



Victorian
Aboriginal
Legal Service



South Eastern Australian
Aboriginal Justice Services
Limited

ABN: 45 926 675 900

28 November 2023

Special Rapporteur on Torture
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH 1211 Geneva 10
Switzerland
By email: sharon.critoph@un.org and hrc-sr-torture@un.org

Dear Special Rapporteur,

Re: Call for input current issues and good practice in prison management

The Victorian Aboriginal Legal Service (VALS) is an Aboriginal Community Controlled Organisation (ACCO) with 50 years of experience of providing culturally safe legal and community justice services to Aboriginal people in Victoria.¹ VALS provides high-quality, holistic, culturally safe, and trauma-informed legal services in civil, criminal, human rights, and family law matters. Our response to your call for input is informed by our legal practices, our community programs and our policy and advocacy expertise.

Aboriginal people are overrepresented in the criminal legal system and their safety in custody is disproportionately lower than non-Aboriginal people. This is due to a myriad of reasons, including; lack of appropriate cultural care, lack of culturally informed health care, and disconnection from family and culture.

Prisons in Australia are overcrowded and unsafe. The 1998 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) delivered over 300 recommendations to reduce the risk of harm and death of Aboriginal people in contact with the criminal legal system.² This report is now over 30 years old, and its recommendations are not appropriately implemented. Aboriginal people continue to experience far higher rates of criminalisation than non-Aboriginal people, and we are also far more likely to die in custody than non-Aboriginal people.

Since the 1st of January 2023 there have been 88 deaths in custody in Australia. This includes the passing of 18 Aboriginal people. Of those 88 deaths, four of the people

¹ For more information about VALS see [About Us](#) on our website.

² [Royal Commission into Aboriginal Deaths in Custody](#) (1998).



Victorian
Aboriginal
Legal Service



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who passed away were young people under 25 years of age.³ Many of deaths could have been avoided if Australian governments complied with their responsibilities to ensure the safety of detained people in custodial facilities.

Conditions in detention

Amongst other issues, Australian prisons are understaffed. Because of this, prison management utilise extended periods of lockdowns and isolation as a tool to reduce staffing pressures.⁴ Governments have taken to creating new language to describe these measures and invented creative tactics to conceal the cumulative time individuals have spent in what is plainly solitary confinement. Unfounded and extended periods of lockdown and isolation are contrary to the rights of detained people. These lockdowns are occurring in adult prisons and youth detention facilities,⁵ with children in youth facilities being held in isolation for periods of up to 22 hours per day.⁶ From April to June 2023, there were 15,972 episodes of isolation in youth justice facilities in the state of Victoria alone, with only 199 of those instances arising as a result of a behavioural issue and the other 15,773 instances were a result of 'security concerns'.⁷

Over 30 years ago the RCIADIC recommended that Aboriginal people should not be held in isolation, yet the Victorian government continues to allow these practices to continue. This has resulted in multiple preventable deaths since the 1998 RCIADIC report. VALS represented the Veronica Nelson's partner, Uncle Percy Lovett, in the coronial inquiry into Veronica's death. The Coroner found that Veronica's passing was preventable, and that various elements of the police and prison systems had failed to meet their duty of care.⁴ Veronica would still be alive today if the prison had afforded Veronica the standard of care she was both entitled to and deserved.

Prisons across Australia are not fit for purpose. An example of this is inappropriate infrastructure, a lack of temperature control in prisons leads to temperature induced illnesses. In the colder areas of the country prisons lack appropriate heating, and in the hotter areas of the country prisons lack appropriate ⁵[OBJ]. Coupled with poor custodial health programs, this puts incarcerated people at risk of experiencing preventable health crises or death. As climate change effects worsen, incarcerated

³ Australian Institute of Criminology, [Deaths in custody in Australia: Real-time Dashboard](#) (Webpage, 2023).

⁴ Coroners Court of Victoria, [Finding into Death with Inquest: Inquest into the passing of Veronica Nelson](#).

⁵ Victorian Ombudsman, [Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmesbury and Parkville](#) (February 2017); Western Australia Office of the Inspector of Custodial Services, [Thermal conditions of prison cells](#) (Report, 2015).



Victorian
Aboriginal
Legal Service



South Eastern Australian
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people are increasingly vulnerable to the impacts of these changes. Governments have a responsibility to ensure that prison facilities are appropriately maintained to safeguard the wellbeing of incarcerated people.

