



Victorian Council for Civil Liberties Inc
Reg No: A0026497L
GPO Box 3161
Melbourne, VIC 3001
t 03 9670 6422
info@libertyvictoria.org.au

PRESIDENT
Michael Stanton

IMMEDIATE PAST PRESIDENT
Julia Kretzenbacher

SENIOR VICE-PRESIDENT
Michelle Bennett

VICE-PRESIDENTS
Thomas Kane
Jamie Gardiner OAM
Monique Mann

TREASURER
Sam Norton

SECRETARY
Hannah Dickinson

PATRON
The Hon. Michael Kirby AC CMG

20 December 2021

Expert Panel

Cultural Review of the Adult Custodial Corrections System

By email: correctionsreview@justice.vic.gov.au

Dear Ms Hilton, Mr Smith AM, Ms Gallagher AO and Mr Cartwright APM,

CULTURAL REVIEW OF THE ADULT CUSTODIAL CORRECTIONS SYSTEM

1. Thank you for the opportunity to provide a submission to this important review.
2. This is a public submission and is not confidential.

About Liberty Victoria

3. Liberty Victoria has worked to defend and extend human rights and freedoms in Victoria for over eighty years. Since 1936 we have sought to influence public debate and government policy on a range of human rights issues. Liberty Victoria is a peak civil liberties organisation in Australia and advocates for human rights and civil liberties. As such, Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government.

4. The members and office holders of Liberty Victoria include people from all walks of life, including legal practitioners who appear in criminal proceedings for both prosecution and defence. Many of our committee members have dealt with prisoners and, more broadly, Victoria's custodial system. More information about our organisation and activities can be found at: libertyvictoria.org.au.

Terms of Reference and Background

5. We are mindful of the terms of reference as published in October 2021.¹ This submission will focus on stream 2 relating to people in custody.
6. From the outset, we note it has been thirty years since the recommendations of the Royal Commission into Aboriginal Deaths in Custody were published, and yet First Nations people are imprisoned and die in prison at a grossly disproportionate rate.
7. We respectfully refer to and adopt the comprehensive submission made to this review by the Victorian Aboriginal Legal Service (VALS).
8. Liberty Victoria recently made a submission to the Victorian Government's Inquiry into the Criminal Justice System, where we addressed issues including prisoner rights and rehabilitation.² We adopt that submission and for convenience repeat some of it below.

Expanding Prisoner Numbers

9. In our submission to the Inquiry into the Criminal Justice System, we noted, amongst things, that reforms to Victorian's criminal justice system over the past twenty years have seen the numbers of Victorian prisoners dramatically increase. For example, over the past decade there have been fourteen pieces of amending legislation that have introduced and then expanded presumptive and mandatory sentencing under the *Sentencing Act 1991* (Vic).³ Further, there have also been significant reforms to parole and bail laws after the Callinan and Coghlan reviews.

