, 'gatekeeping' behaviours preventing access to healthcare, and discrimination and unconscious bias which had a significant detrimental impact on the experiences of Aboriginal people, people from culturally and linguistically diverse backgrounds and transgender people in custody.

While we do not believe these attitudes and behaviours are demonstrated by the majority of corrections staff, this perception was a recurrent theme in our conversations with people in custody, particularly those living in maximum-security prisons:

'While in [a management unit] I could hear someone constantly crying and saying, "I need to see a psychiatrist. I need help. Please give me a psychiatrist. I need to speak to someone". What happened was the officers kept telling her, "Why don't you just kill yourself, it's easier". The person said, "I don't want to kill myself. I just want to see a psychiatrist. Please don't tell me to kill myself because I will kill myself".'

Person in custody

## Recognising the key role of custodial staff in promoting health and wellbeing

Custodial staff play an important role in promoting better health outcomes for people in custody including through observation and supervision, managing requests for healthcare and challenging behaviours, acting as first responders to incidents and providing case management and transitional support. These represent critical opportunities to identify health and wellbeing issues and ensure people receive the healthcare they require.

Despite this, we heard from both custodial staff and people in custody that there is limited education and training for custodial staff in recognising and responding to common health issues experienced by people in custody.

We also heard that due to a lack of specialist healthcare workers, corrections staff in complex roles – such as providing care for people with dementia and those with significant intellectual disabilities – had to perform specialist duties, despite having only learned the relevant skills ‘on the job’.

‘There is very limited training to support prisoners’ health and wellbeing, and contracts in place with service providers [health and wellbeing] are insufficient to meet the needs/demands of prisoners. This is not dissimilar to the service level available in the community, but prisoners are arguably more pre-disposed to poor mental health and wellbeing which contributes to their offending behaviour, and this is exacerbated as a result of their imprisonment [and not addressed during their time in prison].’

**Staff member**

A cultural shift toward a more therapeutic culture across the adult custodial corrections system is a valuable opportunity to grow the capability of custodial staff to support safety and positive change for people in custody. While it would not be appropriate to expect custodial staff to deliver complex healthcare responses without specialist training, there is scope for increased understanding of how to identify and support people in the system that may require specialist healthcare responses.

We also support consideration of specialist training and additional pay for corrections staff with relevant qualifications, skills and experience working with people with complex needs, including people with intellectual disability, people with mental health conditions and older people in custody.

## **Custodial staff may not always facilitate timely access healthcare**

People in custody rely on corrections staff to facilitate requests for medical care and attention. Despite this, we have heard that staff do not always prioritise access to healthcare.

We heard that access to care was sometimes dependent on the particular attitude of a custodial staff member. We heard that this led to people in custody ‘officer shopping’, where they had to make requests to multiple staff members to eventually access the care that they needed:

‘They say that it’s the equivalent of the community medical care and it’s not and what happens is the prison interferes in the delivery of that medical care and so a lot of people don’t get it. I’ve had heart problems. It’s taken me nine months to get the medication right despite the cardiologist saying it must be done this way and the prison say “but that’s not the way we do it”.’

**Person in custody**

We heard from people in custody that requests made to custodial staff via medical request forms and other mechanisms are sometimes ignored or not appropriately actioned:

'Access to specialist medical services is heavily restricted and it is a lengthy process to gain approval for that access. Medical treatment is strictly enforced to the needs of the prison and not the prisoner.'

**Person in custody**

We heard from Justice Health that where custodial staff are making assessments about the priority of access to healthcare they may be overstepping their duties and training;<sup>302</sup> however, people in custody told us repeatedly that whether their request for healthcare was provided depended in the first instance on the individual custodial staff who received the request. For example, we heard that some staff are more likely to provide basic medical supplies like Band-Aids while others deny requests of this nature.

This is inconsistent with the approach to accessing healthcare services supported by the RACGP. The updated RACGP draft standards provide:

'It is important that prisoners normally have direct access to the health service to make an appointment and do not routinely have to rely on others, such as prison staff within the facility, to mediate their request for access to healthcare or to identify medical needs ... It may not be possible for prisoners to contact a health service by telephone to make an appointment, and written requests for an appointment could prove difficult for prisoners with low levels of literacy.'<sup>303</sup>

**Royal Australian College of General Practitioners**

The RACGP supported exploring strategies that would allow people in custody to access to healthcare appointments without relying on corrections staff.

We also heard that people in custody may not want to disclose certain issues to corrections staff including case managers, such as mental health concerns, in case there were consequences for their classification or management within custody.

## **People may encounter prejudice and stereotypes when accessing healthcare**

We heard many reports from people in custody about difficulty in accessing pain medications. In a number of examples, we heard that people endured restricted access to pain medication due to concerns from staff about drug-seeking and addictive behaviour.

<sup>302</sup> Expert interview - stakeholder.

<sup>303</sup> RACGP Standards for health services in Australian prisons : For consultation (2nd edition, 2022) 133.



We heard that drug usage and trafficking was an issue in some prisons. However, we heard that these issues were sometimes conflated with requests for medication to manage chronic pain. We heard from a number of corrections staff at site visits that they regarded many medical requests as drug-seeking behaviours. People in custody described the frustration they felt that genuine need for medication or pain management was being dismissed or minimised.

One person in custody told us that medical staff think that people in custody who request pain relief are 'crying wolf':

'You buzz up after eight o'clock for meds and the nurse will decide whether or not that you should have Nurofen. So, I'm there with a toothache or an infection in my tooth, a migraine, and I just have to put up with that until the morning. So, I've sat in the shower rocking myself with the hot water running on me for hours until I've had women say, "Please, come and help her". That happens all the time.'

**Person in custody**

People in custody living with chronic pain and disability present to medical services more frequently than other people in custody. Some reported that corrections staff labelled them as 'troublemakers' who were taking up limited resources. We heard about eye-rolling and other dismissive conduct when staff responded to requests from people in custody.

Women also reported that health concerns and requests were dismissed. We heard that restricted access to pain medication meant that people experiencing significant pain may be denied access to pain relief. The damaging impact of distrust and stereotyping when people are accessing healthcare was highlighted by Sisters Inside:

'Access to health [is a massive issue] because it's once again about that belief that people have and it's that women are being manipulative, women are drug addicts and they're trying to access drugs so they lie about their health and so that's why we see health deteriorating very quickly and women die because of medical conditions that could've been sorted out very, very quickly where they should never have died and that's about the abuse, the violence of the system that's perpetrated against women by not believing them that we're liars and we're making it up. And so we're not seen as human beings.'

**Expert interview**

## Current infrastructure to support healthcare

We visited every prison across the adult custodial corrections system and made observations about the sufficiency of infrastructure. We observed that there were very few facilities across the system that have been intentionally designed to provide a therapeutic environment or care for the complex health needs of people in custody.

Even where specialist responses and facilities are available, the demand for these facilities is greater than the available beds. As we have noted above, there is limited infrastructure available to support the needs of people with a cognitive impairment. Similar issues exist for people requiring mental health inpatient treatment. We heard suggestions that clinical decision-making can be influenced by the access to beds within the system, with some people in custody being denied treatment for their needs because of a lack of facilities and resourcing.

## Management and observation units

Where appropriate units or beds are not available for people with additional needs, such as people with cognitive disability or acute mental illness, they are placed in mainstream units without support or in management or mental health units designed for short-term use to manage behaviour including the risk of self-harm.

We observed a number of management units and mental health observation cells, and we share the concern of stakeholders that these environments, while they may prioritise the security of the individual, are not therapeutic.

One person in custody spoke about how their own experience in a management unit acted as a cautionary tale for others weighing up disclosing health conditions:

'I told them, I wanted to kill myself or something, they'd put me in a management unit. So, basically a concrete room and watch me for a day or two. And it would feel even more depressing and things, that's what many other prisoners have said, "We don't really like reporting that kind of thing".'

**Person in custody**

Forensicare noted that people experiencing mental health conditions often deteriorate in prison due to environmental factors such as the physical facilities.<sup>304</sup>

We observed that a number of sites had units with dirty, rundown and inadequate conditions for both people in custody and staff. We were particularly concerned and shocked by the significant dilapidation and conditions in Swan 2, the management unit at DPFC. DJCS has advised that these units are in the process of being replaced with new facilities.

<sup>304</sup> Forensicare, Submission to the Cultural Review (December 2021).

## Appropriateness of therapeutic spaces and facilities

There is a substantial variation in the design, facilities and atmosphere across custodial sites, with some more modern facilities reflecting therapeutic approaches through incorporation of green spaces, light and ventilation, recreation facilities and horticulture. We visited some minimum- and medium-security prisons that accommodated people in cottage and apartment-like accommodation which promoted their sense of autonomy and wellbeing.

However, other older, more traditionally configured maximum-security prisons lack any therapeutic design elements. We observed minimalist environments, predominately concrete, with limited natural light, poor ventilation, and ageing and dilapidated facilities. The management units and mental health observation cells at most maximum- and medium-security locations are typically bleak and, in some cases, lacking any element of human dignity.

There is significant scope to improve the physical infrastructure across Victorian prisons, to provide people with access to a more therapeutic environment. Caraniche shared ideas for improving the physical environment to meet the needs of people across the system. They noted the difficulties associated with delivering services and engaging constructively with people in custody without access to appropriate facilities.<sup>305</sup>

We welcomed the opportunity to understand how therapeutic design considerations have been integrated into the planning for WPCC. This includes natural lighting, textures, murals and sound-deadening surfaces. We support closer attention to therapeutic design in future upgrades of physical infrastructure.

### **Recommendation 6.18** **Therapeutic spaces and environments to improve health outcomes for people in custody**

The Department of Justice and Community Safety should conduct an audit of the physical design of existing health and clinical facilities across the adult custodial corrections system to ensure that people in custody can receive healthcare in a therapeutic and safe environment and do not experience barriers to accessing healthcare.

This audit should assess current facilities against principles of:

- a) human rights, including cultural rights and cultural safety
- b) person-centred care
- c) trauma-informed practice and therapeutic design
- d) safety and risk monitoring.

This audit should be completed within 12 months of receipt of this report. In line with the audit's findings, any recommended upgrades to existing facilities and the establishment of new clinical spaces should be resourced and implemented.

<sup>305</sup> Caraniche - Expert Interview with the Cultural review.

## Movement around the system limiting timely access and continuity of healthcare

The fragmentation of health services across the system means that a person's access to healthcare may be influenced by their movement across prisons. We heard from both people in custody and healthcare providers that transfers between locations impacted pre-organised medical appointments, access to prescriptions and medications, and their continuity of care.

The Health Complaints Commissioner highlighted the importance of continuity of healthcare, noting that they frequently receive complaints about losing access to an essential health service or aid following a transfer. Examples included experiencing significant delays in receiving prescription glasses or medication.<sup>306</sup>

We also heard that mental health care was significantly impacted by transfers:

'The way that men move through the system really disrupts their continuity of mental health care – we know in mental health and healthcare, points of transition are high risks points – yet men can move three or four times in their first couple of months.'

**Expert interview**

People in custody described their reluctance to be transferred to another location for the purpose of accessing healthcare:

'There's people that's refusing medical care and would prefer to die than be transferred [to a metropolitan prison]. I'm at that stage too, I [was transferred] for four weeks, I didn't get my procedure, so I would consider not getting treatment rather than going back.'

**People in custody**

The delivery of healthcare is not coordinated across the system and relies on local appointments and healthcare services. This means that when people move between locations, they can experience delays or changes in access to healthcare.

There are current policies in place to ensure that people are not transferred if they are awaiting healthcare appointments. Despite this, we heard multiple examples from people in custody of transfers delaying access to healthcare and medication or resulting in cancellation of upcoming health appointments.

In addition, health services working within the system told us that they are not routinely consulted when decisions are made about a person's transfer to a different location. Lack of consultation or advice from healthcare clinicians has also been an issue identified by the coroner in relation to the transportation of people in custody to specialist healthcare appointments in the community.<sup>307</sup> A recent coronial inquest also identified the barriers for people seeking to access healthcare in the community and the reliance on access to prison transport to access specialist care in the community.

<sup>306</sup> Health Complaints Commissioner - Expert interview with the Cultural Review.

<sup>307</sup> Coroners Court of Victoria (2022) Finding into Death Following Inquest of Jovanoski.

### Continuity of care

Continuity of care is an important element of healthcare for people in custody. Arrangements should be made for continuous access to healthcare at points of admission, transfer and release, and this should be facilitated by prison management. Continuity of care between custody and the community requires coordination, collaboration and partnership between the adult custodial corrections system and health and social supports in the community.

The World Health Organization Prison Health Framework sets out five requirements for continuity of care:

- ▶ registration with a general practitioner
- ▶ protocols for continuity of care, including establishment of shared care plans
- ▶ medication reconciliation at admission
- ▶ supply of medication upon release
- ▶ availability of testing for COVID-19 ahead of release.

The WHO recognised that ‘very few people serve life sentences, so the great majority of people in prison must be prepared for release back into the community, which includes addressing their health conditions and managing their health-related information in a manner that transcends system barriers’.<sup>308</sup>

### Lack of access to Medicare and Pharmaceutical Benefits Scheme

We support work to examine and address other structural barriers to healthcare for people in custody. The cumulative impact people in custody experience from the various barriers to quality health outcomes is amplified by their eligibility status for Medicare and the Pharmaceutical Benefits Scheme.

We encourage the Victorian Government to advocate for a change in the funding model, to provide access to Medicare and the Pharmaceutical Benefits Scheme for people in custody. While this is outside the scope of the Cultural Review, we have heard from a number of stakeholders that the lack of access has a direct impact on safety through undermining efforts to achieve equivalency of care.<sup>309</sup>

We note that the Victorian Parliament's recent Inquiry into Victoria's Criminal Justice System recommended the Victorian Government engage with the Commonwealth Government to explore opportunities to extend access to Medicare and the Pharmaceutical Benefits Scheme to people in custody (Recommendation 74).

<sup>308</sup> World Health Organization, *The WHO Prison health Framework: a framework for assessment of prison health system performance*, 2021, 11.

<sup>309</sup> Fitzroy Legal Service, *Submission to the Cultural Review* (January 2022) 9; Victorian Aboriginal Legal Service, *Submission to the Cultural Review* (December 2021) 101; Liberty Victoria, *Submission to the Cultural Review* (December 2021) 12; LGBTIQ Legal Service, *Submission to the Cultural Review* (December 2021) 28-9; Human Rights Law Centre, *Submission to the Cultural Review* (December 2021) 14.

We endorse this recommendation – ensuring people in custody have access to properly funded public healthcare and medications should be feature of a public health approach to custodial healthcare.

## Increasing staff capability and supporting coordinated service delivery

### Improving the coordination and integration of services

As discussed in Chapter 22, improved collaboration and shared practice between custodial staff and service providers will lead to better outcomes for people in custody. Some of the feedback we received identified the absence of a collaborative or shared approach or orientation between custodial staff and healthcare staff as an influence on the delivery of healthcare and outcomes for people in custody.

Health services working within the adult custodial corrections system described difficult relationships with custodial staff and management and noted that relationships can be inconsistent across different locations.<sup>310</sup>

'There is never any communication between staff. Whether its medical or officers changing shifts, there is no communication.'

**Person in custody**

While we support independence in the delivery of healthcare services, increased collaboration and shared practice is an opportunity to improve overall safety and health outcomes for people in custody.

Other multidisciplinary settings adopt a person-first approach to better coordinate the various actions taken to meet the needs of a person (or respond to any issues of concern) and support shared outcomes. Closer integration of service responses can also deliver more holistic outcomes. This is consistent with the role of the custodial system within the broader social services sector and recognises that people entering the adult custodial corrections system may have connections with a range of social and health services.

This may also assist to address some of the cultural barriers to service delivery and collaborative approaches identified through our conversations with staff and service providers. A number of people and organisations delivering services within the custodial environment told us about their experiences of a 'gatekeeping' culture within Victorian prisons.

<sup>310</sup> Forensicare, Submission to the Cultural Review (December 2021); Caraniche, Submission to the Cultural Review (December 2021); Correct Care, Expert interview with the Cultural Review.

While custodial staff have important security and safety responsibilities to consider, we heard that some staff do not view facilitating access to healthcare for people in custody through a rights-based lens or view it as an essential part of their role.

Service providers we spoke to characterised this approach as being 'hosted' by the prison location, as opposed to being part of the essential operation of a custodial system that values and advances health and wellbeing for people in custody as part of a person-centred approach to custodial services. Embedding opportunities for collaborative practice could help custodial staff and health practitioners better understand their respective role responsibilities and the issues that contribute to safety and better health and wellbeing outcomes for people in custody.

In Chapter 22, we discussed opportunities for health services to participate in integrated case management conversations and case management review processes to ensure that decisions relating to people in custody take into account their various social, health and wellbeing needs. This should include supporting case managers and others working directly with people in custody to understand any health issues or risks that should be considered when making decisions about custodial management.

Joined-up governance and regular engagement between the operational leadership of the adult custodial corrections system, DJCS, the Department of Health and relevant health service providers should address:

- ▶ any emerging issues and risks relating to the provision of healthcare within the custodial environment
- ▶ any operational or policy changes that may be required to improve health outcomes for people in custody
- ▶ any issues experienced by health service providers, such as access to cells, when providing healthcare
- ▶ any systemic issues associated with access to healthcare, such as the impact of people being moving between locations
- ▶ opportunities to improve collaborative practices and integrated case management to support people in custody
- ▶ any concerns about the use of custodial management and restrictive practices.

**Recommendation 6.19**  
**Collaborative and**  
**joined-up governance**  
**arrangements**

The Department of Justice and Community Safety should partner with the Department of Health and health service providers to establish governance arrangements to support the proposed public health model for delivery and oversight of health services across the adult custodial corrections system. These governance arrangements should include:

- a) regular operational service delivery meetings between custodial locations and health service providers
- b) case review, debriefing and reflective practices that identify opportunities to improve the care provided to people in custody
- c) joint training sessions between corrections staff and health staff to develop shared understanding of roles, approaches and responsibilities within the adult custodial corrections system
- d) clear lines of accountability and responsibility for the delivery of primary health services within prisons, including escalation pathways for issues of concern.

## Building the shared capability and understanding of key staff

### Training for custodial staff

Beyond the systems, processes and governance to support access to healthcare, it is essential that staff delivering services to people in custody have the skills and capability to respond to their complex needs and experiences.

In *Part 3. Workforce*, we recommend a renewed approach to training and professional development of custodial staff, to ensure they have skills aligned with the purpose of the custodial system and can support rehabilitation and positive change for people in custody.

We have also identified opportunities to help staff build the skills they need to identify and respond to health-related issues, adopting the least restrictive interventions and reducing reliance on security-driven practices to respond to health-related issues.

### Training for healthcare workers

The World Health Organization emphasises that the health services available to people in custody must have equivalent professional, technical and ethical standards to service providers in the general community.<sup>311</sup> Health staff employed to work within the custodial system must be supported to adapt and apply their training to the specific needs and experiences of people in custody and work effectively to deliver healthcare within the custodial environment. This requires providing health services in a trauma-informed way with an understanding of the socio-economic

<sup>311</sup> World Health Organization, *Good governance for prison health in the 21<sup>st</sup> century* (2013) 8-9.



factors and likely experiences that may have contributed to their offending, behaviours and health concerns.

Custodial healthcare workers must also understand the system's approach to managing people in custody, healthcare treatment pathways, and considerations related to the diagnosis and treatment of people in custody, including access to healthcare in the community, complex needs, substance use and histories of trauma and abuse.

In addition, understanding the particular needs of Aboriginal people entering custody and the risks associated with custody for Aboriginal people should be a feature of training and induction processes for healthcare workers.

While DJCS is not responsible for training healthcare workers, there is scope for it to have more explicit requirements regarding training for contracted service providers and assessment and monitoring of their capability and the quality of services they deliver. Understanding the experience of healthcare users will be central to evaluating whether the delivery of health services is culturally safe, trauma informed and responsive to the individual needs of people in custody.

