



## WITNESS STATEMENT OF MARION HANSEN

I, Marion Hansen, Co-Chair of the Aboriginal Justice Caucus, say as follows:

### Aboriginal Justice Caucus

- 1 The Aboriginal Justice Caucus (AJC) is a self-determining body that provides state wide Aboriginal representation, leadership and a strong voice for the Aboriginal community in all areas relating to justice. The AJC comprises Aboriginal community representatives who are signatories to the Aboriginal Justice Agreement.
- 2 The first Victorian Aboriginal Justice Agreement was established in 2000 in response to recommendations from the 1991 Royal Commission into Aboriginal Deaths in Custody and subsequent 1997 National Ministerial Summit on Indigenous Deaths in Custody. Under the Aboriginal Justice Agreement, the AJC plays a crucial role as the conduit between community and government advocating for systemic reform of the justice system and steering change to address the causes of offending that lead to the overrepresentation of Aboriginal and Torres Strait Islander People in the criminal justice system.
- 3 The Victorian Aboriginal Justice Agreement is a long-term partnership between the Aboriginal community and the Victorian Government. *Burra Lotjpa Dunguludja* is phase four of the Aboriginal Justice Agreement (AJA4). AJA4 affirms the Victorian Government's commitment to self-determination and upholds that self-determination is the only policy approach to produce effective and sustainable outcomes for Aboriginal and Torres Strait Islander people and for Indigenous peoples around the world.<sup>1</sup> AJA4 priorities are to tackle the overrepresentation of Aboriginal people in the justice system, and to close the gaps in Aboriginal and non-Aboriginal justice outcomes by 2031.

### Aboriginal over-representation in the justice system

- 4 Aboriginal young people and adults are significantly over-represented in the criminal justice system. While the degree of over-representation varies across different parts of the criminal justice system, the underlying reasons for this over-representation are complex and enduring.
- 5 Almost 30 years ago, the Royal Commission into Aboriginal Deaths in Custody found that the single most significant contributing factor to Aboriginal people's involvement with the

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<sup>1</sup> Victorian Government, *Burra Lotjpa Dunguludja*, p.11

criminal justice system was the disadvantaged and unequal position of Aboriginal people in Australian society in every way, whether socially, economically or culturally.<sup>2</sup> These inequalities persist, borne out by relatively poorer economic, health and justice outcomes for Aboriginal populations when compared to the rest of the population.

### ***Children and Young People***

- 6 Aboriginal children and young people are vastly overrepresented in Victoria's criminal justice system. On an average day in 2018-19 in Victoria, Aboriginal young people were 11 times as likely to be under youth justice supervision than non-Aboriginal young people.<sup>3</sup>
- 7 Poor mental health is associated with a greater risk of criminal justice system involvement. Almost half of all young people in youth justice custody presented with mental health issues.<sup>4</sup>
- 8 Early criminalisation may act as a precursor, causal and aggravating factor for mental illness in children.<sup>5</sup> Criminalisation and incarceration impacts a child's development, whereby compounding mental illness and trauma. Ending the early criminalisation of children is crucial in preventing exposure to practices and experiences that drive poor mental health outcomes. Added to this complexity is that imprisoned children and young people are likely to be exposed to multiple traumatic events, socioeconomic disadvantage, family violence and poor educational opportunities.
- 9 There is also evidence to suggest that incarceration compromises cognitive functioning. Incarcerating a child or young person is detrimental to adolescent development as it dislocates young people from any protective factors they may have, and incarceration does not reduce offending behaviour.<sup>6</sup>
- 10 Youth detention disproportionately impacts Aboriginal children and young people whereby detrimentally compromising their health and wellbeing. The Royal Commission into the Protection and Detention of Children in the Northern Territory supports this.<sup>7</sup>

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<sup>2</sup> Hansard, 9<sup>th</sup> May 1991, Royal Commission into Aboriginal Deaths in Custody

<sup>3</sup> AIHW 2020, Youth Justice in Australia 2018-19

<sup>4</sup> Youth Parole Board, Annual Report 2018-19

<sup>5</sup> Human Rights Law Centre (2019) Decriminalising Mental Death: Submission to the Royal Commission into Victoria's Mental Health System, 5 July 2019

<sup>6</sup> Armytage P, Ogloff J (2017) Youth Justice Review and Strategy: Meeting the need and reducing offending, Executive Summary July 2017

<sup>7</sup> Human Rights Law Centre (2019) Decriminalising Mental Death: Submission to the Royal Commission into Victoria's Mental Health System, 5 July 2019