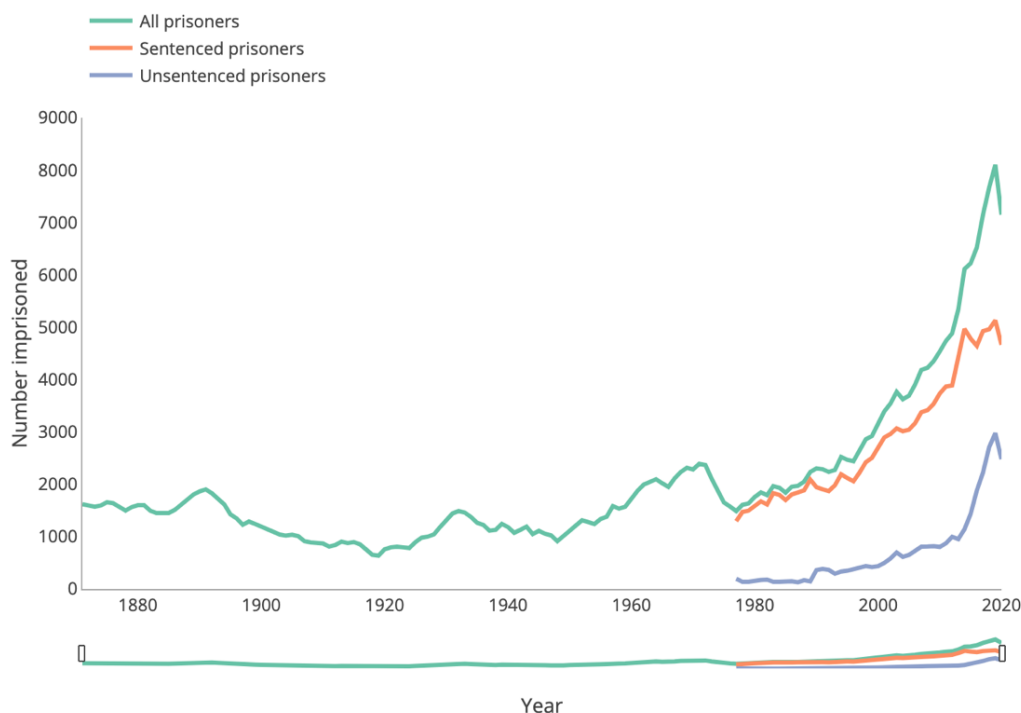
¹ Terms of reference, https://www.correctionsreview.vic.gov.au/wp-content/uploads/2021/10/Doc-Terms_of_reference-Oct2021-2.pdf.

² Liberty Victoria submission to the Inquiry into the Criminal Justice System, <https://libertyvictoria.org.au/content/inquiry-victoria%E2%80%99s-criminal-justice-system>.

³ *Crimes Amendment (Gross Violence Offences) Act 2013* (Vic); *Sentencing Amendment (Baseline Sentences) Act 2014* (Vic); *Sentencing Amendment (Emergency Workers) Act 2014* (Vic); *Sentencing Amendment (Coward's Punch Manslaughter and Other Matters) Act 2014* (Vic); *Serious Sex Offenders (Detention and Supervision) Amendment (Community Safety) Act 2016* (Vic); *Crimes Legislation Amendment Act 2016* (Vic); *Crimes Amendment (Carjacking and Home Invasion) Act 2016* (Vic); *Sentencing (Community Correction Order) and Other Acts Amendment Act 2016* (Vic); *Sentencing Amendment (Sentencing Standards) Act 2017* (Vic); *Children and Justice Legislation Amendment*

10. The Sentencing Advisory Council ('SAC') has published the following graph showing the increase in Victoria's prison population from 1871-2020:⁴

Number of people in Victoria's prisons, 1871 to 2020



11. Each prisoner costs the public over \$130,000 per annum.⁵ Victoria's prison budget is now over \$1.8 billion a year.⁶ The Government has committed to expanding Victoria's prison capacity.⁷
12. A significant part of the growth in prisoner numbers is unsentenced prisoners, with the numbers growing exponentially. In 1977, the number of unsentenced prisoners was

(Youth Justice Reform) Act 2017 (Vic); Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017 (Vic); Justice Legislation Miscellaneous Amendment Act 2018 (Vic); Justice Legislation Amendment (Police and Other Matters) Act 2019 (Vic); and Sentencing Amendment (Emergency Worker Harm) Act 2020 (Vic).

⁴ Victoria's Prison Population', Sentencing Advisory Council ('SAC') (Web Page) <<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-trends/victoria-prison-population>>. See the table 'Number of People in Victoria's Prisons, 1871 to 2020'. As at 30 June 2020, Victoria's prison population was 7,149 (following a 11.8% decrease from 2019-2020 due to the likely impact of the COVID-19 pandemic). As at 31 July 2021 there were 7,194 prisoners in Victorian prisons: 'Monthly Prisoner and Offender Statistics 2020-21', Corrections Victoria (Web Page) <<https://www.corrections.vic.gov.au/monthly-prisoner-and-offender-statistics>>.