**Recommendation 6.20**  
**Minimum training and capability requirements for healthcare providers**

The Department of Justice and Community Safety should specify staff training requirements in any contractual arrangements for the delivery of health services within the adult custodial corrections system, to ensure that staff delivering healthcare to people in custody have relevant knowledge of key health, social and wellbeing considerations for custodial environments.

Staff delivering healthcare should receive training on:

- a) social determinants of health
- b) social and environmental factors relating to offending behaviour
- c) addiction and substance use disorders
- d) Aboriginal cultural safety, with a focus on key issues for Aboriginal people in custody
- e) trauma-informed practice
- f) responding to mental health needs
- g) responding to cognitive impairment and disability
- h) responding to family violence
- i) responding to occupational violence and aggression.

Contractual arrangements should also require regular mandatory refresher training as part of ongoing professional development requirements.

**Recommendation 6.21**  
**Minimum training and capability requirements for custodial staff**

The Department of Justice and Community Safety should provide mandatory training for corrections staff on identifying behaviours, issues and risks that may require further health assessment, to support the safe management of people with complex or diverse needs in custody.

This training should include:

- a) addiction and substance use disorders
- b) mental health conditions
- c) cognitive impairment, including intellectual disability and acquired brain injury
- d) physical disability.

Building capability in these areas will help limit the use of behavioural management practices to manage health-related conditions.

The training should be embedded in the revised pre-service training and part of ongoing professional development. The Department of Justice and Community Safety should consider joint training sessions with healthcare providers to develop shared understanding and collaborative practices.



## 22 Connecting people to programs and opportunities to support rehabilitation and positive change

Delivering effective rehabilitation programs to people in custody that respond to their individual circumstances and offending, alongside meaningful opportunities to participate in work, education and training, can contribute to better outcomes for people in custody and reduce recidivism.<sup>312</sup>

The Mandela Rules emphasise rehabilitation as a foundational purpose of custodial systems:

'The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.'<sup>313</sup>

**Mandela Rules**

The Mandela Rules go on to state that these purposes can only be achieved by providing people in custody with access to 'education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature', all delivered with the individual's needs at the centre.<sup>314</sup>

<sup>312</sup> Andrews DA & Bonta J, 'Rehabilitating criminal justice policy and practice', *Psychology*, 16, (Public Policy and Law, 2010) 39–55.

<sup>313</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') rule 4.

<sup>314</sup> *Ibid.*

Importantly, these principles represent a shift away from trying to eliminate all security risks within a custodial environment; rather, they propose using a prison sentence or time in custody to prepare people to be better equipped to live an independent life, free from crime, upon release. To be most effective, the environment in which these activities are delivered should resemble community life and 'normalise' prison life.<sup>315</sup> This becomes the new organising logic for staff, systems and processes.

In pressing this focus, we understand that there will be people in custody who resist or refuse attempts at case management and rehabilitation. We recognise that not all people in custody will embrace the opportunities that are available to them and that some people in custody may not be motivated toward rehabilitation and positive change.

There are already a range of rehabilitation programs available to people in custody across Victorian public and private prisons.<sup>316</sup> These programs demonstrate the government's recognition of, and commitment to giving people in custody access to purposeful activity and rehabilitation. However, there remain significant gaps between system-level commitments and what people experience in practice.

It was clear from our engagement that the way a person in custody experiences programs is shaped by their individual circumstances, and we acknowledge the challenges of meeting the education, training and employment needs of a large and diverse population. However, generally people in custody told us that they wanted access to a broader range of opportunities to build their skills and prepare for life in the general community.

People also shared experiences of disrupted access to education, training and employment when they were moved around the system. This affected their ability to complete programs and vocational qualifications.

In this chapter, we focus on supporting rehabilitation through the delivery of effective programs to people in custody. This is not just a programmatic approach but requires a doubling down on the system commitment, capability and investment to ensure that the custodial environment is geared to supporting the safe release of people back into the general community.

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<sup>315</sup> Ibid. Rule 5 states 'The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.'

<sup>316</sup> Victorian State Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, Inquiry into Victoria's Criminal Justice System (1 September 2021) Attachment A - Table of programs and initiatives to reduce offending and recidivism

## Key points – Connecting people to programs, and opportunities to support rehabilitation and positive change

- ▶ Access to offence-specific programs is provided toward the end of a person's sentence, which can delay opportunities for them to address underlying factors that might contribute to their offending.
- ▶ The way people in custody are moved through the system can interrupt their participation in programs and activities that support rehabilitation, including education, training and employment opportunities and connections with family and community supports.
- ▶ Some people in custody told us that they had gained important benefits from their participation in prison industries and programs while others reported that they are not always able to access training, education and industry programs that will provide them with skills, connections and employment pathways when they return to the general community.
- ▶ There are limited opportunities for recreational programs that build connections between people in custody and the community.

# What people in custody told us about **REHABILITATION AND POSITIVE CHANGE**

**Positive relationships with staff contribute to rehabilitation and positive change.**

👤 If you do the best you can, if you try to stay out of trouble - it was hard to realise that trying your best doesn't necessarily get you the best outcome. If you do the right thing, the guards think you're trying to scam then, that you have an agenda. They don't know what to do with someone who is polite and respectful.'

👤 My rapport with a prison officer is more conducive and inductive to my rehabilitation than having a case worker officer that you don't want to present to and talk to.'

**People in custody experience positive outcomes when participating in programs.**

👤 I felt that it changed the way I look at myself meaning that I've learnt a very hard lesson in being in prison. I've learned that ... regardless of the behaviour from staff and how they're treating me, it made me realise I can change my life into a better way. In order to [sic] do that I have the control, no one else. And when I look around in how people treat others and/or treated me I have the opportunity now to change my life around and make my life a lot better than [sic] it was ... and that's the only chance that I have now to improve that.'

👤 I was in complete denial and unaware that I even had an issue until I participated in many programs that started to open my eyes and change my mentality towards the way I used to view myself and the world around me.'

👤 I was quite lucky with my case managers. I had some good people who were interested, and they helped.'

**People on remand experience additional barriers to programs and supports.**

👤 It took me 4 weeks to identify my case manager. There's no orientation. It's my first time here and it's hard to work it out, you need someone to show you how everything works.'

👤 [There was] no counselling for his mental health or drug addiction, no medical support for his drug addiction... I was worried about his mental health and how he would go because the amount he must have been using he would have struggled.'

**Access to programs may be disrupted when a person is moved to another location.**

👉 You do 1 subject per semester and people only end up doing 7 parts of a 10 part course – you can't finish it before you leave. It's almost like it's designed that way so that you're not enticed to do the course so they don't have to facilitate it.. You can't finish the course even if you wanted to. If they're not going to provide the ability to finish the course completely, why run it at all? They're doing it because it looks good on paper, but they're not actually providing anything.'

**Offence specific programs may not be available to people in custody when they need them.**

👉 All of the [rehabilitation] services look at your [sentence] end date. You only get into a program if you're close to your end date. You only get into drug and alcohol services if you're close to your end date ... There are no programs. There are no services. When you are looking at a long prison term, there is nothing... there's literally nothing. I said to one of the supervisors "this is not right, this is not fair... what about the long termers" and she said they "get to sit and rot". Again, because of the length of my sentence, I got told "you're not going to get into Distance Education... it's all too hard, there's too many people ahead of you.'

👉 I have been trying for over 8 months to get into the drug rehab courses but they keep saying come back next month. I have been trying to access distance education, but they tell me that only 5 people out of the whole prison can study.'

**Work and education opportunities do not always provide people in custody with the necessary skills to gain post-release employment.**

👉 (Currently) education's limited to ... not so helpful trades or skills that will (not) really give you an opportunity to become gainfully employed.'

👉 Education programs here are just really short ones and nothing really substantial that's going to change your life when you get out.'



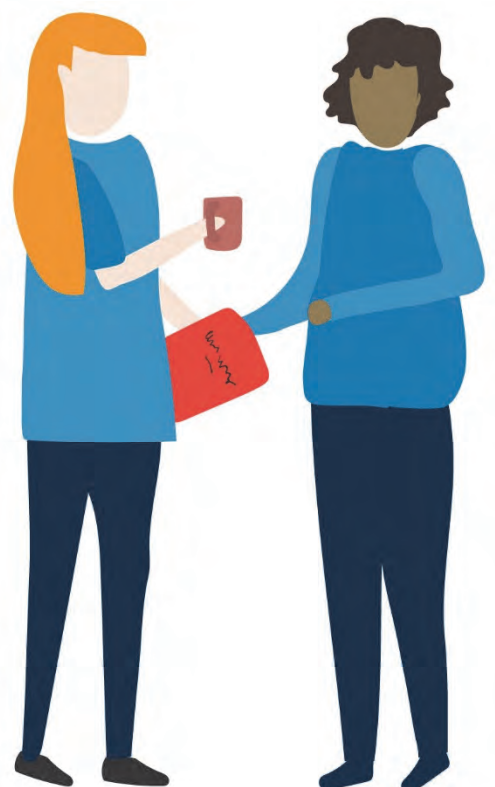
**Women in custody do not have a suitable range of work opportunities available to them.**

One of the things that I have also seen is that a lot of the reintegration programs that women get to be involved in are still heavily masculinely skewed. So there's a lot of education programs that are based around jobs that a woman at my age wouldn't do - I don't want to do traffic control. I may be physically capable. Some women in my age group are not physically capable of doing traffic control. There isn't enough diversity for all ages, all genders, in that prison environment or that program that's related to reintegration and release.'

**People in custody are not supported to maintain skills and connections to work and education opportunities in the community.**

Recidivism is high. There is nothing for people to do when they get out. The current programs are not suitable for the men. They should teach things like basic computer skills ... and other programs that are employment related.'

And also the courses that they've got in here don't reflect you getting a real job on the outside. They're doing things like stop/go courses. And mediocre jobs like that. Yeah, they might suit some of the prisoners in here, but 99% of them they don't. And from the history I was told by some of the other guys that have been in here for years, most of the jobs or the courses you could do in here years ago, were a lot more meaningful. So you could go out and get a real job. They've taken them all away. I've been in here for [\*\*\*] months, and I've only completed one course.'



## Ensuring that offence-specific interventions are timely and adapted to individual needs

Many people in custody are there due to serious criminal offending and have underlying attitudes and behaviours that require a specific response. The community has a strong community interest in ensuring that the adult custodial corrections system helps people in custody who will return to the community address any violence and unacceptable conduct and behaviours through offence-specific interventions.

While the *Corrections Act 1986* does not articulate a purpose for custodial sentences, the *Sentencing Act 1991* (Vic) states that one of a sentence's purposes is to create the conditions for rehabilitation.<sup>317</sup> Accordingly, there are a number of offence-specific programs delivered in custody that aim to address the circumstances of a person's offending. Offence-specific programs are identified as part of the sentence planning process and are designed to reduce the risk of reoffending. This can include violence intervention programs, programs for sexual offenders and supports to reduce the risk of family violence.

Timely access to forensic programs was a key issue raised by people in custody. The Victorian Ombudsman also identified this issue in her investigation into the rehabilitation and reintegration of prisoners in Victoria.<sup>318</sup>

People in custody told us that access to programs and opportunities to support positive change is an important part of their rehabilitation:

'To me, rehabilitation is about changing your behaviour, understanding first of all you made a mistake and you did the wrong thing, accepting that, acknowledging that, taking ownership of that and then moving forward you need to look at yourself how you can make changes individually and how you can integrate back into society to become a person you always believed you were or you should be and what society generally expects of you.'

**Person in custody**

People in custody also shared how programs can support their self-insight and shift their perspective on the world:

'I was in complete denial and unaware that I even had an issue until I participated in many programs that started to open my eyes and change my mentality towards the way I used to view myself and the world around me.'

**Person in custody**

<sup>317</sup> Sentencing Act 1991 (Vic) s1(d)(ii) provides that one of the purposes of the Act is to prevent crime and promote respect for the law by providing for sentences that facilitate the rehabilitation of offenders. Section 5(1)(c) of the *Sentencing Act 1991* provides that one of the specific purposes of sentencing is to establish conditions within which it is considered by the court that the rehabilitation of the offender may be facilitated.

<sup>318</sup> Victorian Ombudsman, Investigation into the rehabilitation and reintegration of prisoners in Victoria (Report, 2015). Recommendation 7 "Increase the availability of offending behaviour programs to ensure that the needs of the prison population, including those on remand, are met in a timely fashion."

There are many factors that influence the delivery of programs for people in custody. Currently, access to programs and opportunities is often concentrated as a person approaches the end of their sentence and becomes eligible to apply for parole.

DJCS advised that the delivery of offence-specific programs toward the end of a person's sentence is a deliberate approach based on evidence that therapeutic programs can be more effective when they are delivered closer a person's release to help them transfer their learning from a prison environment to a general community setting.

Despite this, people in custody told us that they often face long waiting lists for programs and were not able to complete programs to support their application for parole. We also heard from stakeholders that this continues to be an issue for their clients.<sup>319</sup>

**'There's no communication between Corrections Victoria and Forensic Intervention Service (FIS) ... I should have done a program sooner.'**

'Once you get sentenced, depending on the nature of your assessment, when you have your interview with the forensic clinician, they will send a report and they will say "Okay, this person is eligible to do a program". In that case, the officers are very bad at communicating ... Their job is to notify the prisoner that they have heard from FIS about programs, but they don't do that.

I wrote a letter to FIS and then they pretty much said "You're eligible to do the program. This is the date that you're going to do it, this is the location you're going to start on and from that day on you start doing the program ..."

I've been told ... that I'm meant to do the program before I'm eligible for parole ... And there was no communication between Corrections Victoria and the other organisations like FIS.

My family will be concerned because I'm meant to be coming home but Corrections Victoria think I'm a high risk and have another program to do first, which is complete bull because I know what I've done, I should have done a program sooner than later but at the same time they should give me an opportunity to write a letter to FIS.'

*Person in custody with a disability from a culturally and linguistically diverse background*

We also heard that access to programs, services and supports can be interrupted when a person moves across the system and that there is no joined-up process for ensuring continued access to programs. For people reaching the end of their sentence, we heard that the limited provision of timely and focused rehabilitation and transitional support can have a direct impact on their safety and readiness to be released into the general community:

<sup>319</sup> Victoria Legal Aid, Submission to the Cultural Review (December 2021) 11; Fitzroy Legal Service, Submission to the Cultural Review (December 2021) 8; Human Rights Law Centre, Submission to the Cultural Review (December 2021) 19.

'Being transferred to another prison means you have to start from scratch again on waiting list for medical, mental health, dental, counselling and programs.'

**Person in custody**

There may be a number of practical barriers to planning and scheduling offence-related programs, particularly for people who are not serving long sentences. We also recognise that there are legitimate reasons as to why there is focused attention on offence-specific programs toward the end of a person's sentence.

However, we heard that people would benefit from earlier support to respond to the circumstances of their offending. In addition, people in custody should not experience delays in their release due to barriers accessing and completing programs to support applications for parole.

A number of people in custody also told us that the offence-specific programs they participated in have not been appropriate for their needs. Examples included people being required to participate in group-based activities that did not feel safe but were the only available course formats being offered.

**'I've never felt like we're actually being rehabilitated. I never felt like there was any services to actually help me.'**

Trans women living in men's prisons told us about their experiences of participating in group programs with men in custody.

'After I got sexually assaulted [in custody] ... two weeks later I was doing a drug and alcohol program, and the boys were talking about their offences. And talking about sexually assaulting women – but saying it's okay because the women wanted it. Which made me cry because I'd just been sexually assaulted. And then all the boys turned on me, saying, "Oh what, you've got a problem that I'm a sex offender?" And I'm, "I never said that. I didn't say anything. All I did was start crying." And the clinician didn't really say anything either. So I was, "I'm not doing this program anymore." One of the requirements was the female prisoners do programs with other female prisoners to avoid things like that. That was something that we're bringing up in the trans forum as well.

I won't do programs with men – I'm the elephant in the room for some of them because they're quite bigoted, quite a few of them, and I don't want to sit in programs with them. I have to live with them, and I have to work with them, I don't want to have to share – be vulnerable or try and be vulnerable in a program and have them there judging me and then gossiping about me in the yard. That's what it's like.'

*Transgender women in custody*

An expectation that a person completes an offence-specific program to support an application for parole should be accompanied by the necessary resources and planning processes to ensure that these programs can be delivered within the relevant time frames and that people feel safe to participate.

**Recommendation 6.22**

**Offence-specific interventions are responsive to individual needs and circumstances**

The Department of Justice and Community Safety should consider whether the timing and format of offence-specific interventions are responsive to individual need and provide alternatives to group-based interventions for people who cannot safely and/or effectively participate in group-based activities due to their individual circumstances.

## Access to education, training and employment opportunities

Ensuring people have access to education, training and employment opportunities while they are in custody enables them to develop skills and connect with meaningful employment pathways – both critical to supporting rehabilitation and transition to the community. This is recognised in the approach to education, training and employment within the adult custodial corrections system.

Significant work has already been undertaken by DJCS to develop an employment, training and education program for people in custody which creates a pathway for employment in the community. More recently, this has included specific attention to the employment, training and education needs of women in custody.<sup>320</sup>

The *Guiding Principles for Corrections in Australia* note the importance of providing education and the important role that this can play in addressing risk factors and improving rehabilitation outcomes.<sup>321</sup> The principles also note that employment during a period in custody can:

- ▶ make people more employable when they exit custody
- ▶ support them to achieve nationally recognised qualifications
- ▶ complement educational and vocational opportunities.<sup>322</sup>

<sup>320</sup> Department of Justice and Community Safety (Corrections Victoria) 'Women's System Reform Project - Key Reform Initiatives (April 2022)', Data provided to the Cultural Review.

<sup>321</sup> Corrective Services Administrators' Council, *Guiding Principles for Corrections in Australia* (2018). Relevant principles include Principle 5.1.1: 'Prisoners have access to nationally recognised education programs, which are matched to prisoners' education level and learning, and aligned with vocational training and assists them to gain employment post release.; Principle 5.1.2: 'Prisoner employment increases future employability, supports the achievement of nationally recognised qualifications and complements educational and vocational training opportunities' Principle 5.1.3: 'Opportunities for employment are provided to all eligible, sentenced, remand and unsentenced prisoners

<sup>322</sup> Ibid.

These principles are reflected in the Victorian Correctional Management Standards which state that people in custody should be given opportunities to develop literacy, numeracy, vocational and other skills to assist them to gain employment post release and reduce the likelihood of them reoffending.<sup>323</sup>

The connection between education, training and employment, and rehabilitation outcomes is reflected in the Deputy Commissioner's Instructions which links education, training and employment to successful re-engagement with the community post-release and reduced likelihood of reoffending.<sup>324</sup> The Deputy Commissioner's Instructions also establish the requirements for the delivery of education and training<sup>325</sup> and participation in prison industries.<sup>326</sup>

We support access to meaningful opportunities that will assist people in custody to build connections to employment and further training in the general community. This is consistent with the Mandela Rules which provide that 'so far as possible the work provided shall be such as will maintain or increase the prisoners' ability to earn an honest living after release' and 'the organization and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life'.<sup>327</sup>

### **Access to education and training**

All people in custody have a right to access education.<sup>328</sup> People in custody generally have lower levels of educational attainment and are more likely to experience learning difficulties or disabilities than people in the general community. Ensuring people in custody have access to education and are supported with basic literacy and numeracy skills is a focus of prison education reform in other jurisdictions.<sup>329</sup>

The Deputy Commissioner's Instruction sets out the core requirements for the delivery of education to people in custody in Victoria.<sup>330</sup> Language, literacy and numeracy assessments as well as vocational education and training (VET), vocational counselling services and employment programs. People in custody may also be able to participate in distance education offered by educational providers from outside the prison system.<sup>331</sup>

<sup>323</sup> Department of Justice and Community Safety (Corrections Victoria), Correctional Management Standards for Men's Prisons in Victoria (2014); Department of Justice and Community Safety (Corrections Victoria), Standards for the Management of Women Prisoners in Victoria (2014).