Australia continues to detain children and youth in inappropriate facilities. Children across Australia are being held in adult prisons and are subjected to horrendous conditions. In 2016, children who were transferred to a maximum-security adult prison were successful in their litigation that challenged the lawfulness of their detention in the adult facility.⁶ Despite this finding, children continue to be detained in adult prisons across Australia. Children in adult prisons are held in extended periods of isolation to reduce their contact with incarcerated adults.⁷

In Victoria, a child was transferred to a maximum-security adult prison at the age of 16 and he continues to be detained at the adult prison years later.⁸ In Western Australia, a young Aboriginal man recently passed away while being held in a maximum-security adult prison.⁹ Children in Queensland continue to be held in adult prisons and detained in police cells for extended periods, despite the absence of appropriate facilities to support long-term detention.¹⁰

When children in custody are held in isolation they are unable to engage in schooling or education. This impacts their development and intensifies disparities in access to education for vulnerable children. Access to education is a basic human right. Engagement with high quality education is a tool to reduce ongoing contact with the criminal legal system and it empowers young people to break the cycle of criminalisation.¹¹ To ensure that Aboriginal children in detention are not disconnected from culture and community, education must be developed and delivered by Aboriginal organisations.¹²

⁶ [Certain Children by their Litigation Guardian Sister Marie Brigid Arthur v Minister for Families and Children](#) [2016] VSC 796. See Supreme Court of Victoria, [Judgement Handed Down in Certain Children v Min. for Families and Children and Ors](#) for a summary of the case and its decisions.

⁷ The Guardian, [‘Terrifying’: Victorian prison officers put spit hood on a child held at an adult facility](#) (Online article, 1 November 2023).

⁸ The Guardian, [‘Dehumanising’: Aboriginal teen subjected to spit hood at Victorian prison](#) (Online article, 9 November 2023).

⁹ National Indigenous Times, [“Worse than any adult prison” – WA Children’s Court President slams “impunity” of youth prison management](#) (Online article, 24 October 2023).

¹⁰ Australian Human Rights Commission, [National Children’s Commissioner slams ‘shocking’ new Qld youth justice laws](#) (Media release, 25 August 2023).

¹¹ Smart Justice for Young People, [Working Together: Action Plan to End the Over-Representation of Particular Groups of Young People in the Criminal Justice System](#) (Report, 2023).

¹² Commission for Children and Young People, [Our Youth, Our Way](#) (Report, 2021).



Victorian
Aboriginal
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South Eastern Australian
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Measures to reduce overcrowding of prisons

VALS is a strong public advocate for measures to reduce prison populations. We have published various materials that identify these measures, and we continue to advocate and push Australian governments to implement our recommendations.

*Raise the Age*¹³

A key measure to reduce the overrepresentation of Aboriginal children in youth detention is to raise the minimum age of criminal responsibility and the minimum age of detention.

Australia has a shockingly low age of criminal responsibility. A key factor that will reduce the overcrowding of youth detention facilities is raising the minimum age of criminal responsibility to 14, and the minimum age of detention to 16. VALS continues to advocate for these reforms and further information about the impact that the low age of criminal responsibility has on Aboriginal children can be found in our various public policy documents on *Raising the Age* of criminal responsibility.¹⁴

Reforming Bail

The RCIADIC Final Report recommended that imprisonment must only be used as a last resort.¹⁵ Thirty years later, the Coronial Inquest into Veronica Nelsons's passing labelled the current bail laws a complete and unmitigated disaster. The Coroner found that Victorian bail laws discriminate against Aboriginal people, are incompatible with *Victoria's Charter on Human Rights and Responsibilities* legislation,¹⁶ and should be changed urgently. The Victorian Government has introduced amendments to the bail laws that are a welcomed move towards justice, but they are far from what is required to reduce the overrepresentation of Aboriginal people being remanded.¹⁷

Improving parole processes

The Victorian parole system was reformed in 2015 and subsequently increased difficulty in gaining parole. This reform disproportionately impacted Aboriginal people

¹³ Change the Record, [Raise the Age](#) (Webpage).

¹⁴ VALS, [Policy Brief: Raising the Age of Criminal Responsibility](#) (August 2022); and VALS [Submission to the Australian Human Rights Commissions Call for Submissions on Youth Justice](#) (June 2023); and VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (November 2022); and VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021).

