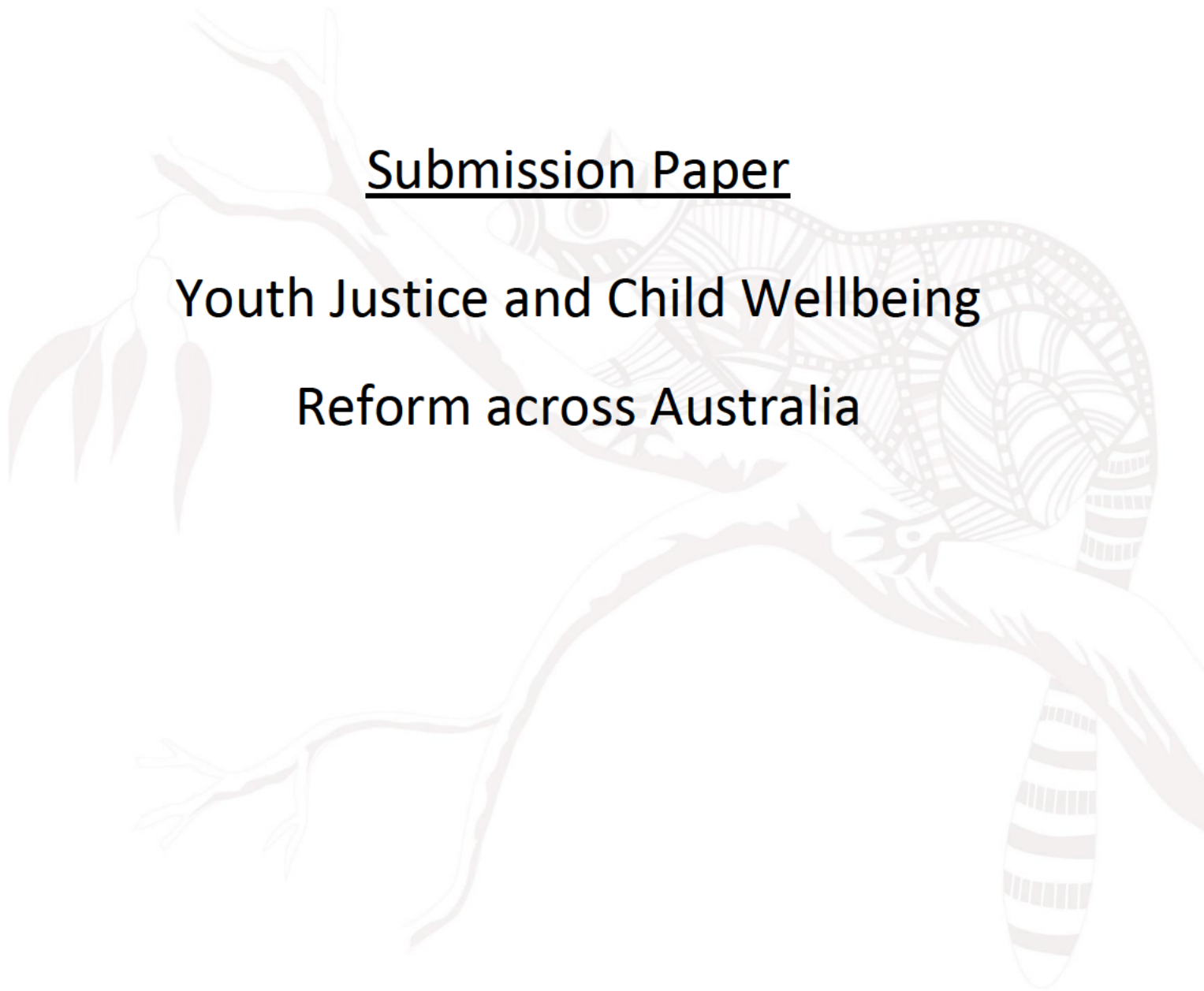




Victorian Aboriginal Community
Services Association Ltd.

Submission Paper

Youth Justice and Child Wellbeing
Reform across Australia



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Note on Language: We use the term 'Aboriginal' to describe people who identify as Aboriginal or Torres Strait Islander. We acknowledge the traditional Aboriginal Owners of Country throughout Victoria and pay our respect to them, their culture, and their Elders past, present and emerging and acknowledge Aboriginal sovereignty was never ceded.