<sup>324</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioners Instructions 3.01 and 3.03*. In relation to private prisons, there are no specific Commissioner's Requirements that relate to education, training or industries. However, the Correctional Management Standards apply to private prisons and therefore should be reflected in their operating procedures.

<sup>325</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 3.01 - Education and Training* (October, 2020)

<sup>326</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 3.03. - Prison Industries* (May, 2020)

<sup>327</sup> Rules 98-99, Mandela Rules.

<sup>328</sup> *Corrections Act 1986*, s 47(o).

<sup>329</sup> His Majesty's Inspectorate of Prisons, Prison education: a review of reading education in prisons; Ministry of Justice, Prisons Strategy (White Paper, December 2021) .37.

<sup>330</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 3.01 - Education and Training* October, 2020).

<sup>331</sup> Ibid.

Notably, the Deputy Commissioner's Instruction provides that while there is a right to education this does not mean that people in custody have a right to participate in any educational course of their choosing.<sup>332</sup> There are also processes for prioritising access to education to people in custody with specific needs.<sup>333</sup>

### Employment in prison industries

In Victoria, the Secretary of DJCS may direct people in custody to work within a prison industry.<sup>334</sup> There is an expectation that all sentenced people in custody under 65 years of age will work unless they are unable to for medical reasons.<sup>335</sup> People work for at least 60 hours a fortnight. People on remand have the option of participating in work but are not required to do so. People in custody are paid at a daily rate set by the Commissioner.

DJCS has advised that there are currently 1,400 people in custody working in 65 prison industries across the system. The DJCS Prison Industries Strategic Plan defines the purpose of the prison industries program as:

'To provide prisoners with opportunities to enhance their vocational and transitional outcomes through structured work and training, while delivering a socially and commercially responsible business model.'<sup>336</sup>

**Prison Industries Strategic Plan 2020–23**

In the last financial year, DJCS generated approximately \$27 million of income from prison industries.<sup>337</sup>

People in custody may work in areas such as prison kitchens, as cleaners in the unit in which they live (or elsewhere), provide mentoring or other support to other people in custody, such as translation services, or as peer mentors assisting people with intellectual disabilities.

There are also prison industries which operate larger-scale manufacturing operations under commercial contracts such as woodwork, metalwork, screen printing and other services with these areas providing products to business, government or local communities.

Some people have the opportunity to participate in work outside the prison. Community work is available for people in custody with minimum security classifications to work on specific projects such as Landmate which is a partnership between DJCS and the Department of Environment, Land, Water and Planning.<sup>338</sup>

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<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

<sup>334</sup> *Corrections Act 1986*, section 84H ('The Secretary may direct prisoner or offender (other than a prisoner on remand) to work in any prison industry or work program approved by the Secretary. A prisoner must comply with a direction of the Secretary under this section.')

<sup>335</sup> Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 3.03. - Prison Industries* (May, 2021)

<sup>336</sup> Department of Justice and Community Safety (Corrections Victoria), *Prison Industries Strategic Plan 2020-2023*, Data provided to the Cultural Review, 19.

<sup>337</sup> Department of Justice and Community Safety, *Annual Report 2020-21 - Financial*. (Report, 2020) 68 < [https://files.justice.vic.gov.au/2021-10/DJCS-Annual-Report-20-21\\_Financial.pdf](https://files.justice.vic.gov.au/2021-10/DJCS-Annual-Report-20-21_Financial.pdf)>.

<sup>338</sup> Corrections Victoria 'Landmate' (Website, 2022) <<https://www.landmate.vic.gov.au/>>.

To deliver these programs, DJCS works in partnership with a range of service providers and organisations to support continuing employment opportunities for people in custody in the community.<sup>339</sup>

### Post Release Employment Opportunities (PREO)

Post Release Employment Opportunities (PREO) is a new approach to industries and employment for people in custody being piloted as part of the Victorian Government Social Procurement Framework.<sup>340</sup>

Through PREO, Corrections Victoria aims to establish employment-focused partnerships with businesses in the community – ‘Second Chance Employers’ – to identify and deliver sustainable employment opportunities for people leaving prison and reduce risk of recidivism. Partner organisations benefit by having reduced hiring costs, the potential for improved employee retention and enhanced Social Procurement Framework credentials for subsequent procurement contracts.<sup>341</sup>

Key elements of the PREO model:

- ▶ existing training and education opportunities in prison assist people in custody to build foundational vocational skills.
- ▶ people in custody are selected to participate in PREO based off of their performance in prison employment
- ▶ PREO participants' details are placed on an Inclusion Hub, which connects them with prospective employers
- ▶ participants are supported by Corrections Victoria to take part in pre-release interviews or other tests as defined by prospective employers to gauge their suitability for a role
- ▶ successful participants will leave custody with a job offer and transition into work with a Second Chance Employer in the community.<sup>342</sup>

Following release, Corrections Victoria will monitor the progress and performance of PREO participants with an aim to address issues and acknowledge achievements.

At the time of the Cultural Review, Corrections Victoria has partnered with organisations who provide textiles and food items for Prisoner Canteens. The textiles procurement is expected to deliver 49–125 jobs for people leaving prison over the next two years in areas such as warehousing and general maintenance, while the Prisoner Canteen procurement is expected to deliver another 75–100 jobs over the next two years in areas such as warehousing and food processing.<sup>343</sup>

<sup>339</sup> For example. DJCS has advised there are a number of industry partnerships including Employment Hubs, the Rapid Employment Pathways Project, the Women's Employment Specialists and the 'Outside Jobs' programs that are delivered in partnership with industry to new employment pathways and employment focussed partnerships with businesses.

<sup>340</sup> Victorian Government, 'Social procurement - Victorian Government approach', *Buying for Victoria* (Web page, 2 July 2021) <https://www.buyingfor.vic.gov.au/social-procurement-victorian-government-approach>.

<sup>341</sup> Department of Justice and Community Safety (Corrections Victoria), 'PREO brochure', Data provided to the Cultural Review.

<sup>342</sup> Ibid.

<sup>343</sup> Department of Justice and Community Safety, Data provided to the Cultural Review.



The programs offered across the system vary by location, providing access to different industry or vocational pathways. Some examples of vocational training available to people in custody include asset maintenance, construction, horticulture, engineering and licensing (for example, forklift licence).

## Experiences of education, training and employment programs

Significant work has been undertaken to develop employment, training and education programs for people in custody. During our engagement, we observed many examples of positive relationships between industries staff and people in custody which demonstrated collaborative, mutually respectful approaches to training and employment. Some people in custody told us that their work provided them with significant purpose during their time in custody.

However, we also heard from staff, people in custody and stakeholders that there is patchy access to education and employment opportunities across the system and that some staff still hold attitudes that people in custody did not deserve or would not benefit from education and training.

One training provider working within the system noted that the attitudes of some staff do not support people in custody accessing education:<sup>344</sup>

'Infrastructure and equipment for prisoner/students is often not to industry standard. This situation feeds into a wide held belief that adult education services within the custodial environment are considered of limited value.'<sup>345</sup>

**Bendigo Kangan Institute**

We heard that education programs are often short and that people in custody did not feel that they had opportunities to participate in education and employment opportunities that might genuinely assist them. Some shared frustration at the nature of prison industry work – including menial and repetitive tasks – and found that prison employment did not support them to develop future-focused and transferable skills.

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<sup>344</sup> Bendigo Kangan Institute, Submission to the Cultural Review (November 2021) 1. This stakeholder noted that people in custody reported that when they ask to be excused from employment to attend education they encountered dismissive or disrespectful comments from corrections staff.

<sup>345</sup> Ibid.

Older people in custody we spoke to perceived that there was a lack of appropriate opportunities for them, limiting their participation in work and education:

'As an older inmate, I find there are no real work opportunities suitable for my age group.'

**Person in custody**

'There's a lot of education programs that are based around jobs that a woman at my age wouldn't do – I don't want to do traffic control. I may be physically capable. Some women in my age group are not physically capable of doing traffic control.'

**Person in custody**

It is important that the programs and opportunities available in custody reflect the skills and capabilities that a person requires to participate in the workforce. Some people in custody that we spoke to noted that current opportunities may not translate to employment opportunities in the community to which they hope to return. This included people feeling frustrated that could not complete the qualifications they commenced while in custody or that the qualifications may not be valued by potential employers.

'Recidivism is high. There is nothing for people to do when they get out. The current programs are not suitable for the men. They should teach things like basic computer skills ... and other programs that are employment related.'

**Person in custody**

The experiences we heard through our own engagement echoed the themes in Corrections Victoria's prisoner survey. In the survey results, while most people felt there were opportunities to work and keep busy, less than half of respondents felt encouraged to plan for their release (47.6 per cent), that there were programs that were relevant to them (43.7 per cent) or that the work or training opportunities that they undertake would help them to get a job on release (40.7 per cent).<sup>346</sup>

## Supporting women with work, education and rehabilitation

As noted previously in this report, women in custody often have distinct pathways to offending, experiences and needs that require a specific, gender-sensitive response to support their rehabilitation and return to the community.

The need to apply a gender-sensitive lens and provide women with tailored rehabilitation, work and education opportunities is reflected in existing departmental policy material. The relevant standards require that training 'reflects the diversity of needs, experiences and life-paths of women prisoners, and uses teaching methodologies that suit women's learning styles.' It also requires that general

<sup>346</sup> Corrections Victoria, Prisoner Survey 2022.

managers provide education and training programs that 'are gender responsive and influence traditional and non-traditional skill areas.'<sup>347</sup>

For prison industries, the current standards require that available work opportunities respond to the needs, experiences and life paths of women, taking into account the barriers faced by women in gaining employment. They should also facilitate flexible working arrangements where possible.<sup>348</sup>

The Women's System Reform Project is an important initiative that embodies these standards and aims to improve links between women in custody and employment post-release.

### **Engaging women in custody in education, training and employment – Women's employment specialist roles**

Women's employment specialist roles focus on engaging women in custody in education, training and employment programs and developing new, tailored pathways to employment in the community – through partnerships with employers, industry and community supports.

The program includes brokerage funding to assist women in prison into employment and transition into the workforce.

Women's employment specialist roles commenced in women's prisons in September 2020 as part of a new approach to improve vocational outcomes for women. The 2019–20 State Budget committed \$1.3m over four years for the creation of two women's employment specialist roles. This figure includes \$0.2m in brokerage funding.

Despite recognition of the need to provide meaningful opportunities for women, when we spoke to women in custody, they told us that some of the work and training opportunities did not create clear employment pathways for them in the community:

'One of the things that I have also seen is that a lot of the reintegration programs that women get to be involved in are still heavily masculinely skewed ... There isn't enough diversity for all ages, all genders, in that prison environment or a program that's related to reintegration and release.'

**Person in custody**

<sup>347</sup> See Standard 24 – Education and vocational training in Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria*, July 2014, p 59; Department of Justice and Community Safety (Corrections Victoria), *Deputy Commissioner's Instruction 3.01 – Education and Training* (May, 2020)– also specifies that people in custody from a number of vulnerable cohorts (described in the policy as 'target' and 'specialised' groups), including women, will receive priority access to education and training.

<sup>348</sup> See Standard 25 – Prison Industries in Corrections Victoria, *Standards for the Management of Women Prisoners in Victoria*, July 2014, p 62.

People in custody we spoke to identified that increasing opportunities to work within the community and being paid at standard rates may assist with successful transition and return to community life.

'The ability to reintegrate faster would be the best. Just the ability to go, "Okay, this person is not at danger of revisiting addictive behaviours, so we can possibly put forward her skills and talents into a role that may see her working in the community a couple of days a week. That may see her earning a normal wage". You know, I'm deprived of my liberty, but if I can earn a normal wage it means when I leave prison, I'm just moving house to a degree. For me, I see a lot of women that leave prison with a few days of a hotel stay up their sleeve, and then that's it. Well, of course they're going to come back to prison. It's the only place they can get a shower.'

**Person in custody**

Transgender women living in men's prisons also shared their experiences of rehabilitation, education and work in custody:

'But then there's – part of it is what am I going to do when I get out of jail? It's like this prison is the reintegration prison. But the education here is, "Well, I could do the chainsaw course. I can do the tractor course. I can do the poultry course." I am not going to do these things when I get out of prison.'

**Person in custody**

As described above, there are a range of education and vocational options available for women in custody at DPFC and Tarrengower,<sup>349</sup> with varying levels of access, and some employment programs that have been specifically designed to provide employment support for women and connect them with employment opportunities in the community. The experiences and needs of women in custody suggest that this must continue to be a critical area of focus for DJCS – it will require ongoing investment and evaluation to ensure that programs are well accessed and effective.

This investment and focus must take into account the very high rates of women in custody on short sentences or short periods of remand – the system must ensure that even during short stints in custody, women can access support for family or gendered violence, trauma, family separation, and drug and alcohol use.

<sup>349</sup> A range of supported distance education programs are available including Certificates in Information, Digital Media and Technology, Certificates in Business, Certificates in Retail Services Certificates in Horticulture Certificates in Kitchen Operations & Commercial Cookery, Certificates in Cleaning Operations, Certificates in Construction, Certificates in Warehousing, First Aid, Diploma of Professional Writing and Editing

## Ensuring that people in custody receive fair pay for prison-based employment

The Mandela Rules set out the rights of people sentenced to take up work while in prison and sets out several safeguards to ensure their employment is fair and includes a system of equitable remuneration, occupational health and safety, and compliance with human rights.<sup>350</sup>

In Victoria, there are three levels for the daily rate of pay for people in custody, ranging from \$6.50 and \$8.95 per day.<sup>351</sup> The pay level assigned to the role is determined by the degree of responsibility, the complexity and demands of the task, the skills required and/or the hours of duty.<sup>352</sup>

The pay scale is reviewed annually by the Secretary of DJCS. However, we understand that the daily rates of pay for people in custody have not increased since 28 April 2015.<sup>353</sup>

These rates of pay are well below rates of pay in the community. While there are significant benefits to supporting people in custody with access to 'real world' employment in an industry context, the conditions and pay should approximate community standards – as a matter of fairness, to comply with international law and to support people to meet their needs while they are in custody and when they transition back into the general community.

### International labour law requirements

The International Labour Organization (ILO) Convention No. 29, which Australia ratified in 1932,<sup>354</sup> obliges signatory states to suppress the use of forced or compulsory labour in all its forms. The convention includes an exception for compulsory labour involving people who have been sentenced by a court of law, who are under the supervision or control of public authority and who are not employed by private individuals, companies or associations. However, the convention does apply to labour connected with the private sector, recognising a heightened risk that private companies could exploit prison labour where people are legally employed at wages far below the minimum wage.

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<sup>350</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) ('Nelson Mandela Rules') See Rules 96-103.

<sup>351</sup> Commissioners Requirement 4.1.1 'Prisoner Monies', Scale of Prisoner Earnings (Schedule 1). [https://files.corrections.vic.gov.au/2021-06/4\\_3.docx](https://files.corrections.vic.gov.au/2021-06/4_3.docx).

<sup>352</sup> Commissioners Requirement 4.1.1 'Prisoner Monies', Scale of Prisoner Earnings (Schedule 1). [https://files.corrections.vic.gov.au/2021-06/4\\_3.docx](https://files.corrections.vic.gov.au/2021-06/4_3.docx).

<sup>353</sup> Commissioners Requirement 4.1.1 'Prisoner Monies', Scale of Prisoner Earnings (Schedule 1). [https://files.corrections.vic.gov.au/2021-06/4\\_3.docx](https://files.corrections.vic.gov.au/2021-06/4_3.docx).

<sup>354</sup> Australia ratified the Optional Protocol to Convention No. 29 on 5 April 2022. [Australia ratifies International Forced Labour Protocol | Australian Minister for Foreign Affairs \(foreignminister.gov.au\)](https://www.foreignminister.gov.au/news/australia-ratifies-international-forced-labour-protocol).

Article 2(2)(c) of Convention 29 allows people in custody to work for private companies 'only where prisoners work in conditions approximating a free employment relationship'.<sup>355</sup> The ILO Committee of Experts requires that people who work for private entities do so voluntarily and on balance, the 'circumstances in which the prison labour is performed should not be so disproportionately lower than the free market that it could be characterized as exploitative'.<sup>356</sup>

Prison work involving private entities could include instances where people in custody work:

- ▶ with a private entity as part of an educational or training scheme
- ▶ in workshops within the prison to produce goods sold to private entities in the open market
- ▶ outside of the prison for a private entity as part of a pre-release scheme
- ▶ within prisons, contributing to the running of correctional facilities managed by private entities
- ▶ with private forms outside of the prison during the day, returning at night.<sup>357</sup>

It is worth noting that the ILO Committee of Experts has sought information from Australia about how people in custody working for private enterprises in Victoria give their informed consent, and what measures are taken to ensure consent is formal and freely given.<sup>358</sup>

In summary, the ILO obligations mean that DJCS must ensure work performed by people for private enterprises or within private prisons is truly voluntary and includes normal wages and employment conditions approximate to the relevant economic sector, allowing for differences that account for deductions for food and lodging.<sup>359</sup>

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<sup>355</sup> Eradication of forced labour, International Labour Organization (ILO), Forced Labour Convention, 15 February 2007, Chapter II, para. 11.

<sup>356</sup> General Report of the Committee of Experts on the Application of Conventions and Recommendations, adopted 2018, published 108th ILV Session (2019) on Articles 1(1), 2(1) and 2(2)(c) of the Convention. Privatization of prisons and prison labour. International Labour Organization Conference, 89th Session, 2001, p. 46, para. 143. [www.ilo.org/public/libdoc/ilo/P/09661/09661\(2001-89-1A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2001-89-1A).pdf).

<sup>357</sup> International Labour Organization, 'Combating Forced Labour: A handbook for employers & business, special action programme to combat forced labour' (2015), p 15-16. [ILO Handbook Booklet 2 - FAQs.indd](#).

<sup>358</sup> See 'Observation: Australia of the Committee of Experts on the Application of Conventions and Recommendations, adopted 2018, published 108th ILV Session (2019) on Articles 1(1), 2(1) and 2(2)(c) of the Convention. Privatization of prisons and prison labour. [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\\_COMMENT\\_ID,P13100\\_COUNTRY\\_ID:3780323,102544:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:3780323,102544:NO).

<sup>359</sup> International Labour Organization, 'Combating Forced Labour: A handbook for employers & business, special action programme to combat forced labour' (2015) 16. [ILO Handbook Booklet 2 - FAQs.indd](#). See also Rule 100, Mandela Rules.

## Experiences of people in custody

We heard from a number of people in custody that their limited wages made it difficult to buy necessities such as toiletry items and maintain family connections by adding money to their phone accounts. Many people expressed their concerns about the cost of phone calls:

'Prices for phone calls and food at the canteen have gone up, but our wages have not.'

**Person in custody**

'Phone calls also cost a lot. The pay structure isn't much, \$26 a week and things you can purchase are expensive. Body wash is \$5. The price of basic toiletry items is about \$15. That only leaves \$10 a week for calls – it's not enough. It limits me to one call to family member per week.'

**Person in custody**

In its submission to the Cultural Review, the Human Rights Law Centre reflected on the connection between low pay and barriers to remaining connected to family and community supports – such as the cost of phone calls.<sup>360</sup>

We also heard that there are limited avenues for people in custody to raise concerns about their conditions of employment and occupational health and safety issues. We heard examples of people feeling like they were treated unfavourably for raising concerns about pay conditions and the disparity between living costs within prison and the cost of living in the community.

One person in custody perceived that employment in industries is prioritised over educational opportunities because people in custody were 'cheap labour':

'Education classes were peripheral to the main daily activity of the prison, enforced attendances in the cheap-labour work factory sheds were a more acceptable "work ethic" ... Classes were usually attended by those desperate to merely escape the mindless drudgery of the work sheds, but unwilling to risk a "disciplinary report".'