## **Adults**

- 11 The overrepresentation of Aboriginal adults in Victorian prisons is also significant. For example, Aboriginal people comprise approximately 9 per cent of those incarcerated yet they represented just 0.8 per cent of the population. Mental illness and ill health is a significant factor contributing to the incarceration of Aboriginal adults. The Koori Prisoner Mental Health and Cognitive Function Study found that seventy-two per cent of Aboriginal men and 92 per cent of Aboriginal women in prison had received a lifetime diagnosis of mental illness.<sup>8</sup>
- 12 The impact of the criminal justice system on mental health is particularly damaging for Aboriginal people. The impacts on the social and emotional wellbeing of Aboriginal individuals, families and communities are particularly devastating for Aboriginal people in custody.

## **Mental health and social and emotional wellbeing**

- 13 Mainstream models of health overwhelmingly operate within Western systems of knowledge and often ignore Aboriginal approaches to health and wellbeing. As a consequence, existing health models can have limitations and disadvantages when working with Aboriginal people. A holistic and culturally appropriate view of health is one that focuses on the physical, spiritual, cultural, emotional and social wellbeing of the person, family and community.<sup>9</sup>
- 14 For Aboriginal people, social and emotional wellbeing encompasses all aspects of life. The social, physical, emotional, cultural and spiritual health of individuals, families and community are the cornerstone for good wellbeing. Spirituality, connection to country, community, family and strong cultural identity contribute to building resilience and are protective factors against poor mental health. For Aboriginal people, mental health may be compromised by racism, discrimination, unresolved trauma and grief that disproportionately impact our communities.
- 15 Colonisation, and the institutions that perpetuate it, brought significant destruction and harm to Aboriginal people and communities including through the dispossession of land, disruption of culture and kinship systems, removal of children, social exclusion, poverty and disadvantage and systemic racism.<sup>10</sup> These experiences continue to affect the social and emotional wellbeing of Aboriginal people to this day.

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<sup>8</sup> Ogloff JRP, Patterson J, Cutajar M, Adams K, Thomas S, Halacas C, 2013, Koori Prisoner Mental health and Cognitive Function Study – Final Report, Centre for Forensic Behavioural Science, Monash University, prepared for Department of Justice and Regulation, Victoria State Government

<sup>9</sup> Public Drunkenness Submission

<sup>10</sup> Aboriginal Justice Caucus Youth Justice Act submission (2020) Human Rights Law Commission

- 16 The AJC recognises that Aboriginal people with poor social and emotional wellbeing are at greater risk of becoming involved with the justice system, and that being involved in the justice system can negatively affect an individual's social and emotional wellbeing as well as that of their family and community. For these reasons, the AJC advocates for policy and practice change and integrated approaches to improve the mental health and social and emotional wellbeing of Aboriginal people in both community and justice settings.

### **Community-based prevention and early intervention**

- 17 Early intervention and prevention are critically important to enhancing social and emotional wellbeing and other protective factors to guard against justice system involvement. These areas need greater resourcing, particularly across Aboriginal communities.
- 18 In 2018, across Victoria, 25 community-based partnership projects were funded under the Koori Youth Crime Prevention Grants, a partnership between the Department of Justice and Community Safety's Community Crime Prevention and Koori Justice Units. The focus for funding was on projects that delivered community strengthening, enhanced family relationships, and offered a holistic approach. More than \$1.5 million in grants were awarded to projects to empower and re-engage Aboriginal children and young people through camps, sporting activities, workshops and education to help prevent them from coming into contact with the criminal justice system. Projects that take a holistic approach to working with young people often have a 'ripple effect' by involving and benefiting their families and community members.<sup>11</sup>
- 19 As part of the development of AJA4, the AJC worked with The Australian Centre for Social Innovation (TACSI) to develop the 'First Contact is the Last Contact' model aimed at preventing unnecessary escalation of contact with the system following exposure to violence or crime through healing and community support. This model aims to support young people right after they come into contact with the justice system, indirectly, through:
- Providing a collection of supports at community, programs and continuum levels;
  - Hearing the voice of the young person to inform the process to follow;
  - Supporting young people to build healthy and positive relationships;

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<sup>11</sup> O'Shea S, McMahon S, Priestly A, Bodkin-Andrews G, Harwood V (2016) 'We are history in the making and we are walking together to change things for the better': Exploring the flows and ripples of learning in a mentoring program for indigenous young people', *Education as Change* vol.20 no.1