⁵ Ian Gray and Kevin Bell, 'Why "Tough on Crime" Attitude Doesn't Make Communities Safer' *Herald Sun* (Web Page, 23 November 2020) <<https://www.heraldsun.com.au/news/opinion/why-tough-on-crime-attitude-doesnt-make-communities-safer/news-story/c899d9398a40979174cc417b49c8c3fa>>.

⁶ Corrections Victoria, 'Corrections Budget for 2019-20 released' (Web page) <<https://www.corrections.vic.gov.au/corrections-budget-for-2019-20-released>>.

⁷ Ibid.

13.1% of the prisoner population, in 2020 that increased to 34.6%.⁸ As at June 2021, the number of unsentenced prisoners in Victoria is 43.9%.⁹ In June 2011, the number of unsentenced prisoners was 18.4%. Much of that growth can be attributed to stricter bail laws.

13. The growth in prisoner numbers is not attributable to the growth in remandee numbers alone. Since 2012, there has also been an increase in the number of prison sentences imposed.¹⁰ As the Sentencing Advisory Council's research has shown:¹¹
 - Between 2004-05 to 2017-18, prison sentences in higher courts increased from 40% to 72% of all outcomes each year.
 - Between 2004-05 to 2017-18, prison sentences in the Magistrates' Court increased from 5% to 8%.
14. There has also been a 15% increase of the number of 'time-served' sentences imposed.¹²
15. Imprisonment is itself a criminogenic factor and those who have spent time in custody are more likely to return to prison. In Victoria around 44.2% of those who are sentenced to a term of imprisonment return to prison within two years.¹³ This is a significantly larger number than those who are sentenced to community-based dispositions, where the rates of persons discharged from community corrections returning to either community corrections or a prison sentence was 17.1%.¹⁴
16. The best way to address re-offending and promote rehabilitation is to increase the number of community-based sentences available to people. That is, of course, beyond the scope of this review. However, it cannot be ignored that many of the issues that affect corrections are related to the ever-growing numbers of (mostly unsentenced)

⁸ Sentencing Advisory Council, *Victoria's Prison Population* (website):

<https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/victorias-prison-population>.

⁹ Australian Bureau of Statistics, *Prisoners in Australia* (9 December 2021):

<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#data-download>.

¹⁰ Sentencing Advisory Council, *Time Served Prison Sentences in Victoria* (February 2020) at pg 3–4:

https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-02/Time_Served_Prison_Sentences_in_Victoria.pdf.

¹¹ *Ibid* at p 4.

¹² *Ibid* at p 1.

¹³ Data is for the years 2019–20, see Report on Government Services 2010, Part C *Justice*, Table CA.4, available: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice>.

¹⁴ Data is for the years 2019–20, see Report on Government Services 2010, Part C *Justice*, Table CA.5, available: <https://www.pc.gov.au/research/ongoing/report-on-government-services/2021/justice>.

prisoners. IBAC identified the link between the pressures arising from the increased prison population and corruption in its report earlier this year.¹⁵

17. Of course, the vast majority of prisoners serving sentences of imprisonment will eventually be released. Former Chief Magistrate the Hon Ian Gray and former Supreme Court Judge the Hon Kevin Bell AM QC have observed that, despite Victoria's imprisonment rate having reached its highest levels since 1895, 'jailing is not working as a deterrent: four out of 10 prisoners in Victoria return to prison within two years of their release, with many entrenched in a relentless cycle of unemployment, homelessness and offending'.¹⁶
18. In her article 'Why Mandatory Sentencing Fails', Ms Tania Wolff, the current President of the Law Institute of Victoria ('LIV'), states:

The Victorian Ombudsman's report into prisons in 2015 provided the following sobering statistics about our prison population:

- (i) 75 per cent of male prisoners and 83 per cent of female prisoners report illicit drug use before going to prison
- (ii) 40 per cent of prisoners have a mental health condition
- (iii) 42 per cent of male prisoners and 33 per cent of female prisoners had a cognitive disability
- (iv) 35 per cent of prisoners were homeless before their arrest
- (v) More than 50 per cent of prisoners were unemployed
- (vi) More than 85 per cent of prisoners had not finished high school.