**Person in custody**

Through our engagement, we also heard that there are work areas which are better paid than others because of the nature of the work. We heard that people working in industries such as manufacturing goods typically earned higher wages than roles which provide personal care or other services within the prison – such as mentors to people with intellectual disability or those who provide translation services for linguistically diverse groups in custody.

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<sup>360</sup> Human Rights Law Centre, Submission to the Cultural Review (December 2021).

The experiences we heard about – of people being paid below community rates of pay and not being able to afford basic essentials such as telephone calls and personal care items – align with perceptions that the labour and rights of people in custody are not valued in the same way as people in the community.

We encourage DJCS to closely consider fair pay for people in custody as part of its consideration of meaningful employment and industry pathways.

**Recommendation 6.23**

**Increased connections to meaningful work and education programs to expand post-release opportunities**

The Department of Justice and Community Safety should continue to expand the work and education opportunities available to people in custody to ensure they provide the skills, capabilities and qualifications to enable people to leave custody with expanded work and education opportunities.

This should include:

- a) expansion of industry schemes across the adult custodial corrections system to help people in custody secure stable and continuing employment upon release
- b) ensuring that people in custody receive fair and appropriate remuneration for prison-based employment
- c) expansion of the community permit scheme to help people in custody regularly access community work and education opportunities while they are in custody, and secure supporting stable and continuing employment upon release
- d) expanded access to digital resources and technology to support digital literacy and inclusion
- e) system-wide measures to track and report on the completion of education and training courses and qualifications by people in custody.

This should include consideration of whether there is equal opportunity in the work and education opportunities available to women in custody.

Building on existing work within the system, particular attention should be given to building stable and well-remunerated industry and employment pathways for women leaving custody.



## Building increased transparency on delivery of work and education programs within the system

Participation in work and education programs is guided by Corrections Victoria’s Education and Training Quality Framework and tracked through SDOs for each prison location.

The Education and Training Quality Framework and contract management process monitors and evaluates education and training service delivery in prisons. There are four SDOs that assess the rates of participation in education, training and employment:

<b>SDO 14</b>	Percentage of prisoners in-scope engaged in purposeful activity for a minimum of 60 hours per fortnight.
<b>SDO 15</b>	Percentage of prisoners in-scope actively participating in approved education and training. Actively participating means any prisoner in-scope who has attended an approved education and training service at least once in the relevant month.
<b>SDO 16</b>	Percentage of education and training units of competency/modules closed enrolments that resulted in a prisoner successfully completing that unit of competency/module. Successful completion means those prisoners assessed as competent (passing the education and training unit of competency/module), including by recognition of prior learning
<b>SDO 22</b>	Percentage performance of gross industry sales, year-to-date against sales targets. Gross industry sales means the amount of sales revenue generated by the prison industry before expense deductions.

As is the case for many other measures within the custodial system, these performance outcomes focus on activity or outputs within the system, rather than assessing outcomes that connect to a broader system purpose.

As part of the broader review of SDOs (see Part 2 for further discussion), we recommend that DJCS consider assessing the completion of education and training rather than enrolments, to better focus on education outcomes. This should be coupled with closer monitoring, evaluation and reporting of education, training and employment programs within the adult custodial corrections system.

## Ensuring that people in custody do not experience technological barriers and exclusion

When people leave custody, they may return to a world where technology and information systems have changed significantly. This can affect their workforce participation and access to essential government services.

In its submission to the Victorian Parliament’s recent Inquiry into Victoria’s Criminal Justice System, VACRO noted that poor digital literacy can impact a person’s reintegration and likelihood of reoffending:

'The participants we encounter in our programs are often experiencing "digital exclusion". Those on longer sentences in particular are not equipped with the skills to participate in daily life in a world where the internet and technology are now essential. Looking for accommodation, applying for jobs, opening a bank account, registering with Centrelink, getting a Medicare card: all these things require digital skills and devices that prison prevents our participants from obtaining. Such digital exclusion is a clear obstacle to reintegration at the point of release. It also limits opportunities for people in prison to engage with services, programs, and interventions that might support their efforts to desist from crime post-release.'<sup>361</sup>

**VACRO**

We understand that DJCS offers programs to help people in custody build their digital literacy and other foundational skills to equip them for life back in the general community. Vocational counselling and employment programs are also offered to link people in custody to education, training and employment options that can continue after their release.<sup>362</sup>

There is support from stakeholders for increasing digital access for people in custody to support a range of social, therapeutic, educational and rehabilitation goals and the development of skills that will support a person's transition to the community.

However, we heard that the current limitations on internet access for people in custody restricts the development of key digital literacy skills. In its submission to the Cultural Review, Liberty Victoria noted that inadequate computer literacy skills may affect people's employment options following release:<sup>363</sup>

'It is not an understatement to observe that, in the modern digital world, online skills are increasingly necessary to meaningfully participate in society.'

**Liberty Victoria**

Liberty Victoria recommended controlled expansion of internet access for people in custody, pointing to the practice in ACT's Alexander Maconochie Centre wherein people in custody have access to a basic in-cell computer that offers a limited email facility and limited access to approved websites.<sup>364</sup>

In a similar vein, the recent Inquiry into Victoria's Criminal Justice System recommended that DJCS develop and implement a digital access policy for Victorian prisons.<sup>365</sup> We consider that expanding digital access for people in custody will create new opportunities and rehabilitation pathways.

<sup>361</sup> VACRO cited in Legislative Council Legal and Social Issues Committee, Inquiry into Victoria's criminal justice system (Report, Volume 1, March 2022) 661.

<sup>362</sup> Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's criminal justice system* (Report, 2022) vol 1.

<sup>363</sup> Liberty Victoria, Submission to the Cultural Review (December 2021)

<sup>364</sup> *Ibid* 9.

<sup>365</sup> Parliament of Victoria Legal and Social Issues Committee, Inquiry into Victoria's criminal justice system (Report, Volume 1, March 2022) 663.

There are also examples from other jurisdictions that show the benefits of combining the development of new skills with ongoing connections to employers in the community.

### **Future-proofing people in custody for a modern workforce – Teaching tech skills in prisons**

Since 2017, people in custody in Her Majesty's Prison Humber (HMP Humber) in East Yorkshire have been learning computer programming as part of their prison education program. Training is led by Code4000, an organisation that works to reduce reoffending by teaching people in custody how to code and prepare them for employment in the tech sector.

Code4000 participants take part in a four-stage program led by volunteers and industry experts:

- ▶ **Stage 1** – Participants are trained in basic and advanced coding techniques.
- ▶ **Stage 2** – Participants have the opportunity to work on real-world projects for external clients, providing income that is reinvested into the project.
- ▶ **Stages 3** – Temporary day release permits allow participants to work for clients in the community.
- ▶ **Stage 4** – Participants are supported to find full-time employment as developers in time for their release.<sup>366</sup>

Following a successful trial at HMP Humber, in 2019 the United Kingdom Department for Digital, Culture, Media and Sport invested \$100,000 to expand the program to HMP Holme House in Stockton-on-Tees. This investment was also intended to fund a new employment hub in Sheffield, providing support, mentoring and training for graduates once they returned to the community.

There are currently 18 Code4000 graduates in the community, of which 40 per cent went into employment after leaving custody, all in the tech sector. In total, 85 per cent of graduates remain engaged in positive activity, in either employment, education or training. None have returned to custody.<sup>367</sup>

The program is modelled on programs run by the Last Mile, a charity which has been delivering computer training programs in prisons in the United States since 2010. Since its inception, the Last Mile has welcomed 974 students, of which 379 have successfully reintegrated into the community. As with graduates of the Code4000 program, no graduates of the Last Mile have returned to custody.<sup>368</sup>

<sup>366</sup> Gov.UK, Coding to be taught in prison to help offenders return to the world of work, (Web page, 2019) <https://www.gov.uk/government/news/coding-to-be-taught-in-prison-to-help-offenders-return-to-the-world-of-work>.

<sup>367</sup> Code4000, "Teaching Tech Changing Lives: Breaking the Cycle of Crime by Teaching Prisoners Coding," [https://code4000.org/static\\_pages/about](https://code4000.org/static_pages/about)

<sup>368</sup> The Last Mile: Paving the road to success, 'About', Available at: <https://thelastmile.org/about/#:~:text=It%20is%20the%20first%20program,and%20professionally%20with%20%25%20recidivism> Note: the US recidivism rate is over 55 per cent.

## Increasing participation in other sporting, social and recreational activities

To the extent possible, people in custody should be able to participate in a range of activities that broadly reflect those available in the community. Alongside work and education programs, sporting programs are an opportunity to build life skills and connection, to support a person's transition back into the general community upon release.

The Centre for Multicultural Youth submitted that culturally relevant recreational programs can provide access to mentors and relationships that assist a young person's rehabilitation.<sup>369</sup> They supported long-term investment in culturally relevant sport and music programs and identified the likelihood that these programs would attract high levels of participation due to the alignment with young people's interests and abilities.<sup>370</sup>

Participation in sport in prisons has been demonstrated to provide physical and mental wellbeing benefits, aid in rehabilitation through the development of prosocial skills and improvements to self-esteem and become a productive tool for managing the behaviour of people in custody.<sup>371</sup>

Sport programs that connect people in custody with coaches and other participants from the wider community can provide role models and encourage the development of new positive support networks. Through partnerships with community sport programs, prison-based sport programs provide the opportunity for people in custody to transition to similar programs in the community upon their release, supporting their reintegration and reducing recidivism.<sup>372</sup>

As well as expanding the range of players available to local clubs, programs that enable people in custody to participate in local sporting clubs in appropriate circumstances can be valuable for a person's rehabilitation and reconnection to community. For example, the Black Rhinos sporting program has assisted young people from the African community to connect with their culture and community through basketball.

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<sup>369</sup> Centre for Multicultural Youth, Submission to the Cultural Review (December 2021)2-3.

<sup>370</sup> Ibid.

<sup>371</sup> Gallant, D., Sherry, E., & Nicholson, M. 'Recreation or rehabilitation? Managing sport for development programs with prison populations' (Sport Management Review, 2015) 18(1), 45-56.

<sup>372</sup> Ibid.

### **The Black Rhinos basketball program**

The Black Rhinos basketball program is a community crime prevention initiative that supports young African Australian men living in and around the south-eastern suburbs of metropolitan Melbourne. It represents a culturally responsive approach to engaging young people through sport.

The program is managed by Afri-Aus Care Inc., an African-led grassroots community organisation that provides reintegration and resettlement support services for culturally diverse communities, including African Australian at-risk youth and their families.

The program is informed by the African philosophy of *Ubuntu*, which emphasises interconnectedness, collective belonging and mutual responsibility. Alongside sports training, participants in the program have access to culturally appropriate counselling support, legal advice and education, as well as intake, assessment and referral to other programs and services.

Afri-Aus Care founder Selba-Gondoza Luka told us that the program was recently extended to the Metropolitan Remand Centre and Marngoneet Correctional Centre in response to requests by some of the young people who had participated in the program while in the community:

‘What happened was we now started bringing our Ubuntu practice into prison through basketball, which these boys really like. So, the connection has started from inside. The Black Rhinos players could see how the other boys were doing, not having freedom at all to go back home as they were locked up in jail. Some of the inmates upon release, they knew exactly where to come, they would come to Afri-Aus Care for support and referral services, we would link them with Centrelink, housing as well or other organisations that we work with. And we have seen perfect transition of young people.’<sup>373</sup>

A 2021 evaluation of the program conducted by the University of Melbourne found that it contributed to reducing participants’ likelihood of offending or reoffending. The evaluation recommended that the program be adequately resourced and expanded to reach more young African Australians.<sup>374</sup>

The *Corrections Act 1986* recognises the value of community sport and recreation for people in custody – section 57B includes provision for a Rehabilitation and Transition Permit.<sup>375</sup> We support greater use of community permits to help people in custody strengthen their connections and access community life ahead of their release.

Guidelines for the use of Community Team Sport Permits explain their purpose as ‘breaking the cycle of unhealthy lifestyles’ and providing opportunities for people in custody to have positive interactions with the local community.<sup>376</sup>

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<sup>373</sup> Dr Stephane Shepherd, Swinburne University and Selba-Gondoza Luka, Afri-Aus Care - Expert interview with the Cultural Review.

<sup>374</sup> Onsando, G., Johns, D., Bediako, K., & Onuogu, P. *Evaluation of the Black Rhinos Basketball Program: The Ubuntu philosophy perspective*. Melbourne, VIC: School of Social and Political Sciences, (2021, University of Melbourne).

<sup>375</sup> Department of Justice and Community Safety (Corrections Victoria), *Custodial Community Permit Program Guidelines*, Section 3 – Rehabilitation and Transition Permits, 31.

<sup>376</sup> *Ibid.*

Authorisation for people in custody to participate in community sports programs depends on the individual's circumstances and their progress toward rehabilitation and reintegration. When a person in custody applies for a Community Team Sport Permit, there is a process for notifying any potential victims of the person's earlier offending, and people convicted of certain categories of offences are not eligible for these permits.

Programs that combine in-custody and community-based recreation and sporting opportunities can foster stronger connections between the closed environment of the adult custodial corrections system and the general community, as well as normalising the movement of people between custody and the community where it is deemed safe and appropriate.

### **Using community permits to support access to services, rehabilitation and transition**

Expanding use of community permits can help build stronger connection between people in custody and the community. Social supports and connections to services can play an important role in assisting people toward their rehabilitation and transition and support their health and wellbeing.

Community permits may be used to facilitate:

- ▶ **family visits** – regular access to home visits and family occasions
- ▶ **healthcare** – access to primary and specialist care in the community
- ▶ **work and education** – access to real-life work and education opportunities in the community
- ▶ **sports and recreation** – access to prosocial sporting and recreation opportunities local clubs
- ▶ **transition** – access to services and supports in the community, including banking and other administrative processes.

Increased use of community permits should be embedded in integrated case management, available to eligible people throughout their time in custody. As a person approaches their release date, the use of community permits will bridge the transition and support a person to return to life in the general community.



## 23 Improving access to transition and reintegration support and connections to social services sector

When a person reaches the end of their time in custody, their return to the general community is a moment of significant transition and change. For some, it can be an opportunity to reconnect with family and friends and establish a new life; but it is also a time of increased risk. How this transition is handled can influence a person's chances of reoffending and returning to the criminal justice system. Planning for successful transition and social reintegration is a final opportunity for the adult custodial corrections system to improve outcomes for both the individual and community safety.

More focused assistance, coordination and consideration of a person's transitional needs and issues is required as a person approaches the end of their time in custody. While this may be more challenging to predict for people on remand, the system can do more to support people under sentence to prepare for their return to the general community even within the practical and security limitations of the custodial environment.

Most people exit prison without any significant exposure to ordinary community life or independent living before their release. Some people may be released into the community after living under long-term management regimes – conditions that provide little to no opportunity for them to develop skills and coping mechanisms to conduct and care for themselves appropriately outside of prison. Current arrangements provide limited access to 'step down' responses and community permits to assist with the process of 'normalisation'.



### What is 'normalisation'?

Normalisation is an emerging concept in research on custodial environments. While there are varying interpretations of the concept in academic literature, normalisation typically involves bringing elements of 'normal' life into the custodial environment and conditions of imprisonment. Normalisation initiatives are often founded on ideas of retaining basic human rights and supporting reintegration post-release.

Normalisation can mean different things at a collective and individual level:

- ▶ At a collective level, normalisation means making services accessible in free society, such as healthcare, available in prison and meeting the same standards of quality as far as possible.
- ▶ At an individual level, normalisation means enabling people in custody to maintain other social roles, such as parent, child or friend.

'Normalisation assures prisoners legal position as part of society, their social position and their need for self-development as individuals.'<sup>377</sup>

Currently, the adult custodial corrections system does not adequately resource the types of approaches and facilities – such as JLTC – that have been shown to support a holistic approach to transition from custody and reintegration into the general community.

JLTC and other transitional approaches acknowledge the importance of restrictions being stepped down and individual participation increasing toward the end of the custodial sentence, to prepare people for living autonomously in the community. While there will always be people in custody who should not have access to the community during their sentence due to their risk, for many people, with good planning, supervision and support, community access will contribute to successful transition.

Significantly, the rates of reoffending for people leaving JLTC are much lower than the general custodial population.<sup>378</sup> Despite this, only a small number of men have access to places at JLTC. There is no equivalent residential transitional facility for women exiting custody and no specific facility for Aboriginal people preparing to exit the custody. In this chapter we recommend an investment in infrastructure and more intensive approaches to offer more people access to the demonstrated benefits of transitional living and support.

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<sup>377</sup> Jill van de Rijt, Esther van Ginneken, Miranda Boone, *Lost in translation: The principle of normalisation in prison policy in Norway and the Netherlands Punishment & Society*, (2017) 1-18. Available at [Lost in translation: The principle of normalisation in prison policy in Norway and the Netherlands \(sagepub.com\)](https://www.sagepub.com).

<sup>378</sup> Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, 2015).8;102. This report quotes recidivism data that indicates that the recidivism rate for Judy Lazarus Transition Centre prisoners is 10.4% compared to 44.1% for the overall prison population.

Many of the factors that influence successful transition and reintegration are beyond the scope of the Cultural Review. This includes the operation of the parole system and the delivery of post-release services through community corrections and community-based support agencies. Regardless, there is still a critical role for the adult custodial corrections system in creating the conditions, connections and capability for a person to safely bridge the gap from custody to returning to the community as someone's neighbour.

### Key findings – Improving access to transition and reintegration

- ▶ Providing transition support should be a key pillar of a person-centred and integrated approach to the management of people in custody, yet there are significant gaps in the current delivery of transitional support.
- ▶ The churn of people through custody – including people serving short sentences or on remand – result in people 'falling through the cracks' and not having access to effective support with community transition and social reintegration.
- ▶ There is insufficient capacity within exiting transitional facilities, which are a critical step in the reintegration journey. Very few people within the system have access to residential transitional support, with only a limited number of beds at JLTC available to men in custody.
- ▶ There are no dedicated pre-release residential transitional facilities for women or Aboriginal people.
- ▶ Most people are released without having had any supervised or structured access to community living.
- ▶ There are additional challenges for meeting the rehabilitation and transitional needs of people on remand and people serving short sentences.

# What participants told us about **TRANSITION**

**People in custody are not supported for successful release and reintegration.**

👤 Honestly I don't feel very supported. I feel like it's, myself included and all of the other people here, that it comes down to, "Oh yeah, they're coming up for release. Let's tick all the boxes and get them out the door. Next one's coming through." It's like moving cattle or sheep. That's what it's like.

*Person in custody*

**People in custody need more access to practical transition programs and intensive transition support.**

👤 If we are able to help a prisoner [with housing] when released it's nowhere long term. It's, 'we'll put you up at a hotel overnight and tomorrow you go to this central housing hub and they'll support you with longer term conditions.' But of course, that crisis accommodation that they put them up in a hotel is in one of the few hotels that will accept our clients, so it's rife with drug abuse and other unsanitary sort of people, or it's crisis shared accommodation in a hostel where we tend to send all of our prisoners that have been discharged, and they're like 'it's setting me up to fail', and they're not wrong. But there are bigger societal issues around lack of housing.'

*Staff member*

**Staff recognise the importance of transition support for people in custody.**

👤 So many people are released from here, they don't have a proper job, they don't have decent accommodation. If you haven't got those things, where are you going to go? You're going to go back into your old life to survive... They're going straight back to the environment that's going to lead them straight back here. We need better post release support for prisoners.'

*Staff member*

👤 The best advice I received when I started was "One day these people might be your neighbour". So, I treat them as though I would treat someone on the street that I just met or someone that I'm engaging with through the supermarket ... or whatever because they could actually be my neighbour ... My view is that the best way is to deal with respect for them and treat them as though they're a neighbour, not a prisoner.'