Background

The Victorian Aboriginal Community Service Association Ltd (VACSAL) is a registered state-wide Aboriginal Community Controlled Organisation (ACCO). As an ACCO, VACSAL operates with an approach underpinned by principles of self-determination and cultural integrity. Founded in 1984, VACSAL has close to 40 years of experience in leading and delivering services that meet the needs of Aboriginal children, families and communities, with early intervention and prevention at the heart of our services. VACSAL's key areas of work are service delivery, advocacy and education spanning youth justice, early years, homeless services, family violence services and community sports. Since its inception, VACSAL has been instrumental in assisting the Victorian and Commonwealth Governments develop policies and programs in major areas relating to the advancement of Aboriginal people. As an Aboriginal community service organisation, we are committed to:

- Self-determination and self-management for Aboriginal communities.
- Advocating for the needs of individuals, families and communities.
- Respect for and acknowledgement of Aboriginal history and kinship networks.
- The delivery of high-quality services.
- Creating an organisation that is open, welcoming and encourages participation by the Aboriginal community.
- Redressing inequality and disadvantage.

VACSAL is an established provider of Aboriginal-specific justice and community safety programs and a recognised expert in this space. VACSAL's service delivery includes a Local Justice program, which focuses on supporting Aboriginal clients through their interactions with the justice system and working with justice-related agencies to enhance services received by Aboriginal clients in the local area. VACSAL runs Bert William's Aboriginal Youth Service, which delivers proactive and preventative services for Aboriginal youth, focusing on reducing over-representation in the youth justice and homeless system. Intertwined are several short-term programs that centre on early intervention and prevention for Aboriginal young people and supporting those involved in the justice system, via cultural connection, connection with the community and linking with local support services.

VACSAL welcomes the opportunity to provide a submission for the project into *Youth Justice and Child Wellbeing Reforms across Australia*. With a focus on the impacts of the education system on Aboriginal Youth and the exasperating lack of early intervention and prevention programs.

What factors contribute to children's and young people's involvement in youth justice systems in Australia?

It is important to understand the broader context of young people in conflict with the law. Research shows that those who are in contact with the justice system are vulnerable children coming from backgrounds of entrenched disadvantage, having poorer educational outcomes, exposed to alcohol and drug use and possibly facing unstable living arrangements.¹ It is the continuous and pervasive influences of Eurocentric supremacy and the consequent racism, marginalisation, social inequity, loss of identity and culture and issues of intergenerational trauma that impact the health and well-being of Aboriginal Youth.² Several policy frameworks in Victoria exist to address this entrenched disadvantage and strive for better outcomes for Aboriginal people across every area of life. These include Korin Korin Balit Djak, Wungurilwil Gagapduir, Balit Marrup, Burra Lotjpa Dunguludja, Marrung, Dhelk Dja, The Victorian Aboriginal Affairs Framework and Burra Lotjpa Dunguludja.

In Victoria, Aboriginal Youth comprise 1.3% of the total Victorian Youth Population, however, Aboriginal youth make up nearly 17% of all youth in detention.³ Not only do they come into the system at a disproportional extent, but the penalties they receive are also demonstrably more severe than those of equivalent non-Aboriginal Youth. The Royal Commission into Aboriginal Deaths in Custody notes the prevalence and apparent triviality of such charges against Aboriginal Youth, play a role in constructing criminal histories from an early age.⁴ The misuse of police discretion in relation to Aboriginal youth as well as specific taskforces where Aboriginal children are constantly under surveillance by police is presently occurring in communities throughout Australia with Aboriginal youth being targeted by police and policing practices.⁵

This is a vulnerable period for youth with a range of biological, interpersonal, cognitive and environmental changes and transitions that increase the occurrence of stressful life events and adaptive functioning required. This brings about other barriers specific to Aboriginal youth populations in help-seeking for mental health issues with discrimination, intergenerational stigmas and feelings of shame associated with help-seeking. Along with this is the fear of confidentiality and misunderstanding and the potential ramifications of government intervention or being ostracised by

¹ Chris Cunneen, Barry Goldson, and Sophie Russell, "Juvenile Justice, Young People and Human Rights in Australia," *Current issues in criminal justice* 28, no. 2 (2016): 174.

² Péta Phelan and Robyn Oxley, "Understanding the Social and Emotional Wellbeing of Aboriginal Lgbtiq(Sb)+ Youth in Victoria's Youth Detention," *Social inclusion* 9, no. 2 (2021): 22.

³ AIHW 2022. Youth detention population in Australia 2022, <<http://www.aihw.gov.au>>

⁴ Greg Gardiner, "Aboriginal Boys' Business: A Study of Indigenous Youth in Victoria in Relation to Educational Participation and Contact with the Juvenile Justice System," *Journal of intercultural studies* 18, no. 1 (1997): 55.

⁵ Phelan and Oxley, "Understanding the Social and Emotional Wellbeing of Aboriginal Lgbtiq(Sb)+ Youth in Victoria's Youth Detention," 19.

the community and the lack of culturally-safe services and experiences of poor help-seeking in the past.⁶

What needs to be changed so that youth justice and related systems protect the rights and well-being of children and young people? What are the barriers to change, and how can these be overcome?