- Walking alongside young people, providing long term and ongoing support to helping them define boundaries, and get them connected to culture; and
  - Keeping young people connected to support networks and understanding who can advocate for them.
- 20 Aboriginal self-determined models, like First Contact is the Last Contact, have the potential to support a child's connection to culture, family, country and community, which is central to Aboriginal children and young people's emotional and social wellbeing, as well as strengthening families and communities to respond to and prevent offending in the future.<sup>12</sup>
- 21 Aboriginal community designed and led youth support systems ensure the best care for Aboriginal children and young people and the future of our communities. The Koorie Youth Council's Ngaga-dji report, endorsed by the AJC, recommends sustainably resourcing Aboriginal community organisations to develop youth support systems that support children in their communities with localised services across health, social and emotional wellbeing, education, family, legal, cultural, and drug and alcohol services.
- 22 Ngaga-dji notes that Aboriginal girls face additional challenges in Victoria's justice system due to a lack of services that work for them and criminalising disadvantage instead of supporting them to stay out of the justice system. This lack of services and criminalisation of Aboriginal girls in Victoria is reflected in their high rates of contact with the system. Aboriginal girls make up 24 per cent of all girls under youth justice supervision, compared to Aboriginal boys, who make up 15 per cent of the male cohort.<sup>13</sup>
- 23 To prevent the criminalisation of Aboriginal children and young people, the Ngaga-dji report endorses raising the age of criminal responsibility to at least 14 in order to give youth support services in communities the best chance to connect and support children who need them. Along with advocating for raising the age, Ngaga-dji sets overarching ways of working that underpin its proposed solutions through self-determination, youth participation, with strong connections to culture, families, Elders and communities.
- 24 In addition to raising the minimum age of criminal responsibility in Australia to 14 years, the criminalisation of Aboriginal young people could be further avoided if the arrest, detention or imprisonment of a child from 14 years was used only as a measure of last resort and for the shortest possible period of time.

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<sup>12</sup> The Australian Centre for Social Innovation (2018), *5 Innovations to Further Self Determination in the Justice System*, Project with the Koorie Caucus, AJA4 Steering Committee, Koorie Justice Unit and The Australian Centre for Social Innovation, April 2018

<sup>13</sup> Koorie Youth Council, *Ngaga-dji Report*, 2019

- 25 Rather than criminalising young people, rehabilitative interventions with restorative justice accountability attached are a low cost criminal justice response. Such responses also invest in the social and emotional wellbeing and healing of the person, families, and communities. The Victorian Government has funded a Restorative Justice Pilot Project under the AJA4, overseen by the Eastern Metropolitan and Hume Regional Aboriginal Justice Advisory Committees. This Placed-Based Local Community-Led Project aims to develop a pilot program of culturally specific and responsive restorative justice and group conferencing for young Aboriginal people who come into contact with the justice system. These approaches complement culturally safe early intervention and prevention programs that strengthen and build resilience.

### **Diversion**

- 26 The most effective justice systems and programs invest in comprehensive interventions to divert people away from justice system involvement, provide access to culturally appropriate interventions to rehabilitate, and offer post-release support to help prevent future offending. Alternatives to incarceration, such as diversion, cautioning and community support programs are effective in steering people away from offending behaviour by strengthening connections to community, culture and Country. Diversion programs are typically less expensive and more effective than incarceration.
- 27 Diversion schemes or services, including mentoring, that are facilitated by Aboriginal community controlled organisations, community members or Elders are more positive for strengthening cultural connection, re-establishing broken relationships and community building. To be effective it is important that support programs are community focussed and involve Aboriginal people from initial assessment through to intervention and evaluation. Program development requires extensive engagement with the Aboriginal community, including the people for whom it is intended.<sup>14</sup>
- 28 The Koori Women's Diversion program operated by community organisations across four sites in Victoria, was developed with extensive Aboriginal involvement. The Program aims to reduce Aboriginal women's involvement with the criminal justice system by providing intensive and holistic case management. This includes practical support to ensure women are connected to the services they need, supported to get to appointments, and reconnected to culture as a source of therapeutic strength, healing and self-esteem.
- 29 The outcomes for women in the program vary according to their needs but include accessing stable accommodation, receiving treatment for physical and mental health issues, ceasing alcohol and drug use, re-engaging with children and extended family,

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<sup>14</sup> Dudgeon P, Milroy H, Walker R (2014). *Working together: Aboriginal and Torres Strait Islander Mental Health and Well-being Principles and Practice*. 2nd ed. Barton: Commonwealth Copyright Administration<sup>SEP</sup>

receiving support to exit violent relationships, reconnecting with culture and community, building social and emotional wellbeing and no further contact with the justice system.<sup>15</sup>