*Staff member*



## Value of transitional support and reintegration

Preparing a person for return to the community and reducing the risk of recidivism should involve, where appropriate, a combination of practical and emotional support, alongside the development of skills and connections to prepare a person to return to the community.

As noted, above, it is important, particularly for people serving short sentences and on remand, for their preparation for release to begin when they enter prison. This concept is captured by the notion of ‘throughcare’ which recognises that the work of supporting transition and reintegration must be embedded into a person’s entire experience in custody.

A key principle under international law and underpinning the criminal justice system is that, within a custodial sentence, a person should be provided with opportunities to change and develop:

‘The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.’<sup>379</sup>

**International Covenant on Civil and Political Rights, Article 10 (3)**

‘The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead law abiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self-respect and develop their sense of responsibility.’<sup>380</sup>

**Mandela Rules – Rule 91**

The World Health Organization also recognises the importance of transitional support and reintegration as one of the four key principles in the Healthy Prison test incorporated into jurisdictional inspection standards in the United Kingdom:

‘Prisoners are supported to maintain and develop relationships with their family and friends. Prisoners are helped to reduce their likelihood of reoffending and their risk of harm is managed effectively. Prisoners are prepared for their release back into the community.’<sup>381</sup>

<sup>379</sup> United Nations (General Assembly). “International Covenant on Civil and Political Rights.” Treaty Series, vol. 999, Dec. 1966, Article 10(3).

<sup>380</sup> United Nations General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners, GA Res 70/175, UN GAOR, 70th sess, Agenda Item 106 (17 December 2015) (‘Nelson Mandela Rules’) rule 91.

<sup>381</sup> HM Inspectorate of Prisons, Our Expectations, (Web page, 2021) [Rehabilitation and release planning \(justiceinspectorates.gov.uk\)](https://www.justiceinspectorates.gov.uk/rehabilitation-and-release-planning/).

Yet, it is no easy task to support the redirection of a person's life trajectory, particularly where they have complex histories of offending, backgrounds of abuse, poverty and disadvantage. As discussed earlier in this report, the adult custodial corrections system must be set up to support reintegration including through a joined-up approach with the social services system. It is not the work of corrections staff alone to ensure a person can successfully reintegrate in the community; it also requires investment to extend available transition and reintegration support to benefit more people leaving custody.

There are some basic prerequisites that should be met before a person's release date including:

- ▶ access to housing
- ▶ access to a bank account and Centrelink payment (if required)
- ▶ career counselling, the development of a CV and employment or training plan
- ▶ a health and dental check and access to Medicare and essential medication
- ▶ access to identification and any documents required to live in the community
- ▶ connections with programs to continue their support and rehabilitation
- ▶ connections with parole officers and others who will play role in their reintegration journey
- ▶ connection with family or other social support networks.

As far as possible, every person should leave prison with these arrangements already in place and an individualised plan for how they will live in the community.

It was clear through our engagement that for people leaving custody, practical challenges accessing banking, Centrelink, housing and social support networks can unwind progress they have made while in custody:

'Community readiness has to be a priority at the prison ... I know it might be hard but you're just going to get people going back. As soon as they haven't got any money to eat, they're going to commit a crime. Day one – identify the problem, identify the problem and fix it ... in my case for instance, I didn't have a bank account and I spent months trying to get one. In the end, it didn't happen, but I was able to get one when I got home. It needs a greater priority, otherwise they're going to keep coming back ... [Some are] in a sort of a helpless, hopeless situation. They're sleeping in their cars and they get desperate. It gets cold in winter so they go and kick a window in, in a shop somewhere. They'd rather spend the winter in jail than in the car ... Especially as they get older. As somebody who is getting older, I've got empathy for these guys.'

**Person formerly in custody**

In addition to these basic needs, each person will have their own needs and goals which will require support. Best practice transitional support requires staff to plan for and facilitate these connections and development of life skills, alongside the stepping down of a person's security regime to enable them to increase their participation in prison and in community life (under supervision). As discussed below, many other jurisdictions offer transitional programs for people preparing to exit custody, including home leave and other temporary access to the community to undertake employment and other activities during the final months and years of their sentence.

Increased access to family and community can be provided as part of a residential transitional support program or integrated into existing custodial arrangements. Where it is not possible to facilitate in-community access to family and supports, additional effort should be made to facilitate video conferencing and visits, to strengthen a person's relationships and social support network before their release.

Many of these examples are reflected in Commissioner's Requirements and the CVRP model. However, through our engagement we have identified a significant gap between policy and practice which is resulting in many people being released without support, housing or skills to cope in the community. In addition, there are currently very few opportunities for people to build skills and connections in the community while serving a custodial sentence.

## Existing transitional supports provided within the custodial system

The value of transitional support for individual and community safety is recognised within the adult custodial corrections system. Under the Commissioner's Requirements, planning for a person's transition back into the general community should commence as soon as they enter custody. This creates an expectation that the processes supporting transition and reintegration should be embedded throughout a person's time in custody:

'Effective transition planning commences on entry to prison, forms part of ongoing prisoner case management, intensifies closer to release and may involve a period of post release support where required.'

**Commissioner's Requirement 3.1.1**

This aspiration was reflected back to us by corrections leaders we spoke to:

'It's really important to acknowledge that addressing someone's transition needs starts as soon as they arrive. People come into the system with a whole range of threads that we need to pick up, from a throughcare perspective, and address so that they don't become worse on the other end.'

**Expert interview**

However, in practice we heard that the orientation of the system results in a concentrated period of transition support only when a person becomes eligible for release into the community. We also heard that limited facilities and resources can limit access to transition support.

## Corrections Victoria Reintegration Pathway

The CVRP model aims to provide a continuum of responses based on the individual needs of people in custody. It aims to respond to the increased risk for people leaving custody and support people to access:

- ▶ housing
- ▶ employment
- ▶ education and training
- ▶ independent living skills
- ▶ mental health
- ▶ alcohol and drugs
- ▶ family/community connectedness.

There are multiple steps to the CVRP model and it provides access to a number of pre- and post-release support programs.<sup>382</sup> Under the CVRP model when a person enters custody they receive support from an assessment and transition coordinator to identify and address the immediate transitional needs that might escalate or compound over their time in custody. This could include, for example, support with housing or debt reduction:

'When people first come in, the Assessment & Transition Coordinator [ATC] assessment is focused on wrapping up loose ends in community. This might include housing situation, loans/debts, Centrelink, child support, people who are state trustees. The second assessment is focused on case planning transition, assessing the prisoners needs for reintegration so things like substance use issues, mental health diagnosis and supports, physical disabilities, understanding their pro social supports. Once assessed, the ATC's role is to link the prison with services for community and internally.'

**Staff member**

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<sup>382</sup> See Department of Justice and Community Safety (Corrections Victoria), Transitional Programs (Web Page, 2021) <https://www.corrections.vic.gov.au/release/transitional-programs>.

People then move through different stages and support programs based on their legal status and identified needs.<sup>383</sup> This could include a combination of

- ▶ **ReGroup** – aims to commence planning for the person's transition back into the community and can also help identify people who may be eligible for more intensive transitional support programs.
- ▶ **ReLink** – intensive transitional planning support based on a person's identified needs.<sup>384</sup> It is delivered by VACRO at all locations except Metropolitan Remand Centre, Melbourne Assessment Prison, Ravenhall and JLTC. There are two levels of support within ReLink based on assessed need.
- ▶ **ReStart** – post-release support for people on remand or with a sentence of three months or less, with complex reintegration needs.<sup>385</sup>
- ▶ **ReConnect** – a voluntary post-release support program delivered by VACRO, providing assertive outreach and practical assistance for people returning to the community.<sup>386</sup>

While the CVRP model represents good practice, not all people have access to the support provided through these programs. We heard examples of people being released without any practical assistance or access to transitional support. We also heard of challenges related to the high churn of people through the system, with a large remand population and people serving shorter sentences making it more difficult to plan for their return to community:

'[My family member] did do some rehabilitation classes to teach them how to survive once they leave prison, and [the facilitator] would say to them, "I don't know why I'm telling you guys this; you're all going to end up back in here anyway." Within prison, he just was demoralised the whole time. Not built up to think of himself as anything worthwhile. And then on the day of release he was dropped at the train station, and he's lucky, and I think he would be rare in prison populations, but we knew he was being released, so we went to the train station and collected him.'

**Family member of a person in custody**

<sup>383</sup> Ibid.

<sup>384</sup> Eligibility includes all prisoners sentenced to 12 months or more and/or eligible for parole; and the following prisoners sentenced to less than 12 months: High need, Serious Violent or Sexual Offenders (as determined by the Reintegration Assessment); Women prisoners; Aboriginal prisoners; and prisoners sentenced to a CCO-Imprisonment Order.

<sup>385</sup> ReStart provides eligible prisoners with up to three months intensive, assertive outreach support to promote sustainable links and reintegration back into the community by engaging pre-release and developing individualised transition plans. Once referred, prioritisation is made for the following prisoner cohort (in no particular order): Women prisoners; Aboriginal and Torres Strait Islander prisoners; Prisoners with a cognitive impairment (intellectual disability, low functioning and acquired brain injury); and young prisoners (aged between 18 and 24 years of age).

<sup>386</sup> To be eligible for ReConnect a person must have a sentence of over three months, and be recommended for post-release support through the ReLink program. All Aboriginal and Torres Strait Islander participants, all female participants, all participants sentenced to a CCO-Imprisonment Order and all high-needs serious violent and sex offenders with sentences of more than three months are eligible for ReConnect.



Additional investment is required to extend the benefits of reintegration support to more people in custody. DJCS has advised that the current post-release support programs – such as ReConnect and ReStart – are only funded to provide approximately 2,800 program placements per year. As a result, programs are targeted at those assessed as having the highest level of complex transition need and many people leave prison without this support.

While the provision of post-release support is outside the scope of the Cultural Review, we recognise there has been recent investment in post-release accommodation in the community, including through the establishment of the Maribyrnong Community Residential Facility and investment in partnerships with community-based organisations to provide continuity of support as people transition from custody to the community. However, there continues to be a gap between demand for transitional support and the level of investment which limits the benefits to a small proportion of the overall custodial population.

## Delivery of residential transitional support

Residential transitional facilities create opportunities for intensive support and community connection for people leaving custody. Residential transitional centres can provide:

- ▶ safe and secure low-security accommodation suitable for a range of cohorts including older people and people with a disability where the infrastructure mirrors community-based apartments or units
- ▶ a strength-based model that aims to build self-sufficiency, life skills, confidence and self-respect through supportive relationships with staff
- ▶ intensive rehabilitative and transitional support with a focus on attaining community-based skills, education and employment, and secure housing post-release
- ▶ an integrated case management model where residents work closely with corrections staff, social workers and others to facilitate reintegration
- ▶ an incentive-based system with increasing access to time in the community including home and family visits
- ▶ opportunities to establish and enter community-based programs, services and supports including to support physical and mental health and ongoing rehabilitation in the community.<sup>387</sup>

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<sup>387</sup> See generally Department of Justice and Community Safety, Corrections Victoria, Transition from Custody to Community, (Issues Paper, 2001) [https://files.corrections.vic.gov.au/2021-06/transition\\_0.pdf](https://files.corrections.vic.gov.au/2021-06/transition_0.pdf).

Only a limited number of people in custody have access to dedicated residential reintegration pathways through placement at JLTC.<sup>388</sup> The JLTC model supports residents to build connections within the general community on a more regular basis than people living in other minimum-security facilities. This can include visiting their families for up to 48 hours each week, attending work experience for two days a week, studying toward qualifications, accessing community support agencies, joining community groups (including sports and recreation) and volunteering at community organisations/events.<sup>389</sup> The program is based on a person's individual needs, strengths and goals.

During our engagement, we observed the way that staff at JLTC worked to support residents and provide active case management, including maintaining relationships with parole officers and support services to ensure a coordinated approach to their return to community life.

While people in custody may be eligible for access to the community through the use of Transition and Reintegration Permits across other other locations, the importance of building tangible community connections is more embedded in the approach at JLTC. One of the clear advantages of this facility is the orientation of the staff toward reintegration of people into the community. Staff actively assist residents to access education and training, employment, stable accommodation, counselling and establishing or improving community and family ties.

### In-prison arrangements to support transition

In addition to dedicated transitional facilities, there are locations and units that are specifically designed for people with minimum security ratings to live in a way that builds their independence, life skills and preparedness for release. This includes cottage- and apartment-style accommodation at medium- and minimum-security locations with self-catering facilities.

During our site visits, we noticed the sense of wellbeing of people living in these 'communities' and their pride in cottage and lodge accommodation.

On a number of occasions, we observed people cooking, cleaning and maintaining their living quarters. We heard that people living in this style of accommodation enjoyed being able to cook their own food and that navigating a shared budget with their roommates was both a learning opportunity for some people who had never done this in the community, and also a preferable way of managing food allowance while in custody. People told us that, on the whole, living with others provided a sense of community and companionship.

Prison environments, living conditions and routines that correspond with normality, as far as practicable, reinforce a sense of dignity and respect, and provide opportunities to build skills necessary for a self-sufficient life on release.

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<sup>388</sup> JLTC can currently only accommodate 25 people exiting the system which, in the 2018–19 reporting year represented approximately 0.3 per cent of the total Victorian prison population. There is no equivalent centre for women or Aboriginal people.

<sup>389</sup> Department of Justice and Community Safety (Corrections Victoria), *Commissioner's Requirement 3.1.2 Judy Lazarus Transition Centre* (July 2020).

## Mainstreaming reintegration and transition support across the system

To support successful transition and social reintegration there are opportunities to integrate changes to custodial facilities and routines to minimise the differences between life in custody and life in the community, particularly for people who are approaching the end of their sentence. While it is much easier to apply the principle of 'normalisation' to transitional centres, there are still many opportunities to adapt everyday life conditions within prisons.

The physical environment and custodial routine have a role to play in supporting independent living skills, community participation and increased self-reliance. This can help reduce the level of 'institutionalisation' people may experience in custody, through normalisation and incremental change.

The pressure on the system due to the growing proportion of people remand has influenced the configuration of the system and the intended delivery of rehabilitation and reintegration services at some locations. For example, the need to accommodate the growing remand population has required a shift away from the intended use of Ravenhall Correctional Centre and the specific focus on rehabilitation and reintegration.<sup>390</sup> Other locations that were established for people serving sentences are also providing accommodation for people on remand.<sup>391</sup>

As a result, there is now an urgent need for DJCS to renew the process for elements of normal life to be incrementally reintroduced toward the end of a person's sentence, to support safe reintegration.

Mainstreaming reintegration and transitional support across the system – including for people on remand and serving shorter sentences – must begin with more a collaborative and integrated approach to case management that commences the as soon as a person enters custody. This model must recognise the coordinating role of the adult custodial corrections system in supporting rehabilitation and reducing recidivism through integrated and person-centred throughcare within a constructive environment. The model of throughcare must include more intensive transitional support and reintegration support, such as that offered at JLTC.

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<sup>390</sup> The impact of the growing remand population on the use and performance of Ravenhall Correctional Centre was identified in the audit by the Victorian Auditor General. Victorian Auditor General's Office, *Ravenhall Prison: rehabilitating and Reintegrating Prisoners* (Report, 2020).

<sup>391</sup> For example, the Cultural Review heard from staff at Marngoneet how the decision to start accepting people on remand in 2021 had significantly influenced service delivery and the orientation of that location.

These elements include:

- ▶ focused attention to dynamic needs such as housing, appointments in the community, access to Commonwealth entitlements (including Centrelink, Medicare and NDIS) and other issues that affect transition to the community should be assertively supported for sentenced people approaching their earliest release date
- ▶ increasing the use of community permits will also support the development of continuing connections within the community
- ▶ increasing family contact and home release programs.

In addition, DJCS should consider options to use existing infrastructure in a way that enables people to complete their sentence in less restrictive conditions, with increasing access to self-care and catering, and more intensive case management support.

Through these activities and increasing access to community, family and social support, people should build a sense of responsibility, self-respect, connection and confidence to prepare them to move into mainstream community life when they reach the end of their sentence or remand period. Increasing 'privileges' and access to specialist programs and support may also motivate people in custody and provide an incentive for positive behaviour as people prepare for the next chapter of their lives.

## Speciality programs to support family and community connections

Family ties are often strained when a person is incarcerated, and there are limited opportunities to reconnect and strengthen family ties while in custody. Yet, a strong sense of belonging and connection to family or other social support is critical to a person's successful social reintegration.

In the United Kingdom, a review found that people in custody who receive family visits are 39 per cent less likely to reoffend than those who do not and that supportive relationships with family members 'give meaning and all-important motivation to other strands of rehabilitation and resettlement activity'.<sup>392</sup>

Evidence shows maintaining connections with family is particularly important for women in custody – they are more likely to be primary carers or mothers, and separation from their families and other significant relationships impacts their take up and response to programs and services while in custody.<sup>393</sup> They should be afforded appropriate support to maintain and strengthen their relationships,

<sup>392</sup> Ministry of Justice, *The Importance of Strengthening female Offenders' Family and other relationships to prevent reoffending and reduce intergenerational crime* (Report, 2019) 17.

<sup>393</sup> Rossiter, C., Power, T., Fowler, C., Jackson, D., Hyslop, D., & Dawson, A. (2015). Mothering at a distance: What inc Centre for Innovative Justice. (2021). Centre for Innovative Justice, *Leaving Custody Behind: Foundations for safer communities & gender-informed criminal justice system* (Issues Paper, July 2021).

particularly with their children.<sup>394</sup> Aboriginal women may have additional caring responsibilities for children in their kinship network and should also be supported to maintain these caring relationships.

Transition supports for women should include family-focused interventions that recognise the impact that their incarceration has on their childcare, family and cultural responsibilities.<sup>395</sup> Ensuring that a woman's connection to her community is maintained while in custody is a core principle of gender-responsive approaches to criminal justice services.

We heard that family restorative conferences and other processes were particularly helpful for young African men who had become estranged from their families such as Ubuntu Practice facilitated by Afri-Aus Care.<sup>396</sup>

Similar work occurs in other community justice settings including the Neighbourhood Justice Centre, where depending on the wishes of the client, case conferencing may involve family and other professionals. A similar model could be adopted to support people to transition from custody into the community:

'[The Neighbourhood Justice Centre] has problem solving meetings which is kind of like case conferencing but it's very client-centred and driven by the client. It's a process where the client identifies who's going to attend the meeting to support them; so it's not just professionals; it's also people in the community who are significant for them, their families etc ... [These meetings are a] really powerful tool and may actually be a useful process to assist clients transitioning from custody to the community as it affords an opportunity for significant others, both professional and personal, to be aware of issues or concerns the individual has around leaving custody and aware of the strategies in place to assist address these issues.'

Expert interview

## Community permits and leave arrangements

More controlled access to the community helps people in custody develop skills and habits that are compatible with safe, independent lives in the community. A system committed to rehabilitation recognises that people preparing to exist custody need to be supported to make the changes that will assist them to return to community living and avoid returning to custody.

DJCS should consider options to stretch the spectrum of security classifications and settings within the adult custodial corrections system to create opportunities for increased movement between custody and the community (with appropriate approvals) for people in minimum-security settings.

<sup>394</sup> Brunton-Smith, I. and McCarthy, D.J. 'The Effects of Prisoner Attachment to Family on Re-Entry outcomes: A Longitudinal Assessment', *British Journal of Criminology*, (2016) 16; Covington, S., 'The Relational theory of Women's Psychological Development and Implications for the Criminal Justice System' in *Female Offenders: Critical Perspectives and Effective Interventions*, Zaplin, R Editor. (2017, 2nd Edition).

<sup>395</sup> Ibid.

<sup>396</sup> Dr Stephane Shepherd, Swinburne University and Selba-Gondoza Luka, Afri-Aus Care - Expert interview with the Cultural Review.