The notion that the unwell, addicted and impaired will stop committing crimes without rehabilitation and therapeutic programs to deal with the underlying causes of offending is fanciful. It is well known that the motivation to satisfy a drug addiction outweighs the threat of punishment and its long-term consequences.

In a growing number of jurisdictions internationally, including Texas, governments are directing resources away from prisons and towards rehabilitation programs for offenders and justice reinvestment initiatives.¹⁷

19. Any potential reforms to Victoria's custodial system need to be seen in that context. Nevertheless, the criminal justice system has a vital role in promoting rehabilitation. As

¹⁵ IBAC, Special Report on Corrections IBAC Operations Rous, Caparra, Nisidia and Molarra (Web page, June 2021) <https://www.ibac.vic.gov.au/docs/default-source/special-reports/special-report-on-corrections---june-2021.pdf?sfvrsn=ee450c8c_2>.

¹⁶ Gray and Bell (n 10). See Corrections Victoria, 'Corrections Statistics: Quick Reference' (Web Page) citing Council of Australian Governments, Report on Government Services 2020 <<http://www.corrections.vic.gov.au/prisons/corrections-statistics-quick-reference>>.

¹⁷ Tania Wolff, 'Why Mandatory Sentencing Fails', *Law Institute Journal* (Web Page, 1 February 2018) <<https://www.liv.asn.au/Staying-Informed/LIJ/LIJ/Jan-Feb-2018/Why-mandatory-sentencing-fails>>.

Chief Justice French stated in *Hogan v Hinch*,¹⁸ '[r]ehabilitation, if it can be achieved, is likely to be the most durable guarantor of community protection and is clearly in the public interest'.¹⁹

20. To the same end, Justice Maxwell, the President of the Court of Appeal has observed:

*In what continues to be a highly punitive debate about sentencing, it seems to me that this Court needs to promote public understanding of the fact that, quite apart from the interest of the individual whom it is sought to rehabilitate, there is a vital community interest in maximising the prospects of rehabilitation of an individual who has been convicted of a serious crime. The prospect of an offender being rehabilitated represents the best hope for the community that the person will never again engage in violent behaviour.*²⁰

21. In relation to youthful offenders, in *Azzopardi v The Queen*²¹ Justice Redlich stated:

*[C]ourts "recognise the potential for young offenders to be redeemed and rehabilitated". This potential exists because young offenders are typically still in a stage of mental and emotional development and may be more open to influences designed to positively change their behaviour than adults who have established patterns of anti-social behaviour. No doubt because of this potential, it has been stated that the rehabilitation of young offenders, "is one of the great objectives of the criminal law".*²²

Rehabilitation in Prison

22. Imprisonment can have a devastating impact on a person's life. As the Victorian Ombudsman Deborah Glass said in 2018: 'prison is not a therapeutic environment'.²³

23. Those who are remanded or sentenced not only lose their liberty, but also face the loss of their jobs, family, reputation and sometimes their life.

24. We repeat our submission to the Victorian Ombudsman's 2014 Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria:

It is vital that resourcing for rehabilitation and reintegration services increases proportionately to the prison population. If an offender could potentially benefit from transition services, offence-specific rehabilitation programs or educational opportunities, any failure to provide those services is an indictment on the system. Additionally, regard must be had to the particular characteristics of

¹⁸ [2011] HCA 4; (2011) 243 CLR 506.

¹⁹ Ibid 537 [32].

²⁰ *DPP v Malikovski* [2010] VSCA 130, [51].

²¹ (2011) 35 VR 43.