¹⁵ VALS, [Policy Brief: Fixing Victoria's Broken Bail Laws](#) (Fact sheet, 2022).

¹⁶ [Charter of Human Rights and Responsibilities Act 2006](#) (Vic).

¹⁷ VALS, [Pocum's Law: the Blueprint for Bail Reform](#) (Fact sheet, 2023).



Victorian
Aboriginal
Legal Service



South Eastern Australian
Aboriginal Justice Services
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who are less likely to apply for parole and are also less likely to be granted parole. An equitable parole system is one that is fair, transparent, and culturally appropriate.¹⁸ Central to these reforms is the need to embed procedural fairness and natural justice within parole processes, and an overarching requirement that parole systems comply with the principle of detention as a last resort.¹⁹

Implementation of the Optional Protocol to the Convention Against Torture in Australia

Despite ratifying the Optional Protocol to the Convention Against Torture (OPCAT) in 2017, Australia has failed to make any genuine progress towards implementing OPCAT. In late 2022, the United Nations Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) terminated its visit to Australia following a lack of compliance from custodial facilities.²⁰ Implementing OPCAT and establishing an NPM would go a long way to preventing the ill-treatment of people in custody.²¹ Further, any implementation of OPCAT must be culturally safe.²²

State and Federal governments are at a deadlock as to who should fund the National Preventive Mechanism (NPM), and they continue to miss multiple implementation deadlines.²³ Although the Federal Government has committed a small amount of funding to support the establishment of the NPMs, State agencies are required to fund the ongoing functions of the NPMs.²⁴ Both State and Federal governments are refusing to take financial responsibility for the implementation of OPCAT and are recklessly placing the safety and welfare of incarcerated people at risk by doing so.

¹⁸ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (November 2022).

¹⁹ Ibid.

²⁰ UNOHC, [UN torture prevention body terminates visit to Australia, confirms missions to South Africa, Kazakhstan, Madagascar, Croatia, Georgia, Guatemala, Palestine, and the Philippines](#) (Media release, 20 February 2023)

²¹ VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (November 2022); and VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021).

²² Ibid.

²³ VALS, [Submission to the "Call for input: Deaths in custody" from the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions](#) (March 2023).

²⁴ Australian Human Rights Commission, [Road Map to OPCAT Compliance](#) (Report, October 2022).



Victorian
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South Eastern Australian
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Healthcare in custody

Inadequate healthcare in prisons, including a lack of culturally safe healthcare provided by Aboriginal organisations, is one of the key contributors to poor outcomes for incarcerated Aboriginal people. A 2021 journalistic investigation found that Aboriginal people who died in custody were three times more likely to not receive all necessary medical care as compared to non-Aboriginal people. The disparity in provision of healthcare preceding death was even more vast for Aboriginal women, with less than half receiving adequate medical care prior to their death.²⁵

The RCIADIC recommended that the standard of health care in prisons must be equivalent to the standard of care available in community; yet the standard of health care in prison remains abysmal.²⁶ To protect the wellbeing of incarcerated people it is imperative that prison healthcare is;

- Equivalent to the standard of care available to the general public,
- Delivered by public services and not outsourced to private healthcare providers,
- For Aboriginal people, healthcare must be culturally safe and delivered by Aboriginal Community Controlled Health Organisations (ACCHOs),
- Public health benefits, such as public health schemes and disbursements, must be available to incarcerated people,
- Oversight and monitoring of the provision of healthcare services is imperative to ensure good practice,
- A complaints mechanism must be in place.²⁷

Lack of culturally safe health care in prisons is a major issue in Australian prisons. Winnunga Nimmityjah Aboriginal Health and Community Services delivers in-reach healthcare services in Australian Capital Territory prisons.²⁸ Winnunga Nimmityjah has successfully improved the delivery of culturally safe healthcare in the ACTs prisons, and has also improved continuity of care for Aboriginal people who are exiting prison.

²⁵ The Guardian, [The facts about Australia's rising toll of Indigenous deaths in custody](#) (Online article, 9 April 2021). See also VALS [Submission to the "Call for input: Deaths in custody" from the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions](#) (March 2023).

²⁶ VALS [Submission to the "Call for input: Deaths in custody" from the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions](#) (March 2023).