**Recommendation 6.24**  
**Intensive transitional support and access to community permits across custodial locations**

The Department of Justice and Community Safety should broaden access to the intensive transitional support available at Judy Lazarus Transition Centre across custodial settings. This should include increasing access to community permits across the adult custodial corrections system, commencing with eligible people at low- and medium-security prisons, to facilitate:

- a) community-based employment, training and education
- b) participation in family activities, home visits and daily routines
- c) participation in sport and recreation in the community
- d) access to health and other appointments and services in the community, including the use of warm referrals.

These opportunities should ideally be connected to the community that a person in custody is planning to return to.

Specific attention should be given to the transitional needs of people with substance use disorders and mental health conditions to ensure they establish connections with services in the community they will return to.

## Extending access to intensive residential transition support for people completing sentences

We support the expansion of step-down models of transition centres similar to the JLTC.

The benefits of JLTC are currently concentrated into a small group of men preparing for their return to the community. The Victorian Ombudsman has already recommended that DJCS explore options to provide services available at JLTC to a larger number of people in custody.<sup>397</sup>

We support this recommendation and draw on other similar (post-release) models to demonstrate the value in offering residential transitional supporting for more people as they complete their sentence.

There are existing models for post-sentence transitional support that have successfully reduced rates of recidivism.<sup>398</sup> For example, the Maribyrnong Community Residential Facility, established in the repurposed immigration centre in May 2020, was initially intended to provide temporary accommodation for men released from prison during the pandemic, to help them avoid contracting or

<sup>397</sup> 'Recommendation 17: Investigate and provide options to government for replicating the services available in the Judy Lazarus Transition Centre for women prisoners.' Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Report, 2015).

<sup>398</sup> Department of Justice and Community Safety (Corrections Victoria), 'Evaluation of the Maribyrnong Community Residential Facility', (Report, 2021) 56.

spreading COVID-19. Since its establishment, it has shown great promise, particularly in its integrated model of case management:

'If they're able to transition into a transitional facility, they have stable accommodation, a roof over their head. Because what happens with a lot of people that do leave and even if they've got a lot of supports wrapped around them, it's just – you're just crisis management ... So, it's really challenging to engage in long-term, meaningful sustainable transition outcomes. Whereas what we're seeing at places like the [ Maribyrnong Community Residential Facility], you've got a stable roof over your head, you're not freaking out about where you're going to sleep that night. So, all of a sudden you can start to have a think about, "Oh, how do I get my licence back?" "Maybe I could get a job over here" or "Actually, you know what? I really want to start seeing my kids again". So, all of a sudden you're not in crisis mode, so you start moving to things that are much more sustainable, long-term.'

Expert interview

Similar to JLTC, Maribyrnong Community Residential Facility is able to provide intensive transitional support in a less restrictive environment to enables people to move directly into employment and housing within the community, and focus on goals such as reconnecting with family, supporting their mental health and other rehabilitative needs.

**'If you take responsibility away from an adult, they regress.'**

'The general temperament of staff influences the temperament of prisoners, and I feel that prisoners that are spoken down to or treated with no dignity or respect, they develop a complex.

Then, when they get released, they don't know how to handle being in society properly, because they've had all their responsibility taken away from them as well, and they end up reoffending.

My experience is – and I'm not trying to rubbish the prisoners in this instance – but if you take responsibility away from an adult, they regress. The reason why people mature is because they are given more responsibility, in my opinion. As you're a teenager and you go through from pre-teens to your teen years, you get more responsibility and allowances to go out with friends and all that kind of stuff. You go through school and then you start working and then you develop into an adult. But if you take that away from people [while they are in prison custody], they regress backwards, and then you're effectively releasing a 16-year-old that's 45 into the community, and they don't know how to function.'

*Person in custody at a minimum-security location*

We support increased access to residential transition through the creation of additional facilities to meet the transitional needs of women and Aboriginal people, as well as an expanded number of places for men across the adult custodial corrections system.

## Providing a specific transitional facility for women

There has been an overall increase in the number of women entering custody, who are more likely to spend short periods in custody for minor offences. This compounds disadvantage and disconnection from family and community, and means that women have less opportunity to access the support they need in prison and, following release, to address the issues that led to their offending. There is currently no dedicated transition centre for women which deprives women from access to this intensive residential transition support.<sup>399</sup>

Transition supports for women should include family-focused interventions that recognise the impact that their incarceration has on their childcare, family and cultural responsibilities.<sup>400</sup>

To provide transitional supports for women in custody across the system, we support the creation of an additional transitional facility for women with more intensive support to facilitate their safe transition back into the general community.

## Providing a specific transitional facility for Aboriginal people

Leaving the custodial system is a time of increased risk for Aboriginal people who may have lost connections to family, community and culture and experience a decline in their health and wellbeing while in custody.

In Part 5, we note the critical role that Wulgunggo Ngalu Learning Place and Baggarrook Transitional Housing Program play in providing culturally responsive post-release support for Aboriginal people living in the community. These examples of community-based, culturally safe models of care, focused on healing, cultural connection and reintegration, represent best practice and must be expanded to reduce the unacceptable rates of Aboriginal people returning to prison. The benefits of these models should also be extended to ensure this transitional support is available for Aboriginal people approaching the end of a custodial sentence.

### Recommendation 6.25 Expanded access to residential transition programs

The Department of Justice and Community Safety should establish additional residential transition centres modelled on the Judy Lazarus Transition Centre, to provide better reintegration planning and support for more people in custody as they return to the community.

The additional residential transition centres should include:

- a) a dedicated transition centre for women leaving custody
- b) a dedicated community-led transition centre for Aboriginal people leaving custody, developed in consultation with the Aboriginal community
- c) additional transition centres for men.

<sup>399</sup> Victorian Aboriginal Legal Service, Submission to the Cultural Review (December 2021).

<sup>400</sup> Recommendation 17, Victorian Ombudsman, *Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre* (Report, 2017).



## Improving the supports provided to people on remand and people serving short sentences

Delivering supports and services to the growing proportion of people on remand presents additional complexities for the adult custodial corrections system. These challenges may be exacerbated where a person has specific or complex needs that must be accommodated within a 'high-churn' remand environment.

There can be uncertainty about the duration of time that a person will remain on remand or whether they will remain in custody once they are sentenced, which can make it difficult to deliver programs without interruption or plan for the person's return to the community.

While a person on remand may have access to general supports such as education modules and cultural programs, they will not generally be eligible for targeted supports related to their alleged offending, because these matters have not been finalised. This can delay the commencement of programs directed at rehabilitation and positive change.

Through our engagement, we heard from people in custody and service providers that people on remand should have access to a wider range of programs and supports.<sup>401</sup> The lengthy periods that many people spend on remand and the possibility that people are sentenced to time served and released into the community means it is particularly important for any time spent in custody to be structured and focused on preparing the individual for their return to living in the general community.

There is also an opportunity for a person's time on remand to be used to connect them to supports and services that could reduce the risk that they remain involved in the criminal justice system.

We have heard that short periods of time on remand or under sentence can disrupt the protective elements in a person's life – such as employment, housing and family connections – without providing any real access to meaningful interventions geared toward positive change. The result is that, even after a short period in custody, people can be more vulnerable when they return to the community and at higher risk of reoffending and returning to the criminal justice system.

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<sup>401</sup> See, for example, Liberty Victoria, Submission to the Cultural Review (December 2021) 7.

The Victorian Government has acknowledged the challenges that time-served sentences and short sentences create for the system:

'Separate to time served prison sentences, short sentences are also challenging from a programmatic perspective due to issues with access to programs or training. Programs often provide support and intervention over a set period of time, including offence specific programs. It is therefore difficult for people on short term sentences to effectively engage in this support. Premature withdrawal from treatment, or having insufficient time to complete programs, can increase risk of reoffending.'<sup>402</sup>

There has been a recent focus on overcoming some of these challenges by offering a more flexible package of programs for people on remand. However, it is clear from our conversations with people in custody, corrections staff and stakeholders that access to programs and supports for people on remand continue to be a significant concern.

People on remand told us about the opportunities and supports available to them while they are in custody:

'You can't do anything on remand. It's dead time. You can do some bullshit five-hour walk-in, spend a day doing something, it means absolutely nothing. They don't know when you're going to be released, some people don't have a court date for 12 months – that should surpass the fact that you're on remand. A lot of people are on remand for a long time. It's dead time because they're not even allowing you to try and better yourself in that time. I expect if I want to be able to do it, I should be able to.'

**People in custody**

There can also be an impact for people who spend lengthy time on remand before being sentenced:

'People are on remand to the point where, by the time they get sentenced, that's their sentence done. People who are remanded and then get sentenced but are also then eligible for parole [because they've been remanded for so long] aren't able to apply as they've not been able to get into things that they have to do to get their earliest [release date] but they couldn't do that because they were on remand. It's a stitch up.'

**People in custody**

<sup>402</sup> Victorian State Government, Submission No 93 to Legal and Social Issues Committee Inquiry, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (1 September 2021) 68.

Many of the conversations we had with people across the system described the range of barriers people on remand and people serving short sentences face when attempting to access programs and other supports. Given that almost one half of the total prison population are people on remand and many people only have short stints in custody, DJCS needs to do much more to develop programs for these groups to better support them when they return to life in the general community.

In particular, increased access to technology may help expand access to rehabilitation programs and support for people on remand and people serving short sentences. The development of the new WPCC explored opportunities to better embed technology, to increase access to programs.

### **Embedding technology at WPCC**

The development of the new WPCC is expected to include a number of innovative technology upgrades that will improve security, internal communications, data collection, and outcomes for people in custody.

People in custody are expected to have access to secure in-cell technology and Wi-Fi, which will enable them to schedule appointments, make requests, participate in online education and programs, and connect with family and friends through secure online visits and emails. People in custody will also have improved access to library services, community information, prison radio and recreation.

Access will be managed on an individual basis, based on risk and needs, and is expected to support people in custody to develop skills that will support reintegration and employment, including computer literacy.

Increased technology capability will also support legal and court processes and assist in community connection and prompt referral to services, which are essential supports for people on remand. Prison staff will receive additional training to ensure that they possess appropriate skills, knowledge and competence to support people in custody through these processes.

These technological improvements are also expected to reduce repetitive paper-based tasks and deliver associated efficiency and cost savings, provide a more modern working environment for staff and service providers, improve system-wide data-sharing and support case-management practices.

We understand that technology applications developed for WPCC may be adapted for use across the adult custodial corrections system.

There is an opportunity to make greater use of technology to expand access to self-paced rehabilitation programs including for people on remand. In New South Wales, prisons have expanded the use of tablets to enable people in custody to access rehabilitation programs.<sup>403</sup> Other jurisdictions have also relaxed restrictions on access to computers, email and the internet for people in custody. This shift toward embracing new technology can help overcome barriers in the delivery of essential health, wellbeing and rehabilitation services.

Importantly, one of the other impacts of a large remand population is the number of people released from custody with 'time-served' when their criminal matter is finalised.<sup>404</sup> This means that some people are released straight back into the community without much coordinated planning for transition, such as arrangements for housing, employment or social support, health services and connections to rehabilitation services.

We heard that women can be disproportionately affected by the limited access to remand and transition support, given the high number of women on remand and the impact of short sentences on access to effective supports. Limited access to programs means women exiting custody may not have an opportunity to holistically respond to issues contributing to their offending including high rates of mental health, substance use disorders, family or gendered violence, poverty and trauma.<sup>405</sup> The impact of this gap in holistic service responses can be particularly acute for Aboriginal women on remand.

'It's very difficult to establish cultural and meaningful ties with programs in prison when you're in there for such a short period of time and segregated for all of that time. It actually seems to be operating to just separate people out from their communities, not put them in touch with the kind of supports that might be available from elders and others in prison – because of not being able to attend cultural programs and groups and those sorts of things because they're in such a churn of short terms.'

**Flat Out**

It is promising that work is underway to provide better support for people exiting custody without spending any time under sentence. DJCS's Remand Release Assistance Program addresses some of these needs<sup>406</sup> and supports people to transition back to the community by providing information about Centrelink payments and services, crisis accommodation, health services, including access to medication, drug and alcohol harm minimisation approaches, processes for collecting property from prison, information about court supports made available for people on bail.<sup>407</sup>

<sup>403</sup> New South Wales Government (Communities and Justice), 'Custodial Operations Policy and Procedures, 8.3 Inmate computers' (Policy, 2018).

<sup>404</sup> Sentencing Advisory Council, *Time Served Prison Sentences in Victoria* (Report, 2020).

<sup>405</sup> Centre for Innovative Justice, *Leaving custody behind: Foundations for safer communities & gender-informed criminal justice systems* (Issues Paper, 2021).

<sup>406</sup> Corrections Victoria, Commissioner's Requirement 3.1.1 - Transition Support and Preparation for Release (29 July 2020).

<sup>407</sup> See Department of Justice and Community Safety (Corrections Victoria), Transitional Programs (Web Page, 2021) <https://www.corrections.vic.gov.au/release/transitional-programs>.

We support further innovation in how the adult custodial corrections system can support people spending short times in custody to remain connected to supports and services in the community. It is clear that the changing profile of the custodial population demands a fresh approach.

**Recommendation 6.26**  
**Enhanced rehabilitation**  
**transition support and**  
**planning to people on**  
**remand**

The Department of Justice and Community Safety should consider further expanding access to programs for people on remand to ensure people released from remand and those sentenced to time served can receive essential rehabilitation and transition support before they are released back into the community.

Specific and sufficient funding should be made available to health and community services organisations and Aboriginal community-controlled organisations to provide support and continuity of care for people on remand.

People on remand should be able to participate in these programs without prejudicing the finalisation of their legal issue.

# Appendices

**Appendix A.** Terms of Reference

**Appendix B.** Stakeholder submissions

**Appendix C.** Expert interviews and briefings

**Appendix D.** Site visits schedule

**Appendix E.** Focus groups and yarning circles during site visits

**Appendix F.** Sample site visit itinerary

**Appendix G.** Workforce survey questions

**Appendix H.** Service delivery outcomes and key performance indicators

**Appendix I.** Relevant integrity reviews and investigations

## Appendix A. Terms of Reference

The Review will inquire into and report on culture, safety and inclusion, and integrity within the Victorian custodial corrections system (“the Review”).

It will report to the Minister for Corrections through the Secretary, Department of Justice and Community Services (DJCS) and the Deputy Secretary, Corrections and Justice Services (CJS).

The Review will support a safe prison system that is free from breaches of integrity, sexual harassment and discrimination and promotes Aboriginal cultural safety and self-determination.

The Review will span both the public and private adult custodial corrections system. It will inquire into the culture of the adult custodial corrections system, focussed on two streams of inquiry – ensuring the wellbeing and safety of staff within the adult custodial system, and the safety (including Cultural safety) of people in custody. In particular, it will consider:

### Stream 1 – Custodial Staff

1. Measures to address systemic behavioural and cultural challenges among and towards staff, impacting on staff wellbeing and safety.
2. The effectiveness and appropriateness of the DJCS systems and processes that prevent and respond to behavioural and cultural challenges to protect and preserve the wellbeing of all staff.
3. Options to drive cultural change and promote appropriate behaviour that is consistent with a culturally safe and integrity-based corrections system, including options to address workforce skills and key capabilities (including leadership capability).
4. Measures to ensure appropriate and effective cultural support for Aboriginal staff.

### Stream 2 – People in custody

1. Whether systems and processes in prisons ensure that Aboriginal people in custody have the right to access and continue to practice Culture, are free from discrimination, and are consistent with Aboriginal self-determination.
2. The effectiveness and appropriateness of DJCS systems and processes to support the safety of people in custody (noting issues experienced by particular cohort groups such as women, Aboriginal people, LGBTI people, people with disability, elderly individuals and people from a CALD background).

Matters currently on foot regarding conduct will be dealt with in the usual way and not form part of this review. Allegations of criminal or inappropriate conduct will be passed on to appropriate bodies and will also not be investigated or responded to by the Review.

The Review will build on key achievements and initiatives already underway within DJCS, including the implementation of a range of rehabilitation focussed support programs, Corrections Victoria's ongoing efforts to strengthen workplace culture and leadership capability, strengthening systems and responses to integrity issues and the ongoing commitment to the Victorian Aboriginal Justice Agreement.

In inquiring into the culture of the corrections system, the Review will have regard to the Victorian Public Sector values (Responsiveness; Integrity; Impartiality; Accountability; Respect; Leadership; Human Rights), the Charter of Human Rights, Corrections Conduct and Ethics Commissioner's Requirement and the DJCS Integrity Policy.



## Appendix B. Stakeholder submissions

<b>Independent commissions and statutory agencies</b>	Commission for Children and Young People Office of the Public Advocate Victoria Legal Aid (VLA) Victorian Disability Worker Commission
<b>Union and workforce</b>	Australian Institute of Health and Safety Community and Public Sector Union (CPSU)
<b>Aboriginal community-controlled organisations</b>	Djirra First Peoples' Assembly of Victoria Victorian Aboriginal Legal Service (VALS)
<b>Academia</b>	RMIT University – Bronwyn Naylor RMIT University – Centre for Innovative Justice RMIT University – Prison-based and Community Think Tanks
<b>Legal organisations</b>	Fitzroy Legal Service Human Rights Law Centre LGBTIQ Legal Service Liberty Victoria Mental Health Legal Centre Youthlaw
<b>Community organisations</b>	Australian Red Cross Catholic Care Victoria Catholic Social Services Victoria Financial Counselling Victoria Jesuit Social Services Simon Katterl Consulting Women and Mentoring
<b>Culturally and linguistically diverse community organisations</b>	Centre for Multicultural Youth Islamic Council of Victoria

<b>Health supports</b>	Caraniche Forensicare Victorian Alcohol and Drug Association (VAADA)
<b>Disability organisations</b>	National Disability Services Victorian Advocacy League for Individuals with Disability (VALID)
<b>Custodial education providers</b>	Bendigo Kangan Institute
<b>Other stakeholders</b>	A confidential stakeholder submission

## Appendix C. Expert interviews and briefings

Organisation	Expert
Afri-Aus Care	Selba-Gondoza Luka, Chief Executive Officer and Founder Stephane Shepherd, Deputy Chair, Afri-Aus Care, and Associate Professor, Centre for Forensic Behavioural Science, Swinburne University
Australia OPCAT Network	Bronwyn Naylor, Co-Founder, Australia OPCAT Network, and Professor of Law, Graduate School of Business and Law, RMIT University Steven Caruana, Coordinator, Australia OPCAT Network, and Specialist Advisor – Immigration and OPCAT, Australian Human Rights Commission
Caraniche	Jacinta Pollard, Managing Director
Centre for Multicultural Youth	Carmel Guerra OAM, Director and Chief Executive Officer
Community and Public Sector Union	Karen Batt, Secretary, Victorian Branch and team
CorrectCare Australasia	John Hoogeneen, Managing Director Dr Foti Blaher, Chief Medical Officer Christine Fuller, Chief Nursing Officer Mark Bulger, Regional Manager (Rural)
Department of Justice and Community Safety	Executives representing DJCS, Corrections and Justice Services, Corrections Victoria, Aboriginal Justice, Youth Justice, Common Clients, Contracts and Infrastructure, Custodial Operations, Forensic Intervention Services, Integrity and Reviews, Koori Justice Unit, Justice Assurance and Review Office, Justice Health, Justice Policy and Data Reform, Litigation and Coronial Matters, Naalamba Ganbu and Nerrlinggu Yilam, Offender Services, Policy, Strategy and Service Design, Prison Disability Support Initiative, Prison Industries, Security and Intelligence, Sentence Management, System Performance, Security and Emergency Services Group (SESG)
Flat Out	Karen Fletcher, Executive Officer
Forensicare	Margaret Grigg, Chief Executive Officer

Organisation	Expert
Health Complaints Commissioner	Dorota Siarkiewicz, Acting Commissioner
Islamic Council of Victoria	Mohamed Mohideen OAM, President
Law and Advocacy Centre for Women	Jill Prior, Principal Legal Officer
Neighbourhood Justice Centre	Rachel Powning, General Manager
Office of the Public Advocate	Colleen Pearce, Public Advocate
RMIT University – Prison-based and Community Think Tanks	Marietta Martinovic, Australian Inside Out Prison Exchange Program, and Senior Lecturer in Criminology and Justice, RMIT University Tarmi A'Vard, Australian Inside Out Prison Exchange Program Facilitator, and Lecturer, La Trobe University
Sisters Inside	Debbie Kilroy OAM, Chief Executive Officer
The Torch	Tarsha Davis, Program Manager
Victoria Legal Aid	Louise Glanville, Chief Executive Officer
Victorian Aboriginal Legal Service	George Selvanera, Acting Chief Executive Officer
Victorian Commissioner for LGBTIQ+ Communities	Todd Fernando, Commissioner
Victorian Custody Reference Group	Claire Seppings, Chair
Victorian Equal Opportunity and Human Rights Commission	Lauren Matthews, Director, Education and Engagement Sally Shevach, Senior Adviser, Human Rights
Victorian Government	The Hon. Natalie Hutchins, Minister for Corrections
Victorian Ombudsman	Deborah Glass, Victorian Ombudsman
Victorian Public Sector Commission	Adam Fennessy PSM, Commissioner
WorkSafe Victoria	Narelle Beer, Executive Director, Health and Safety

## Appendix D. Site visits schedule

Site	Location	Date
Judy Lazarus Transition Centre	West Melbourne	15–16 November 2021
Dhurringile Prison	Murchison	23 November 2021
Beechworth Correctional Centre	Beechworth	24 November 2021
Tarrengower Prison	Nuggetty	1–2 December 2021
Loddon Prison Precinct (Middleton)	Castlemaine	6–7 December 2021
Langi Kal Kal Prison	Langi Kal Kal	13–14 December 2021
Port Phillip Prison	Truganina	7–10 February 2022
Dame Phyllis Frost Centre	Ravenhall	21–24 February 2022
Ravenhall Correctional Centre	Ravenhall	23–25 February 2022
Metropolitan Remand Centre	Ravenhall	7 and 9 March 2022
Hopkins Correctional Centre	Ararat	15–16 March 2022
Melbourne Assessment Prison	West Melbourne	21–22 March 2022
Marngoneet Correctional Centre (Karreenga)	Lara	28–29 March 2022
Barwon Prison	Lara	31 March
Wulgunggo Ngalu Learning Place*	Macks Creek	5 April 2022
Fulham Correctional Centre	Sale	6–7 April 2022

\* Wulgunggo Ngalu Learning Place is a residential diversion program for Aboriginal men completing a community correction order. Participation is voluntary, and participants live on site for three to six months.