- 30 Given that imprisonment has a disproportionate impact on social and emotional wellbeing outcomes for Aboriginal people and their families. This AJC continue to advocate for longer-term funding for the Victoria Police Koori Youth Cautioning Program so that it can operate across more sites; and more gender appropriate, community-based diversionary support options for Aboriginal young people, Aboriginal women and Aboriginal men. These are vital to preventing initial contact and reducing further involvement with the justice system.
- 31 A long-term priority of the AJC is a residential diversion program for Aboriginal women similar to Wulgunggo Ngalu Learning Place. An Aboriginal designed and operated residential program would provide opportunities for Aboriginal women involved in the justice system to learn new skills, reconnect with, or further strengthen, their culture and participate in programs and activities to help address the issues that contributed to their including mental ill health and substance misuse.
- 32 Good practice for addressing physical health, mental health, interpersonal issues, and substance abuse issues requires holistic, culturally embedded, therapeutic programs. The Bunjilwarra Koori Youth Alcohol and Drug Healing Service is a 12 bed alcohol and other drugs residential rehabilitation and healing service for Aboriginal young people aged between 16-25 years. The service operates with an Aboriginal defined healing and cultural framework, supported by trauma informed practice; adolescent developmental framework; and therapeutic community and recovery frameworks.<sup>16</sup>
- 33 There is mounting evidence that culturally safe, Aboriginal designed and delivered services are more effective than those provided by mainstream service providers. Evidence from the 2016 Victorian Royal Commission into Family Violence found that culturally safe family violence services are more likely to be effective for Aboriginal and Torres Strait Islander people, and that ACCOs are more likely to delivery culturally safe services. Dardi Munwurro delivers a range of family violence, healing and behaviour change programs services, to break the cycle of inter-generational trauma in Aboriginal families and communities. This is achieved by empowering and inspiring individuals to heal the past, acknowledge the present and create a positive vision for the future.

### **Culturally safe and trauma informed services in the justice system**

<sup>15</sup> Victorian Government Aboriginal Affairs Report 2019, 15.2 *Decrease the number and eliminate the over-representation of Aboriginal women in the justice system*, p.87

<sup>16</sup> Submission to the Inquiry into the Overrepresentation of Children and Young People in Youth Justice, Commission for Children and Young People, Aboriginal Justice Caucus 2019

- 34 Investment and reinvestment in culturally safe and trauma informed responses and services are essential for the social and emotional wellbeing and the healing of Aboriginal people, their families and communities. Even more so, when these services are provided to Aboriginal people in custody and the need to strengthen cultural connection, build resilience and protects against poor mental health and social emotional wellbeing is even greater.
- 35 A lack of access to mental health services along with suicide rates, particularly in regional areas of Victoria, is of great concern to the AJC. To address services gaps, culturally appropriate mental health services should be offered in partnership through local health providers and Aboriginal Community Controlled Organisations (ACCOs) across all regions. In addition, mental health and suicide prevention training ought to be a priority for Aboriginal service provision workers, including Koori Youth Justice Workers.
- 36 It must be ensured that culturally safe trauma informed services are provided through forensic mental health facilities. This includes Thomas Embling Hospital, which provides mental health services to some prisons within the Victorian prison system.
- 37 When developing AJA4, the AJC developed principles, through our work to define self-determination in the justice system, to guide the development of initiatives under the Agreement. These seem particularly relevant to the provision of mental health services and social and emotional wellbeing support for Aboriginal people in the justice system:
1. Prioritise self-determination: Always strive to transfer power, decision-making and resources to the Aboriginal community.
  2. Support cultural strengthening: Enhance positive connections to family, community and kin to build resilience to setbacks and develop strategies for dealing with hardships.
  3. Be strengths-based: Respect and honour the strengths and resilience of Aboriginal people, families and communities and build upon these.
  4. Be trauma-informed: Employ healing approaches that seek to understand and respond to trauma and its impact on individuals, families and communities.
  5. Be restorative: Aim for the restoration of victims, offenders and communities and repair the harm resulting from the crime, including harm to relationships.
  6. Use therapeutic approaches: Recognise that at all stages of involvement with the justice system there is potential to make a positive impact on a person's life.
  7. Respond to context: Recognise and adapt to meet the specific needs and circumstances of people, families, and communities.



8. Be holistic: Address the interrelated risk factors for offending in a holistic manner, such as substance abuse, housing, and unemployment.