²⁷ See VALS, [Nuther-mooyoop to the Yoorrook Justice Commission: Criminal Legal System](#) (November 2022); and VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021); and VALS [Submission to the "Call for input: Deaths in custody" from the UN's Special Rapporteur on extrajudicial, summary or arbitrary executions](#) (March 2023).

²⁸ For more information about Winnunga Nimmityjah Aboriginal Health and Community Services see their [website](#).



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Despite the proven benefits of an ACCHO delivering healthcare services in prisons, a chronic lack of consistent funding limits Winnunga Nimmityjah's ability to deliver a consistently fulsome service. Winnunga Nimmityjah's CEO was a panellist on VALS's prison healthcare webinar that was published earlier this year.²⁹

Rehabilitation and reintegration

A key part of reducing ongoing contact with the criminal legal system and custody is ensuring that adequate rehabilitation and reintegration programs are available. This includes delivering programs that are culturally safe and support a connection to culture. Rehabilitation programs that are developed and delivered by Aboriginal people and organisations are incredibly successful in encouraging rehabilitation.³⁰

Aboriginal rehabilitation programs such as the *Wulgunggo Ngalu Learning Place* utilise cultural healing and overall skill development to strengthen participants wellbeing and promote rehabilitation and reintegration into community.³¹ Aboriginal healing and rehabilitation programs are often small-scale and typically have long waiting lists due to a lack of funding to expand their service. It is imperative that culturally safe rehabilitation and reintegration programs receive substantial funding to ensure that all Aboriginal people who want to access the programs can do so. In recognising the massive overrepresentation of Aboriginal people in the criminal legal system, governments have a responsibility to ensure that rehabilitation services available in custodial settings are culturally safe. Programs that promote and protect people's connection to their culture and cultural identity are far more effective in reducing recidivism and also improving the wellbeing of incarcerated people.

Preparing for the next pandemic

COVID-19 had an incredibly detrimental impact on the criminal legal system in Australia. Incarcerated people in Victoria were required to undertake 2-weeks isolation upon reception into prison, and 2-weeks isolation again following any contact with the external community (including appearing in Court).³² Incarcerated people experience far higher rates of poor mental health and episodes of self-harm, and the extended periods of isolation intensified these vulnerabilities.³³ Isolation practices in Victorian

²⁹ VALS, [Prison Healthcare Webinar](#) (April 2023).

³⁰ VALS, [Submission to the Inquiry into Victoria's Criminal Justice System](#) (September 2021).

³¹ Corrections Victoria, [Wulgunggo Ngalu Learning Place](#) (2017).

³² VALS, [Submission to the Public Accounts and Estimates Committee COVID-19 Inquiry](#) (September 2020).

³³ Ibid.



Victorian
Aboriginal
Legal Service



South Eastern Australian
Aboriginal Justice Services
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prisons increased instances of poor mental health and put vulnerable people at a much greater risk of self-harm or suicide.

Further to this, criminal hearings and trials were postponed for months, and in some cases years, resulting in long court backlogs and extended periods of remand. At one point during the pandemic, criminal trials were awaiting hearing for up to 22 months.³⁴

VALS has published several policy pieces on the measures that are required to safeguard the rights and wellbeing of incarcerated people during the COVID-19 pandemic, as well as measures that can be taken to reduce the impact of pandemics on incarcerated people and prison systems.³⁵

For your convenience I have included an attachment of all above-referenced materials published by VALS.

I hope this submission informs the Special Rapporteur's Fourth Report on the current issues and good practices in the management of prisons. I hope the report speaks to the distinct issues faced by Indigenous peoples, whilst also highlighting our strength in, and right to, be connected with our culture and communities.

I look forward to reading the Fourth Report once published.

Yours sincerely,

Nerita Waight

Nerita Waight

Chief Executive Officer

³⁴ County Court of Victoria, [Chief Judge Peter Kidd provides an update on the status of the County Court's COVID-19 backlog of criminal jury trials](#) (Media release, 9 October 2023).

³⁵ See; VALS, [Submission to the Public Accounts and Estimates Committee COVID-19 Inquiry](#) (September 2020); and VALS, [Managing the Pandemic in Victoria](#) (Fact sheet, 2021); and VALS, [Building Back Better: COVID-19 Recovery Plan](#) (Policy document, 2021).