## Appendix E. Focus groups and yarning circles during site visits

Site	Audience and engagement activity		
	Corrections staff	People in custody	
	Focus group	Focus group	Yarning circle
Judy Lazarus Transition Centre	1 session	1 session	–
Dhurringile Prison	–	1 session – prisoner representatives	1 session
Beechworth Correctional Centre	1 session	1 session – older men	–
Tarrengower Prison	–	1 session – older women	1 session
Loddon Prison Precinct (Middleton)	2 sessions	2 sessions – men with intellectual disability and Vietnamese men	2 sessions
Langi Kal Kal Prison	1 session	1 session – prisoner representatives	1 session
Port Phillip Prison	2 sessions	3 sessions – youth, men with intellectual disability, and men in palliative care	2 sessions
Dame Phyllis Frost Centre	3 sessions – general (2) and supervisor	–	1 session
Ravenhall Correctional Centre	1 session	2 sessions – prisoner representatives and men from CALD backgrounds	1 session
Metropolitan Remand Centre	–	–	–
Hopkins Correctional Centre	1 session	1 session – LGBTIQ+ people in custody	1 session

Site	Audience and engagement activity		
	Corrections staff	People in custody	
	Focus group	Focus group	Yarning circle
Melbourne Assessment Prison	–	–	–
Marrngoneet Correctional Centre (Karreenga)	2 sessions	2 sessions	1 session
Barwon Prison	1 session	1 session	1 session
Wulgunggo Ngalu Learning Place	–	–	1 session
Fulham Correctional Centre	1 session	1 session	1 session

## Appendix F. Sample site visit itinerary

Schedule	Activity
<b>Day 1</b>	
9.30am	Review team complete COVID-19 rapid antigen testing and security screening before entry.
10.00am	Expert Panel and senior leadership representatives meet with site general manager and executive team. Remainder of Review team, escorted by staff, visit mainstream units, engaging informally with staff and people in custody, taking oral submissions and registering interest in confidential interviews.
1.00pm	Lunch.
2.00pm	Focus group with staff, led by Expert Panel members and senior leadership representative. Confidential interviews with staff, if scheduled. Remainder of Review team visit protection and management units.
4.00pm	Review team reconvene and finalise participant registrations.
4.30pm	Conclude site visit.
<b>Day 2</b>	
9.30am	Review team complete COVID-19 rapid antigen testing and security screening before entry.
10.00am	Expert Panel, senior leadership representatives and Review team, escorted by staff, visit any specialist units (mental health, complex needs) and onsite industries. Confidential interviews with people in custody, if scheduled.
11.00am	Yarning Circle with Aboriginal people in custody.
1.00pm	Lunch.
2.00pm	Focus group with people in custody, led by Expert Panel members and senior leadership representative. Confidential interviews with people in custody, if scheduled. Remainder of Review team visit mainstream units.
4.00pm	Review team reconvene and finalise participant registrations.
4.30pm	Conclude site visit.



# Appendix G. Workforce survey questions

## Training and support

The following questions are about the level of training and support you receive on the job.

**1. Which of the following priorities are the most important for custodial staff to have in doing their job? [Please select up to three options]**

Maintaining security and enhancing community safety

Providing case management

Ensuring prisoner's mental health and wellbeing

Reducing the risk of recidivism and promoting rehabilitation

Keeping the site safe for everyone

Other [Please specify]

**2. What are the most important qualities for custodial staff to have? [Please select up to five qualities that you feel are most important]**

Empathy and understanding

Patience and fairness

Good communicator

Physical strength and toughness

Responsible and acts with integrity

Personal resilience

Flexible and adaptable

Friendly and approachable

Loyalty and professionalism

Non-confrontational and able to manage conflict

Other [Please specify]

**3. To what extent do you feel you have been trained enough in each of the following areas in order to do your job well?**

	Fully	Mostly	Partly	A little	Not at all	Not sure
Maintaining security and good order	1	2	3	4	5	6
Providing case management	1	2	3	4	5	6
Ensuring prisoner's mental health and wellbeing	1	2	3	4	5	6
Reducing the risk of recidivism and promoting rehabilitation	1	2	3	4	5	6
Keeping the site safe for everyone	1	2	3	4	5	6

**4. Please indicate what additional training or support you require. [Enable lines if qError! Reference source not found. row is mostly or less (2-5).]**

Maintaining security and good order

Providing case management

Ensuring prisoner's mental health and wellbeing

Reducing the risk of recidivism and promoting rehabilitation

## Your safety, motivation and wellbeing at work

The following questions are about your experiences of workplace safety, motivation, stress and job satisfaction.

**5. Please indicate to what extent you agree or disagree with the following statements.**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know/ Not applicable
I feel safe in my workplace	1	2	3	4	5	6

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know/ Not applicable
I get satisfaction from my job	1	2	3	4	5	6
I feel motivated to do my job	1	2	3	4	5	6
I feel respected by my colleagues at my ordinary work site	1	2	3	4	5	6
I feel respected and valued by management at my ordinary work site	1	2	3	4	5	6
I feel that if something goes wrong at work, I get the help I need from management	1	2	3	4	5	6
After a critical incident at work, I get the right support from management	1	2	3	4	5	6
I feel that Corrections Victoria understands and supports the environment I work in	1	2	3	4	5	6
I rely on my colleagues for my safety	1	2	3	4	5	6

**6. In the last 5 years, have you been physically injured by a prisoner at work?**

Yes [Please go to question 22]

No

**7. [Activate q22, if q21 = 1, Yes] What was the injury (if it is your experience, please describe injuries including sexual assault and mental harm)?**

**8. How likely do you feel it is that you will experience any of the following by a prisoner in the next 12 months?**

	Definitely	Probably	Possibly	Possibly not	Definitely not	Not sure
Assault, resulting in minor physical injury	1	2	3	4	5	6
Assault, resulting in a major physical injury	1	2	3	4	5	6
Threats	1	2	3	4	5	6
Verbal abuse	1	2	3	4	5	6
Sexual harassment	1	2	3	4	5	6
Sexual assault	1	2	3	4	5	6

**9. Please rate how often you experience the following.**

	Always	Often	Sometimes	Rarely	Never	Not sure
I feel that work makes it hard to spend quality time with family	1	2	3	4	5	6
I feel drained at the end of a workday	1	2	3	4	5	6
I find my job stressful	1	2	3	4	5	6

**10. Have you experienced any of the following emotions due to work in the last 12 months? [Please select all that apply]**

- Stimulated and excited for work
- A sense of pride
- A sense of reward
- A sense of collegiality
- A sense of feeling safe and supported
- Fear, dread or panic
- Anxiety or agitation
- Anger or explosiveness
- Hypervigilance or the feeling 'on edge'
- Disconnected or 'checked out'
- A loss of connection with colleagues
- A loss of interest or motivation in my work

**11. Have you been told by a doctor, counsellor or psychologist that you have or are at risk of developing a stress-related illness (such as depression, anxiety or post-traumatic stress syndrome (PTSD) while you have worked as a custodial staff member?**

- Yes
- No

**12. Have you taken leave due to work-related stress in the past two years whilst working for Corrections Victoria?**

- Yes
- No

**13. How much has work stress affected you, positively or negatively, in the past two years?**

	Very positive impact	Positive impact	No impact	Negative impact	Very negative impact	Not sure
How much I enjoy my job	1	2	3	4	5	6
My family life	1	2	3	4	5	6
My relationships	1	2	3	4	5	6

	Very positive impact	Positive impact	No impact	Negative impact	Very negative impact	Not sure
My physical health	1	2	3	4	5	6

**14. Please indicate to what extent you agree or disagree with the following statements.**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know/ Not applicable
I receive enough support through work to help me manage work-related stress	1	2	3	4	5	6
I feel comfortable discussing work stress and how I am coping with my work, with my manager or supervisor	1	2	3	4	5	6
The wellbeing supports available meet my needs when it comes to my experience of work-related stress	1	2	3	4	5	6

**15. What type of wellbeing support have you accessed in the workplace in the last two years? [Please select all that apply]**

- Counselling or psychology (through the EAP or another provider)
- Post incident debriefing
- Peer support through the prison Staff Support Program
- Group debriefings
- Wellbeing coaching or workshops
- Informal 1:1 support with management or supervisor

Support from a CPSU delegate

Networks and forums (e.g. PRIDE network, LGBTIQ+ and Aboriginal portfolio holders)

Other [Please specify]

I have not accessed any wellbeing support in the workplace

**16. Do you feel confident that you could report any issues with your safety or the safety of other people in your workplace and have them responded to?**

Very confident

Moderately confident

Slightly confident

Not very confident

Not at all confident

## Staff–prisoner relations

The following questions are about your experiences working with prisoners, including your view of how well staff and prisoners get along, the level of respect between staff and prisoners and how staff manage challenging behaviour.

**17. Please indicate to what extent you agree or disagree with the following statements.**

	Always	Most of the time	Sometimes	Rarely	Not at all	Don't know / Not applicable
I feel I positively influence prisoners' lives through my work	1	2	3	4	5	6

**18. To what extent do you feel you have been trained to deal with prisoners' needs relating to each of the following.**

	Fully	Mostly	Partly	A little	Not at all	Not sure
Disability	1	2	3	4	5	6
Aboriginal cultural safety	1	2	3	4	5	6
Mental health	1	2	3	4	5	6
Culturally and linguistically diverse backgrounds	1	2	3	4	5	6
Physical health requirements, such as additional mobility support	1	2	3	4	5	6

**19. In general, how well do you think custodial staff and prisoners get along?**

- Very well
- Well
- Mixed
- Poorly
- Very poorly

**20. In general, do you consider prisoners are treated respectfully?**

- Always
- Most of the time
- Sometimes
- Rarely
- Never



**21. In general, do you feel confident to provide effective case management to prisoners?**

- Very confident
- Moderately confident
- Slightly confident
- Not very confident
- Not at all confident

## Aboriginal cultural safety

**22. Do you identify as Aboriginal?**

- Yes
- No
- Prefer not to say

**23. Do you identify as Torres Strait Islander?**

- Yes
- No
- Prefer not to say

[Show if neither Q22 nor Q23 =1] Please note, this section is for Aboriginal and Torres Strait Islander respondents only. Please go to the next section.

**24. What type of culturally appropriate support is available for you at work, and how to do you rate these?**

	Extremely helpful	Helpful	Moderately helpful	Unhelpful	Extremely unhelpful	Available to me at work, but I haven't used it	Not available to me at work	Unsure if this is available to me at work
Access to Aboriginal Liaison Officers or ALO network	1	2	3	4	5	6	7	8
Support from Aboriginal colleagues	1	2	3	4	5	6	7	8

	Extremely helpful	Helpful	Moderately helpful	Unhelpful	Extremely unhelpful	Available to me at work, but I haven't used it	Not available to me at work	Unsure if this is available to me at work
Support from Aboriginal supervisor or management	1	2	3	4	5	6	7	8
EAP Aboriginal Helpline	1	2	3	4	5	6	7	8
Monthly debriefings sessions for Aboriginal Wellbeing Officers (though Yilam)	1	2	3	4	5	6	7	8
Support from the Aboriginal Employment Team	1	2	3	4	5	6	7	8

**25. What does 'cultural safety' mean to you?**

**26. Please indicate to what extent you agree or disagree with the following statements about your experience at Corrections Victoria.**

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know/ Not applicable
As an Aboriginal person, I feel safe going to work	1	2	3	4	5	6
As an Aboriginal person, I know I will be respected	1	2	3	4	5	6

	Strongly agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree	Don't know/ Not applicable
by my colleagues						
I work with and have the support other Aboriginal people	1	2	3	4	5	6
My cultural practices such as sorry business are understood and respected	1	2	3	4	5	6
My identity and lived experience as an Aboriginal person is respected and acknowledged	1	2	3	4	5	6
I have opportunities to contribute to decisions about things that affect me at work	1	2	3	4	5	6
I don't experience racial discrimination or racism at work	1	2	3	4	5	6

**27. How often, if at all, are you made to feel unsafe at work, as an Aboriginal person?**

Always

Often

Sometimes

Rarely

Never [Please go to the next section]

**28. Who contributed to you feeling unsafe? [Please select all that apply]**

- My peer
- My supervisor or manager
- Someone more senior in my workplace
- Other [Please specify]

**29. What was the impact of this experience? [Please select all that apply]**

- Felt disrespected
- Lost trust in my workplace
- Felt like my culture and identity was not understood
- Lost enjoyment of my job
- Became stressed or anxious coming to work
- Made me consider other employment/quitting job
- Other [Please specify]
- No real impact

**30. Did you make a complaint about (or report) the experience?**

- Yes [Please go to question 32]
- No

**31. Why did you decide not to report or make a complaint about the experience? [Please select all that apply]**

- I feared it would make things worse for me
- I did not think it would make a difference
- Other reason [Please specify]

**32. [Ask if q30=1, Yes] What was the outcome of your complaint?**

**33. Which of the following would make you feel more culturally safe at work? [Please select up to three options]**

- Better training for staff on Aboriginal culture and experiences
- Stronger role-modelling from my superiors
- My colleagues calling out disrespectful behaviour
- More Aboriginal staff
- Aboriginal staff in more senior positions

Leaders, managers and supervisors setting and role modelling culturally safe behaviour

Being managed or supervised by an Aboriginal person

Colleagues that access cultural safety training

HR policy that reflects our culture (NAIDOC/sorry business)

Ongoing Cultural Safety training at all levels

Aboriginal history books in the library

Other [Please specify]

## Experiences within in the workplace

The following questions in this section seek to understand issues within the custodial workplace that relate to unwelcome behaviours by staff towards other staff.

The unwelcome behaviours that the Cultural Review is looking at include unwanted sexual behaviours, discrimination, bullying, racism and other unsafe and unlawful workplace behaviours.

**34. In the past five years, have you directly experienced any of the following behaviours in your workplace where the person responsible was another staff member? [Please select all that apply] (click on the behaviour for a definition and examples)**

Sexual assault

Sexual harassment or other unwanted sexual behaviours

Discrimination or less favourable treatment because of my gender, race, disability, or some other attribute

Bullying

Physical assault

Verbal abuse and/or threats

Other unwelcome behaviours [Please specify]

I have not experienced any unwelcome behaviours [Please go to the next section]

**35. Who was the person responsible for the behaviour? [Please select all that apply]**

My direct line manager or supervisor

Another manager or supervisor within the prison I work in

A co-worker who was more senior

A co-worker at the same level as me

The General Manager of the prison I work in

The General Manager of another prison

An Assistant Commissioner or member of the Executive within Corrections Victoria

A non-custodial staff member

A Victoria Police officer

Other support personnel (e.g. community support worker, cleaner, contractor)

Visitor

Someone else [Please specify]

Don't know

Prefer not to say

**36. What was the gender of the person responsible for the behaviour?**

Female

Male

Other

**37. How did you respond to your experience? [Please select all that apply]**

I confronted the person/people involved

I tried to avoid the person/people involved

I kept a record of the behaviour

I discussed the behaviour with someone at Corrections Victoria

I formally reported/complained about the behaviour

I accessed a support service, including counselling or EAP

I accessed legal advice

I requested a transfer to avoid further contact with the person/people involved

I thought about leaving Corrections Victoria

Other [Please specify]

I did nothing

**38. [Ask if Q37!=5, not reported] If you did not make a formal complaint about your experience, can you tell us why?**

I wasn't aware of how the complaint process worked or who to report to

My co-workers advised me not to make a complaint

I thought I would not be believed

I was embarrassed

I thought I would be blamed

I thought I would get fired

I was afraid for my career aspirations

I wasn't confident in the process and how well I might be supported

I thought the complaint process would be difficult

I thought it would not change things or that nothing would be done

Lack of confidentiality of the complaint process

I feared negative consequences for the person or people who engaged in the conduct

I didn't think it was serious enough [Please specify why]

Other [Please specify]

**39. Who did you make a complaint to? [Please select all that apply]**

*I made a complaint within Corrections Victoria*

My direct line manager or supervisor

Another line manager or supervisor within the prison I work in

The Operations/Senior Operations Manager of the prison I work in

The General Manager of the prison I work in

A line manager or supervisor outside of the prison I work in

The Assistant Commissioner responsible for my prison

The Deputy Commissioner

The Commissioner

*I made a complaint within the Department of Justice and Community Safety*

A senior manager or Executive within DJCS

DJCS People and Culture

A Public Interest Disclosure Coordinator

- Deputy Secretary of the DJCS
- Secretary of the DJCS
- I made an external complaint
- A CPSU delegate
- A lawyer or legal service
- Victorian Equal Opportunity and Human Rights Commission
- Australian Human Rights Commission
- Fair Work Ombudsman
- Worksafe
- Victorian Ombudsman
- Independent Broad-based Anti-Corruption Commission
- Victoria Police
- Don't know
- Prefer not to say

**40. What were the personal consequences for you from the experience?  
[Please select all that apply]**

- It impacted on your employment, career or work
- It had negative financial consequences for you
- It impacted negatively on your relationships with your partner, children, friends or family
- It impacted negatively on your self-esteem and confidence
- It impacted negatively on your health and general wellbeing
- It impacted negatively on your mental health or caused you stress
- There were some other consequences for you [Please specify]
- There were no long-term consequences for you
- Don't know
- Prefer not to say