²² Ibid 54 [35] (citations omitted). Coghlan AJA agreeing at 70 [92], Macaulay AJA agreeing at 70 [93].

²³ Victorian Ombudsman, 'Investigation into the imprisonment of a woman found unfit to stand trial' (16 October 2018), 16.

*vulnerable prisoners, notably women and Aboriginal and Torres Strait Islander prisoners.*²⁴

25. One of the biggest issues for prisoners (both sentenced and unsentenced) is the lack of rehabilitation programs available, in particular due to the lengthy wait times. This seems to have become worse due to COVID-19, where many programs were suspended for most of 2020 and a significant part of 2021. Rehabilitation programs are often also not culturally appropriate for Aboriginal and/or Torres Strait Islander people, or not appropriate at all for the program's objective (for example, having group sessions focused on sexual offending).
26. This issue is compounded by there being an increased number of unsentenced prisoners. Unsentenced prisoners generally have more limited programs available to them and often the wait lists for those programs are lengthy. With more people being sentenced to time-served sentences, this means that there are more people being released from custody without having participated in any programs.
27. This issue has been highlighted for many years. In 2015, the Victorian Ombudsman's *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (Ombudsman's Report) found that there were long waiting lists for rehabilitation programs²⁵ and she made particular recommendations, which were supported by the Department of Justice. Unfortunately, despite this support, it appears that the same problems persist six years after the recommendations were made.

Reintegration programs

28. Almost every imprisoned person will be released. Every year thousands of people leave the prison system and re-enter the community. They face a lack of institutional support, stigmatisation and barriers to employment, untreated mental health issues, and challenges in finding affordable housing.
29. Those who find stable housing after release from prison are less likely to reoffend.²⁶

²⁴ Liberty Victoria, Submission to the Victorian Ombudsman's Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria (Web Page, 31 December 2014) <https://libertyvictoria.org.au/sites/default/files/LibertyVictoria-YLLR_Submission_Ombudsman_PrisonConsultation20141231.pdf> [99].

²⁵ Victorian Ombudsman's *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015) at [15]–[21] <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>.

²⁶ Willis M, 'Supported housing for prisoners returning to the community: A review of the literature' (2018) Australian Institute of Criminology Research Report 07.

30. We refer to and adopt the Young Liberty for Law Reform Fact Sheet, 'What Happens After Prison?'.²⁷
31. In addition to there being a lack of rehabilitation programs available to prisoners, there is also a lack of reintegration or transitional programs available. It is clear that the majority of people who are incarcerated come from more disadvantaged backgrounds. As outlined in the Ombudsman's Report:²⁸
- 10. The profile of Victorian prisoners is clear and consistent: their disadvantaged backgrounds are evident in the demographics and statistics.*
- 11. 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.*
32. While Corrections Victoria runs the Corrections Victoria Reintegration Pathway (CVRP), it appears this program is only available to a limited number of prisoners. In the 2015 Ombudsman's Report, it was noted that Corrections Victoria had a target of 1,000 prisoners a year to participate in the CRVP.²⁹ As at 2015, that meant that there were more than 3,000 prisoners every year that would be left without structured support to return to the community.³⁰
33. This means that many people with complex problems, who have already experienced severe disadvantage, are released from custody without any further support. With prisoner numbers having increased significantly since 2015, there is a concern that there are now even more people leaving prisons without structured support. In Liberty Victoria's experience, this lack of support is a significant factor in people returning to custody. Liberty Victoria recommends that there be a significant increase in funding for reintegration and transition programs in order to ensure that more people are supported in returning to the community at the end of their time in custody.

²⁷ Young Liberty for Law Reform Fact Sheet, 'What Happens After Prison?' (Web Page) <<https://libertyvictoria.org.au/sites/default/files/YLLR-after-prison-fact-sheet.pdf>>.

²⁸ Victorian Ombudsman's *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015) at [10]–[11] <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>.