In 2018, the Koorie Youth Council released the *Ngaga-dji* report which told the stories of Aboriginal youth in Victoria's justice system. The recommendations of the report called for change across the various systems responsible for the over-representation of Aboriginal youth and call for greater self-determination, youth participation and the role of culture, family, Elders and communities.⁷ Within the school system itself, both Aboriginal boys and girls are facing varying degrees of racism coming from teachers, other students and institutionally. This is impacting the experience of school for Aboriginal youth and when this is sustained and extensive some students may choose to abandon school altogether. In some cases, only 1 in 5 Aboriginal males are completing their schooling compared to a state average of almost 4 in 5. In comparison within Youth Justice, almost 1 in 4 Aboriginal males are listed as offenders compared to a rate of 1 in 15 for non-Aboriginal males.⁸

At a critical age in the lives of young Aboriginal males, they are abandoning school, and at the same age, many young males are starting to construct criminal histories. Research has suggested that for many Aboriginal youths life on the street offers something that school does not. This highlights that the lure of independence with an element of risk is preferable to school if it has been a place of stress and pressure, failure, alienation and boredom.⁹

Racism is also playing a part in the youth experience which is a negative force shaping values, attitudes and responses. Research over 20 years has found Aboriginal youth and their families continue to experience racism in the educational system in the form of discrimination from teachers, media and the school materials that position Aboriginal people as inferior and the projection of low expectations of success. Added to these projections of white dominance through the extensive erasure of Aboriginality that occurs in classrooms through a colonial curriculum. These conditions are impacting classroom engagement and are placing Aboriginal students in a space where they are excluded in both subtle and powerful ways. The outcome is often compounded by the ways

⁶ Ibid., 23.

⁷ Chris Cunneen, Sophie Russell, and Melanie Schwartz, "Principles in Diversion of Aboriginal and Torres Strait Islander Young People from the Criminal Jurisdiction," *Current issues in criminal justice* 33, no. 2 (2021): 175.

⁸ Gardiner, "Aboriginal Boys' Business: A Study of Indigenous Youth in Victoria in Relation to Educational Participation and Contact with the Juvenile Justice System," 53.

⁹ Ibid., 57.

Aboriginal youth will stand up or speak out in ways not sanctioned and are disproportionately targeted for discipline.¹⁰

These issues demonstrate the longstanding problems with the dominance of deficit assumptions of Aboriginal people. The racism present in the education system is reinforcing the erasure of Aboriginal people and forcing Aboriginal youth to be ashamed of who they are and rejecting culture in a quest to belong and feel connected at school. This is where the call to action from the *Ngaga-dji* report implores educators, researchers and policymakers to listen to and make policy with the Aboriginal community and deeply consider and act against racism and exclusions that are present in the education system.¹¹ The issue of racism coupled with schools not being fully equipped with an understanding of how intergenerational trauma affects Aboriginal young people being pushed away from school and towards the justice system.

The well-being of Aboriginal youth involves a connection of physical and mental well-being, plus the well-being of family, community, culture and spirituality. Educators need to be aware of how the schooling system has disrupted some of these connections and have a responsibility to seek to understand how to rebuild these through the leadership of the Aboriginal people built on reciprocity, shared responsibility, accountability and open discussion. This requires a concerted policy shift that seeks to change what has been identified as a deficit discourse placing the blame on Aboriginal peoples.¹²

Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

Early intervention and prevention as a principal response have been recommended and supported by several commissions and reports, including RCIADIC and Our Youth Our Way (OYOW). The 2021 OYOW report found a severe lack of early intervention and prevention services across Victoria. The report highlighted that in most cases early intervention services could have addressed factors driving offending behaviour and prevented young people's entry into the youth justice system.¹³ In many cases, there were simply no early intervention supports available for young people due to age requirements or lack of funding and in other cases, they were unavailable due to being at capacity or

¹⁰ Sophie Rudolph, "Ngaga-Dji, a Call to Action : Education Justice and Youth Imprisonment," *Australian educational researcher* 48, no. 3 (2021): 437.

¹¹ *Ibid.*, 435.

¹² *Ibid.*, 443.

¹³ *Ibid.*, Commission for Children and Young People, *Our youth, our way: inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*

unreachable from the person's location.¹⁴ A lack of programs and services means appropriate and timely interventions for young people are scarce, and they subsequently enter the justice system into a cycle of reoffending. ACCOs have the cultural expertise, commitment and desire to run these programs but suffer under competitive tenders, short-term funding and in many cases no funding opportunities to get them off the ground and keep them running.