9. Protect cultural rights: Respect the distinct and unique rights of Aboriginal people.

10. Address unconscious bias: Identify and respond to systemic racism and discrimination that persists in the justice system<sup>17</sup>.

## Courts

38 Koori Courts operate in the Children's, Magistrates' and County Courts, and provide a more informal approach to court hearings in order to allow greater participation by the Aboriginal community in the court process. Elders and Respected Persons, Aboriginal and Torres Strait Islander family members, and Koori Court Officers are able to engage in and support the court processes. Through providing a more culturally safe space, Aboriginal people are able to tell their stories and explain issues and experiences that may have contributed to their offending. This enables Magistrates, Judges and others to identify any necessary programs and supports required to facilitate sentence completion.

39 The success of Koori Courts demonstrates that Aboriginal justice outcomes can be improved through providing greater access to therapeutic justice models and specialist courts. Any increased capacity or access to therapeutic courts for Aboriginal people should be coupled with a commensurate increase in the capacity and availability of support services connected with the programs.

## Corrections

40 Members of the AJC worked closely with Justice Health to develop the Aboriginal Social and Emotional Wellbeing Plan (ASEWP) which provides a range of positions, programs and other supports for Aboriginal people in prison and Community Correctional Services.

41 The AJC would like to see initiatives under the ASEWP continue and expand to further enhance the social, emotional and spiritual wellbeing of Aboriginal people in custody, and similar initiatives be developed, that reflect the voices of Aboriginal young people, for the youth justice system.

42 The AJC also recognise the critical role that Aboriginal Wellbeing Officers (AWOs) play in prisons. AWOs provide ongoing welfare, advocacy and support for Aboriginal people in prison; and oversee pre and post released plans to ensure appropriate supports are in place to help people transition back into the community. While the numbers of Aboriginal

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<sup>17</sup> Victorian Government, *Burra Lotjpa Dungaludja*, p.28

people in prison has grown, there has not been the same growth in the number of AWOs. This means that AWOs have to support a growing number of people with their cultural, social and emotional wellbeing needs and find it increasingly difficult to meet these needs and community and cultural expectations in relation to these roles.

- 43 The AJC would like to see an increase in the number of AWO roles across Victoria's prisons, and greater support for AWOs.

#### **Self-determination, social and emotional wellbeing programs and the justice system**

- 44 The strength and resilience of Aboriginal people, families and communities is compromised by complex problems, including historical and ongoing dispossession, marginalisation, racism, as well as the legacy of past policies of forced removal and cultural assimilation. Policy makers need to understand that social problems are deeply entrenched and ought to be approached with consideration of historical, social, community, family and individual factors. It is thus instrumental to involve Aboriginal people and communities in the design of policies and legislation that affects us.
- 45 Similarly, programs and services need to be designed, delivered and evaluated *by* and with the Aboriginal community not for us. When Elders, community members, and other local Aboriginal organisations and service providers are engaged in consultative and development processes the most important needs of a community can be distinguished and the most appropriate methods of implementation can be identified.
- 46 Hearing and valuing the voice of Aboriginal young people is particularly important in these processes. Providing Aboriginal young people with safe spaces in which they can be engaged and empowered to speak up is important to build their self-esteem and to ensure programs and services designed for Aboriginal young people will work for them.
- 47 The role of the AJC is evolving, as our members participate in a growing number of local and state-wide advisory and governance mechanisms to inform government responses to justice-related issues.
- 48 Progressing Aboriginal self-determination necessitates new and enhanced roles for Aboriginal people, our communities and the organisations that represent us. The AJC continues to advocate for increased Aboriginal participation in government processes, policy and program design, which is critical to the realisation of Aboriginal self-determination.
- 49 The AJC believes that enabling greater Aboriginal self-determination through implementation of any of the recommendations from this Royal Commission that affect Aboriginal and Torres Strait Islander people, will be critical to their success.

**Recommendations for change**

50 The Royal Commission into Victoria's Mental Health System represents the opportunity to make lasting changes to the mental health system that better respond to the needs of Aboriginal and Torres Strait Islander people, particularly those at risk of or involved in the criminal justice system. The AJC hopes to see the following outcomes:

- a) Investment in early intervention, diversion and integrated holistic wrap-around services that are vital in addressing underlying mental health issues, to promote social and emotional wellbeing, and prevent the likelihood of further contact with the justice system.
- b) Enhanced access to culturally safe and trauma informed mental health and social and emotional wellbeing services in community and custodial contexts.
- c) Increased funding to existing programs that support the social and emotional wellbeing of Aboriginal people that are healing rather than punitive in their approach.

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