²⁹ Victorian Ombudsman's *Investigation into the rehabilitation and reintegration of prisoners in Victoria* (2015) at [784]–[790] <https://assets.ombudsman.vic.gov.au/assets/Reports/Parliamentary-Reports/1-PDF-Report-Files/Investigation-into-the-rehabilitation-and-reintegration-of-prisoners-in-Victoria.pdf>.

³⁰ Ibid.

Controlled Access to the Internet

34. Liberty Victoria also strongly supports controlled, restricted access to the internet for Victorian prisoners.³¹
35. Victorian prisoners are not permitted to access the internet during their incarceration. This imposes a dual limitation on those wanting to undertake distance education while in prison. First, information on what programs are available, and their content, is far more difficult to access offline. Secondly, meaningful participation in such education opportunities is made more difficult, if not altogether impossible.³²
36. Liberty Victoria notes that the Corrections Guidelines provide that prisoners' education shall enable them to develop appropriate skills for use in employment upon release. In a rapidly changing world, online learning is a mechanism which allows students to 'develop important skills which better equip them for the modern workplace' than offline vocational training. It is not an understatement to observe that, in the modern digital world, online skills are increasingly necessary to meaningfully participate in society.
37. Liberty Victoria is concerned that preventing prisoners from developing this important aspect of literacy will have ramifications for their further education and employment prospects post-release. Although there are understandable security concerns, Liberty Victoria submits that this could be addressed by monitoring and controlling internet usage of prisoners. The ACT human rights-compliant Maconochie Centre is a successful example of best practice in this area. This approach involves blocking all access to the internet but then 'white-listing' certain suitable websites to allow prisoner access.

Prisoner Rights, Strip-Searching, Use of Force and Solitary Confinement

38. Prisoners have rights, including those protected by the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter), and s 47 of the *Corrections Act 1986* (Vic). However, further protections and rights should be enshrined in legislation which reflect international human rights, such as those in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

³¹ Liberty Victoria, Submission to the Victorian Ombudsman's Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria (Web Page, 31 December 2014) <https://libertyvictoria.org.au/sites/default/files/LibertyVictoria-YLLR_Submission_Ombudsman_PrisonConsultation20141231.pdf>.

³² Lisa Harrison, 'Prisoners and Their Access to the Internet in Pursuit of Education' (2014) 39 *Alternative Law Journal* 159–61.

39. Many prisoners face mistreatment, including being subject to harmful, unnecessary and degrading practices like routine strip-searching and solitary confinement. These practices must cease.
40. In *Minogue v Thompson*³³ Justice Richards found that the routine strip-searching and drug testing of the plaintiff constituted breaches of his human rights under the *Charter*.³⁴ While we note the appeal to the Court of Appeal was allowed, the Court upheld Justice Richards' findings in relation to some of the incidents of strip-searching.³⁵
41. Further, any use of force or restraints should be exceptional and only as a last resort, to prevent an imminent and serious threat of injury to the incarcerated person or others. Legislation should regulate the use of force and restraints.
42. Liberty Victoria has previously expressed its concerns about the use of solitary confinement in prisons.³⁶ This is all the more relevant given the impacts of the COVID-19 pandemic.
43. Security regimes in prisons, such as solitary confinement, have a significant adverse effect on the rehabilitation and reintegration of prisoners. Where prisoners are placed in solitary confinement, or 'lockdown', they are unable to participate in rehabilitation programs. This means that the rehabilitative element of their incarceration is delayed or deferred and further, may adversely impact prospects for such prisoners being granted supervision on parole.
44. The use of solitary confinement can have long-term (and potentially life-long) impacts on people, with individuals with disabilities or a history of trauma being particularly vulnerable. The Royal Commission into Aboriginal Deaths in Custody noted the 'extreme anxiety suffered by Aboriginal prisoners committed to solitary confinement' and that it is 'undesirable in the highest degree that an Aboriginal prisoner should be placed in segregation or isolated detention'.³⁷ As identified by the World Health

³³ [2021] VSC 56.

³⁴ *Ibid* [146].