**41. Please provide any other comments about your experience in the space below.**



**42. How long did it take for you to get an outcome?**

Same day or next working day

Less than 1 month

1 to 3 months

4 to 6 months

7 to 12 months

More than 12 months

Don't know

Prefer not to say

**43. Did any of the following things happen to you after you made a complaint? [Please select all that apply]**

Corrections Victoria apologised for failing to prevent the unlawful conduct

Corrections Victoria paid you compensation because of the unlawful conduct

The unlawful conduct stopped

I received positive feedback for making the complaint

I received additional support

I was supported to take leave

My shifts were changed on my request

My shifts were changed without consulting me

My employment was terminated

I was made redundant

I was transferred

I resigned

I was dismissed or lost my job

I was demoted

I was disciplined

I was denied workplace opportunities, such as training or promotion

I was ostracised, victimised, or ignored by colleagues

I was labelled a troublemaker

There were some other consequences for me [Please specify]

There were no consequences for me

Don't know

Prefer not to say

**44. Did any of the following things happen to the person who engaged in the conduct as a result of you making a complaint?**

They were disciplined

They were formally warned

They were informally spoken to

They were transferred

They had their shifts changed

Their employment was terminated

They were made redundant

They resigned

They apologised

There were some other consequences [Please specify]

There were no consequences

I don't know

**45. How satisfied did you feel with the complaint process?**

Very satisfied

Satisfied

Neither satisfied nor dissatisfied

Dissatisfied

Very dissatisfied

I don't know

**46. Did you feel safe and supported during the complaint process?**

Yes

No

I don't know

**47. If you had another experience of unwelcome behaviour at Corrections Victoria, would you make a complaint again?**

Definitely

Probably

Possibly

Possibly not

Definitely not

**48. In the future, how likely would you be to make a complaint about or report the following type of workplace conduct:**

	Very likely	Likely		Unlikely	Very unlikely	Don't know/ Not applicable
Sexual harassment	1	2	3	4	5	6
Discrimination	1	2	3	4	5	6
Racism						
Bullying						
Integrity risk or issue	1	2	3	4	5	6

**49. If you were considering making a complaint about workplace conduct in future, who would you feel most comfortable to approach?**

My direct line manager or supervisor

Another line manager or supervisor within the prison I work in

The Operations/Senior Operations Manager of the prison I work in

The General Manager of the prison I work in

A line manager or supervisor outside of the prison I work in

The Assistant Commissioner responsible for my prison

The Deputy Commissioner

The Commissioner

A senior manager or Executive within DJCS

DJCS People and Culture

Deputy Secretary of the DJCS

Secretary of the DJCS

## Witnessing workplace behaviours

We are asking these questions to understand issues with witnessing behaviours in the custodial workplace

The behaviours that the Cultural Review is looking at include unwanted sexual behaviours, discrimination, bullying, racism, integrity issues and other unsafe and unlawful workplace behaviours

**50. In the past five years, have you witnessed any of the following behaviours towards your colleagues in your workplace involving staff? [Please select all that apply]**

Sexual assault

Sexual harassment or other unwanted sexual behaviours

Discrimination or less favourable treatment because of gender, race, disability, or some other attribute

Bullying

Physical assault

Verbal abuse and/or threats

Other unwelcome behaviours [Please specify]

I have not witnessed any unwelcome behaviours [Please go to the next section]

**51. In the past five years, have you witnessed any of the following behaviours in your workplace towards prisoners? [Please select all that apply]**

Excessive use of force

Improper use of restraint (e.g. unnecessary handcuffing)

Improper use of solitary confinement

Inappropriate strip searching

Inappropriate sexual or intimate relationships with prisoners

Inappropriate power relationships with prisoners (for example, using bribes or contraband to get the prisoner to perform favours)

Masking behaviour, such as covering up body-worn cameras or deliberately not reporting on incidents

Discrimination or less favourable treatment because of gender, race, disability, or some other attribute

Introducing contraband to prisoners

Other misconduct on the part of staff interacting with prisoners [Please specify]

None of the above

If None of the above selected for both q50 and 0, go to qX.

**52. Thinking about the most recent behaviour you witnessed, did you respond or take action in any way? [Please select all that apply]**

I spoke to the person/s who engaged in the conduct

I made a formal complaint

I had an informal conversation with my manager

I talked with or listened to the person who experienced the behaviour about the incident

I took other action [Please specify]

I didn't take any action [Please go to question 54]

**53. Did any of the following things happen because you took action about the conduct you witnessed? [Please select all that apply]**

I received positive feedback for making the complaint

I was disciplined

I was transferred or changed shifts

I resigned

I was dismissed

The unlawful conduct stopped

I was demoted

I was ostracised, victimised, or ignored by colleagues

There were some other consequences for me [Please specify]

There were no consequences for me

Don't know

Prefer not to say

**54. [Ask if Q52=6, no action] If you didn't take action after witnessing the unwelcome behaviour, what were your reasons? [Please select all that apply]**

I didn't want to make things worse for the person who experienced the unwelcome behaviour

I was worried about the negative impact that taking action might have on me, such as my career or safety

I didn't think it was serious enough to intervene

I didn't think it was my responsibility

I knew that other people were supporting and assisting the person

I didn't know what to do

The person who experienced the unlawful conduct asked me not to take any action

Any other reasons [Please specify]

Don't know

## Future state of Corrections Victoria

**55. What would you like to see change to improve the culture of your workplace?**

**56. What supports and training would make Corrections Victoria a better place to work for you?**

**57. What changes to complaints and reporting would make you feel safer to complain?**

## About your work within the Victorian adult custodial corrections system

We are asking these questions to understand your employment as custodial staff. Your answers will help us to understand how the roles, location and team composition impact the experience of custodial staff.

**58. What is your role?**

Custodial officer

SESG/ERG (or equivalent in employed at a private facility)

Aboriginal Wellbeing Officer/Aboriginal Liaison Officer

Senior Management team

Rehabilitation & reintegration team (such as FIS/ATC's/program facilitators)

Industry officer

Prison support roles (such a HR/maintenance etc)

Prison administration (such as Health & safety, performance and compliance roles, general administration/support roles)

Other [Please specify] [Please specify]

**59. What type of facility do you work in?**

Minimum security facility

Medium Security facility

Maximum security facility

Remand facility

Private facility

Transition centre

**60. Where do you currently work?**

Barwon Prison

Beechworth Correctional Centre

Chisholm Road

Dame Phyllis Frost Centre

Dhurringile Prison

Fulham Correctional Centre

Hopkins Correctional Centre

Judy Lazarus Transition Centre

Langi Kal Kal Prison

Loddon Prison Precinct (Middleton)

Marngoneet Correctional Centre (Karreenga)

Melbourne Assessment Prison

Metropolitan Remand Centre

Port Phillip Prison

Ravenhall Correctional Centre

Tarrengower Prison

Prefer not to say [Please go to question 10]

**61. What is your employment status?**

Permanent (full-time)

Permanent (part-time)

Temporary contract

Casual

**62. How long have you worked in the adult custodial system?**

Less than 1 year

1-3 years

4-6 years

7-10 years

11-15 years

More than 15 years

## About you

**63. What is your gender or gender identity?**

Female

Male

I was born with natural variations to sex characteristics (sometimes called intersex)

Trans or gender diverse

Non-binary

Other [Please specify]

X (Indeterminate/Intersex/Unspecified/Gender fluid/Non-binary)

I use a different term

Prefer not to say

**64. Do you identify as coming from a cultural, ethnically or linguistically diverse background?**

Yes

No

Prefer not to say

**65. What is your sexual orientation?**

Lesbian

Gay

Bisexual

Heterosexual



Queer

Other [Please specify]

Prefer not to say

**66. Do you identify as Lesbian, Gay, Bisexual, Transgender and/or gender diverse, Intersex, Queer, Questioning and/or Asexual (LGBTIQA+)?**

Yes

No

**67. How old were you at your last birthday?**

18-29

30-39

40-49

50-59

60 or over

Prefer not to say

**68. Do you have a disability?**

Yes

No

Other [Please specify]

**69. Are you happy to provide more feedback to the Cultural Review in a confidential interview?**

Yes

No [End survey]

**70. Please provide your name and the email or phone number (or both) you want the Cultural Review to contact you.**

Name
Phone number
Email

## Appendix H. Service delivery outcomes and key performance indicators

### Summary of service delivery outcomes (SDOs)

Outcome	Description	Intent
SDO 1	Escapes	To minimise the number of escapes and maintain lawful custody of all prisoners
SDO 2	Assault on Staff or Other Persons	To minimise the number and severity of assaults on staff or other persons by prisoners
SDO 3	Out of Cell Hours	To maximise prisoners' daily out of cell hours, consistent with the approved regime under which they are managed, while acknowledging that the maintenance of a safe and secure prison environment will at times require the restriction of prisoners to their cells or specified areas during normal unlock hours
SDO 4	Number of Unnatural Deaths	To have no unnatural deaths of prisoners.
SDO 5	Self Harm	To minimise the number of incidents of self-harm and ensure the effective management of prisoners at risk of self-harm or suicide
SDO 6	Assault on Prisoners by Other Prisoners	To minimise the number and severity of assaults on prisoners by other prisoners.
SDO 7	Assault on Prisoners by Staff	To prevent any assaults on prisoners by staff
SDO 8	Random General Urinalysis	To measure and deter the use of illicit drugs within prisons.
SDO 9	Health Assessments	To ensure all prisoners initially received into the prison system or transferred from another prison have their general and mental health needs assessed promptly.

Outcome	Description	Intent
SDO 10	'At Risk' Assessments	To ensure all prisoners identified as being potentially 'at risk' promptly receive an 'At Risk' Assessment.
SDO 11	Chronic Health Care Plans	To drive the importance of identifying, managing and improving the health and well-being of prisoners in custody.
SDO 12	Maintenance of Accredited Health Provider Status	To monitor that Accredited Health Provider Status is maintained.
SDO 13	Professional Misconduct (by healthcare provider)	To monitor any incidents of professional misconduct by a healthcare provider or healthcare professional.
SDO 14	Proportion of Prisoners Engaged in Purposeful Activity	To promote prisoner rehabilitation and their constructive engagement
SDO 15	Vocational Education and Training Participation	To encourage prisoners to increase their participation in education.
SDO 16	Education and Training Successful Unit of Competency/Modules Completion	To maximise the number of enrolments in education and training units of competency/modules that result in a successful completion.
SDO 17	Prison Related Harm Reduction	The provision of information to prisoners regarding strategies to minimise harm to themselves and others while in custody.
SDO 18A	Offending Behaviour Programs and Alcohol and Other Drug Programs (Programs Delivered)	To ensure delivery of Offending Behaviour Programs (OBP) and Alcohol and Other Drug (AOD) Programs as per the Program Schedule submitted.
SDO 18B	Offending Behaviour Programs and Other Drug Programs (prisoner completions)	To encourage prisoner completion of Offending Behaviour Programs (OPB) and Alcohol and Other Drug (AOD) Programs.
SDO 20A	Pre-Release Program	To ensure that prisoners receive transitional support prior to release
SDO 20B	Remand Release Assistance Program	To ensure that eligible remand prisoners are provided with relevant information regarding available post-release supports in the event of discharge from court.
SDO 21	Prisoner Survey	To measure indicators of a healthy prison.
SDO 22	Prison Industries	To ensure prison industries meet agreed sales targets.

Outcome	Description	Intent
SDO 23	Case Management	To drive effective case management of prisoners by targeting those factors which may contribute to the prisoner returning to prison.
SDO 24	Occupational Health and Safety / Workcover	To monitor the levels of health and safety within the work environment.
SDO 25	Disability Training	To ensure that custodial staff rostered in the Marlborough Unit, or other prison staff who work with cognitively impaired prisoners, at Port Phillip Prison are adequately trained and supported to work with prisoners with a cognitive impairment.

## Summary of key performance indicators (KPIs)

Outcome	Description	Intent
KPI 1	Health discharge plans	To ensure prisoners with significant health issues requiring ongoing health care are released with a Health Discharge Plan to promote continuity of care upon release into the community
KPI 2	Communicable diseases services and immunisations	To ensure all prisoners initially received into the prison system at the prison are offered screening for communicable diseases and immunisation status.
KPI 3	Detected Substance Drug Test Verification	To increase the effectiveness of urinalysis testing programs in prisons by ensuring prisoners who return a detected substance urinalysis drug test result have their test result verified in the required timeframe to determine whether a prescribed medication caused the detected substance within the urinalysis sample.
KPI 4	Provision of timely primary health services	To ensure prisoners are provided with timely primary health services.
KPI 5	Completion of Identified Drug User Reviews	To ensure IDU reviews occur in a timely manner.
KPI 6	Release on the correct date	To ensure prisoners are released on the correct date
KPI 7	N/A	Not part of quarterly reporting

Outcome	Description	Intent
KPI 8	Carrying out scheduled Facility Management Service failures	To drive the importance of a secure facility and maintaining infrastructure quality standards.
KPI 9	Rectifying Facilities Management Service failures	To ensure that Failure Events are rectified in a timely manner
KPI 10	Responding to Service Failure Notices and Default Notices	To ensure that Service Failures as notified by the State are responded to in a timely and effective manner.
KPI 11	Incident Reporting	To ensure that all Reportable Incidents and Notifiable Incidents are recorded and reported on the Commissioner's Information Systems as per the State's requirements.
KPI 12	Maintaining performance data	To ensure that the requirements with respect to Performance Data are met, including provision of data, and ensuring the availability, integrity and accuracy of data.
KPI 13	Providing plans and reports	To ensure that the requirements with respect to provision of Plans and Reports are met.
KPI 14	Trend Performance	This KPI will drive the early identification of multiple service indicators that are at risk of not being met, and the development and implementation of strategies to respond to and avoid this actually occurring.
KPI 15.1	Reintegration – Education	To ensure that Prison appropriate interventions are implemented to address the identified post-release education/training needs of sentenced Prisoner Pathway Participants-15.1.
KPI 15.2	Reintegration – Employment	To ensure that Prison appropriate interventions are implemented to address the identified post-release employment needs of sentenced Prisoner Pathway Participants.
KPI 15.3	Reintegration – Housing	To ensure that Prison appropriate interventions are implemented to address the identified post-release housing needs of sentenced Prisoner Pathway Participants.
KPI 15.4	Reintegration – Alcohol and Other Drugs	To ensure that Prison appropriate interventions are implemented to address the identified post-release AOD treatment

Outcome	Description	Intent
		needs of sentenced Prisoner Pathway Participants.
KPI 15.5	Mental Health	To ensure that Prison appropriate interventions are implemented to address the identified mental health treatment needs of sentenced Prisoner Pathway Participants.
KPI 16	Reducing recidivism	To measure the rate at which Prisoners released from the Prison return to any prison within a specified period of time, providing an indication of the influence of the Contractor upon recidivism.
KPI 17	Provision of Timely Forensic Mental Health Services	To measure the rate at which Prisoners released from the Prison return to any prison within a specified period of time, providing an indication of the influence of the Contractor upon recidivism.
KPI 18	Mental Health Recovery Plans	To ensure that prisoners with a mental illness or a significant mental health issue are provided with a Mental Health Recovery Plan in a timely manner.
KPI 19	A Review of Mental Health Recovery Plans	To ensure effective and appropriate treatment and ongoing management of prisoners with a mental illness or significant mental health issue.
KPI 20	Follow up of prisoners discharged from mental health inpatient care	<p>To ensure prisoners discharged from mental health inpatient care are followed-up within the required timeframe to ensure continuity of care.</p> <p>Timely post-discharge follow-up is an important component of mental health care. Monitoring the proportion of discharges that are followed up within seven days is a good measure of timeliness of this care. This indicator reflects the effectiveness of the interface between admitted care and non-admitted care.</p>
KPI 21	Mental health discharge plans upon release	To ensure prisoners with mental illness or significant mental health issues requiring ongoing care are released from prison with a Mental Health Discharge Plan to promote continuity of care upon release into the community.

Outcome	Description	Intent
KPI 22	Forensic mental health service assessment within 24 hours	To ensure that prisoners transferred for the purpose of an FMH Service Assessment are assessed within the required timeframe
KPI 23	Management of referrals to Forensicare	To ensure that the Contractor adheres to the criteria developed by Forensicare for the referral of prisoners to the FMH Services.
KPI 24	Reintegration Assessment and Referral	To ensure that the Contractor prepares Individual Reintegration Plans and, where a need is identified, refers Prisoners to its Ravenhall Alliance partners.
KPI 25	Reintegration Assessment and Referral for Remand Prisoners	To ensure the Contractor completes a Reintegration Assessment and, where a need is identified, refers remand prisoners to Program and Service Providers to address identified needs.

## Appendix I. Relevant integrity reviews and investigations

### ***Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison*** **Victorian Ombudsman (June 2022)**

This investigation examined eight alleged excessive use of force incidents at the Metropolitan Remand Centre (MRC) and Melbourne Assessment Prison (MAP). While only four of these allegations were substantiated, all illustrated concerning behaviours and poor decision making by staff, including failure to avoid use of force through de-escalation, disrespect towards people in custody, use of force as a means of retaliation or punishment, and masking behaviours such as using force in CCTV blind-spots and failing to use body worn cameras (BWCs). The investigation also found evidence of underreporting of assault and a culture of silence.

### ***Special Report on Corrections: IBAC Operations Rous, Caparra, Nisidia and Molara*** **IBAC (June 2021)**

The Special Report focuses on four investigations into allegations of corrupt conduct in corrections highlighting serious and systemic corruption risks involving excessive use of force, inappropriate strip searching practices, issues with internal investigations and reporting, interference with BWCs and CCTV, conflicts of interest, inappropriate relationships, tracking contraband and misuse of information. The report discusses various ways Corrections Victoria can strengthen its policies, systems and practices to mitigate corruption risks and vulnerabilities.

### ***Internal Review of the MRC's Use of Force Incidents and the associated involvement of the ERG*** **Corrections Victoria (March 2021)**

This internal desktop review of use of force incidents at the MRC found no evidence of a pattern of excessive use of force at the MRC or specific concerns about the involvement of ERG in use of force incidents. However, identified a number of opportunities to strengthen oversight of and support provided to ERG members, including additional training opportunities, check-ins and debriefing provided by the EAP.

### ***OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people*** **Victorian Ombudsman (September 2019)**

This investigation involved a thematic inspection of solitary confinement of children and young people (those under the age of 25) in Port Phillip Prison, Malmsbury Youth Justice Precinct and Secure Welfare Services. Port Phillip Prison was found to be particularly ill-equipped to deal with the challenging behaviour of young people, who were disproportionately subjected to isolation practices. The Ombudsman found that conditions of separation almost invariably amounted to solitary confinement, often for questionable or punitive reasons, and with no



documented consideration of whether the mental health of the prisoner contributed to their behaviour or if isolation would aggravate an existing mental health condition.

***Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre (DPFC)***  
**Victorian Ombudsman (November 2017)**

This OPCAT-style inspection at DPFC identified a number of practices that pose a high risk of torture or degrading treatment, including the high incidence of use of force and restraint at DPFC and prolonged solitary confinement and routine strip searching. The report also commented on risk areas in the record keeping relating to use of force, restraints and separation.

***Review of the application and management of reasonable force in a corrections custodial environment***  
**Justice Assurance and Review Office (JARO)<sup>1</sup> (February 2017)**

This unpublished report examined the risk and controls associated with the reasonable use of force in Victorian prisons. The review findings were focussed on how Corrections Victoria manages the risks that arise from use of force events, and on opportunities for improvement in the controls including compliance and management, training, and BWCs. The report led to many changes including data collection on the use of force through the Prison Information Management System (PIMS) and regular audits of use of force incidents by the Operations Directorate.

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<sup>1</sup> Then known as the Office of Correctional Services Review.