The 2015 Royal Commission into Family Violence highlighted the severe scarcity of appropriate early intervention and prevention services to strengthen families and reduce the number of Aboriginal children entering the child protection system.¹⁵ The Commission included specific recommendations for increased investment into ACCOs for targeted prevention and early intervention services.¹⁶ In addition, the Dhelk Dja Koori Caucus have highlighted the lack of investment in prevention activity and the need for strengths-based funding, particularly for children and young people. Wraparound programs that address youth offending holistically are needed to support diversionary interventions and the most successful diversionary strategies were generally those grounded in and drawing upon the family, kinship, social and cultural networks of a young person.¹⁷

Aboriginal youth who are engaged with ACCOs will have better health and well-being outcomes with the continued connection to culture. Many examples of best practices are highly localised, and holistic and involve whole of community approaches, taking place in the presence of Elders, reconnecting young people with cultural identity and a sense of belonging to country.¹⁸ Aboriginal families often do not access mainstream services due to apprehension that these services are not culturally safe and often operate with an individualistic focus, not taking into account the importance of wrap-around whole-of-family support often required for Aboriginal youth and families. Pride in, and connection to culture are protective factors, and programs and strategies to strengthen identity and a sense of connection and belonging for Aboriginal peoples and families are crucial to minimise contact with the criminal justice system.

VACSAL runs several programs to assist children and young people to build on their social and emotional well-being and support them to avoid entry into the justice system. VACSAL's Bert

¹⁴ *ibid*

¹⁵ Commission for Children and Young People, *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria* (Melbourne: Commission for Children and Young People, 2016), available at: [always-was-always-will-be-koori-children-inquiry-report-oct16.pdf](https://www.cryp.vic.gov.au/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf) (ccyp.vic.gov.au)

¹⁶ *Ibid*, Commission for Children and Young People, *Always was, always will be Koori children*

¹⁷ Cunneen, Russell, and Schwartz, "Principles in Diversion of Aboriginal and Torres Strait Islander Young People from the Criminal Jurisdiction," 180.

¹⁸ Cunneen, Russell, and Schwartz, "Principles in Diversion of Aboriginal and Torres Strait Islander Young People from the Criminal Jurisdiction," 179.

Williams Aboriginal Youth Service (BWAYS) has been in operation since 1984, delivering proactive early-intervention services to Koori youth in the North and West Metropolitan region who are at risk of homelessness and subsequently entering the youth justice system. BWAYS provides short-term crisis accommodation, intensive casework, Aboriginal cultural support plans, community supports and linkages and early intervention and prevention programs.

VACSAL hosts several short-term programs, dependent on funding, to support diversion from the criminal justice system. For example, resilience camps support young people to reconnect with their culture and learn about the services available to them. At previous camps, speakers have been present to educate young people about mental health, cyber safety and support services available to them. Camps have also consisted of cultural activities such as yarning circles and arts and crafts. Participants report feeling an increased sense of connection to culture and community, and a wider knowledge of services and support available to them. The demand for these types of holistic services is extremely high, to the point these can no longer be advertised and participants must be selected. Programs like these are highly effective in diverting young people from the criminal justice system and connecting them with services.

From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

For youth who are under the scrutiny of the criminal justice system, the additional high-level physical and psychological stress can be overwhelming and harmful. Adolescence is a pivotal phase of psychosocial development and addressing psychological stress during this vulnerable time may prevent or minimise the impacts on social and emotional wellbeing of young people as they mature.¹⁹

The effects of colonisation, genocide and dispossession continue to play out in the lives of Aboriginal young people today, with many experiencing significant trauma histories of violence, trauma racism and addiction. As outlined the education system needs to be aware of the disrupted connections of physical and mental well-being, family and kinship, community, culture, land and ancestors by school systems. The rebuilding of these forms of connection needs to be approached nationally and through the leadership of Aboriginal people.

Investment in place-based early intervention and prevention approaches to address disadvantage within communities where there is the highest level of Aboriginal population growth and demand

¹⁹ Phelan and Oxley, "Understanding the Social and Emotional Wellbeing of Aboriginal Lgbtiq(Sb)+ Youth in Victoria's Youth Detention," 23.

for services needs to have a national approach to be able to commit to long-term funding agreements that align financially with the mainstream community service sector to ensure ACCOs can attract and retain skilled Aboriginal staff.

Governments are increasingly calling on organisations to provide evidence for the success of their programs but rarely are they funded to carry out or facilitate through independent evaluation. Evaluation is a way to safeguard against claims of ineffectiveness and as a tool to advocate for continued funding. A national approach to funding the monitoring and evaluation of early intervention and prevention programs would be a way to understand what works and what does not work which not only benefit the organisation but young Aboriginal people as well.²⁰

²⁰ Cunneen, Russell, and Schwartz, "Principles in Diversion of Aboriginal and Torres Strait Islander Young People from the Criminal Jurisdiction," 185.