³⁵ *Thompson v Minogue* [2021] VSCA 358.

³⁶ Liberty Victoria, Submission to the Victorian Ombudsman's Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria (Web Page, 31 December 2014) <https://libertyvictoria.org.au/sites/default/files/LibertyVictoria-YLLR_Submission_Ombudsman_PrisonConsultation20141231.pdf>.

³⁷ Royal Commission into Aboriginal Deaths in Custody.

Organization, '[s]olitary confinement can affect rehabilitation efforts and former prisoners' chances of successful reintegration into society following their release.'³⁸

45. Research into heightened security conditions and prolonged isolation shows that:

*Inmates in isolation, whether for the purpose of protective custody or punishment, suffer from numerous psychological and physical symptoms, such as perceptual changes, affective disturbances (notably depression), difficulties in thinking, concentration and memory problems, and problems with impulse control...*³⁹

46. The use of solitary confinement should be abolished. Regardless of what other label is used (such as isolation or segregation), any use of isolation that amounts to effective solitary confinement should be prohibited by legislation.

Health Care

47. People in prison must have access to quality healthcare of the same standard that is available in the community. This is integral to the human rights, dignity and post-release prospects of people in prison. The Nelson Mandela Rules, at Rule 24(1) states that "prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."⁴⁰ This includes continuity of care once a person has re-entered the community.⁴¹
48. Rules 25 to 35 outline the processes and structures necessary to ensure proper access to health care, including the need for thorough evaluation, accurate and confidential medical records, prompt access in urgent cases and special accommodation for prenatal and postnatal care treatment.
49. The Charter states that 'all persons deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.'⁴² This includes access to medical care, in circumstances where people in prison are entirely reliant on prison services to respond to their healthcare needs.

³⁸ World Health Organization Regional Office for Europe, Prisons and Health (2014), <https://www.euro.who.int/__data/assets/pdf_file/0005/249188/Prisons-and-Health.pdf>

³⁹ Jesenia Pizarro and Vanja M K Stenius, 'Supermax Prisons: Their Rise, Current Practices and Effect on Inmates' (2004) 84 *The Prison Journal* 248, 256. See also Sharon Shalev, 'Solitary Confinement and Supermax Prisons: A Human Rights and Ethical Analysis' (2011) 11 *Journal of Forensic Psychology Practice* 151.

⁴⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015).

⁴¹ *Ibid*, Rule 24(2).

⁴² Charter, s22(1).

50. The availability and standard of healthcare in prison is particularly important because of the high likelihood that a person in prison lives with disability, chronic health issues and mental health issues. For example, one third of people in prison report a history of a chronic health condition and 40% report a previous diagnosis of a mental health condition.⁴³
51. The Royal Commission into Aboriginal Deaths in Custody in 1991 made a number of recommendations relating to the provision of healthcare services to Aboriginal and Torres Strait Islander people in prison. This included a recommendation about the equivalency of healthcare and also about the importance of corrective services working with Aboriginal Community Controlled Health services to review, report on and providing mental and physical healthcare in custody.⁴⁴
52. Medical problems and self-harm have been identified as the ‘most common cause of death’ in prison and ‘Indigenous people who died in custody were three times more likely not to receive all necessary medical care, compared to non-Indigenous people.’⁴⁵
53. In order to address the current inadequacies in healthcare provision, it is necessary to adequately fund and implement structures to underpin quality and continuity of care. First, it is important for the responsibility for healthcare to be moved from Corrections Victoria to the Department of Health, which has the necessary and appropriate expertise to respond to the healthcare needs of people in prison.
54. Secondly, barriers to access to Medicare and the National Disability Insurance Scheme (NDIS) must be removed. Responsibility for funding healthcare in prisons lies with the Victorian government. Health services, such as Aboriginal Community Controlled health services, are not able to access rebates under federal schemes, including Medicare and the Pharmaceutical Benefits Scheme. This has significant financial implications for those services providing healthcare to people in prison. Further, there are significant barriers to people in prison living with disability seeking funding under the NDIS. There are structural barriers, such as the National Disability Insurance Agency refusing applications on the basis that disability services for people in prison are a matter for the state government. There are also practical barriers, such as the

⁴³ Australian Institute of Health and Welfare 2019. The health of Australia’s prisoners 2018. Cat. no. PHE 246. Canberra: AIHW.

⁴⁴ Royal Commission into Aboriginal Deaths in Custody (Final Report, 1991), recommendation 152.

⁴⁵ Allam, L. et al. (2021). The facts about Australia’s rising toll of Indigenous deaths in custody. Available at <<https://www.theguardian.com/australia-news/2021/apr/09/the-facts-about-australias-rising-toll-of-indigenous-deaths-in-custody>>.

complexity of completing relevant paperwork and obtaining the necessary medical reports to support a claim.

55. In its submission to this Inquiry, the VALS outlines a number of good practice models in the ACT, the Northern Territory and New South Wales.⁴⁶ Liberty Victoria commends these models.
56. In addition to improving access to healthcare directed at the physical health of people in prison, it is critical to ensure accessible and high-quality mental health care. As noted above, people with mental health issues are overrepresented in prisons. Further, the World Health Organisation recognises the negative effects of the prison environment on mental, including the increased risk of suicide in prison. Liberty Victoria echoes the call of the VALS for increased access to culturally safe, trauma-informed, forensic mental health services, including resources for the Victorian Aboriginal Community Controlled Health Organisation to develop appropriate programs to support the mental health of people in prison.

Preventing Corruption in Prisons and Ensuring Adequate Oversight of Prisons

57. Societies that give emphasis to rehabilitation while taking crime seriously have lower crime rates. Societies that degrade and humiliate people who have committed criminal offences tend to have higher crime rates.⁴⁷
58. In recent years, Victoria's anti-corruption watchdog – the Independent Broad-based Anti-Corruption Commission ('IBAC') – in its special report on corrections uncovered serious and systemic wrongdoing in Victoria's private and public prisons.⁴⁸
59. The Victorian Ombudsman found that disciplinary hearings in Victorian prisons are still carried out 'in the dark' with insufficient scrutiny, oversight or transparency.⁴⁹ These disciplinary hearings can have serious consequences for prisoners, including removal of access to phones, restrictions on out of cell time and withdrawal of contact with family:

⁴⁶ [VALS-Submission-to-the-Prison-Culture-Review-December-2021.pdf](#) at 101-102.

⁴⁷ Braithwaite J, 'Shame and criminal justice' *Canadian Journal of Criminology* (July 2000) 42, 3.

⁴⁸ Independent Broad-based Anti-corruption commission, 'Special report on corrections' (June 2021).

⁴⁹ Victorian Ombudsman, 'Investigation into good practice when conducting prison disciplinary hearings' (6 July 2021).

*In one case, a prisoner said he was told he would not be taken off the methadone program if he pleaded guilty – a decision he came to regret after the hearing officer denied making such a deal and he was removed from the program.*⁵⁰

60. Steps should be taken to ensure that disciplinary processes in prison are fair, independent, with clear written reasons provided and that prisoners have access to mechanisms for review of these decisions, and to legal advice and representation.
61. Preventing corruption and increasing oversight and transparency within Victorian prisons is essential to achieving rehabilitation of offenders, reducing recidivism and the criminogenic effect of incarceration, and keeping *all* Victorians safe.
62. We urge the expert panel to consider the Ombudsman's inquiry into the disciplinary hearings and IBAC's report into corrections, as well as the recommendations made by both of those reports.
63. Liberty Victoria would particularly like to emphasise the importance of the Victorian and Commonwealth Governments complying with Australia's international obligation to establish independent detention oversight under the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT). The deadline for implementing OPCAT across all jurisdictions in Australia is January 2022. Despite this fast-approaching deadline, there has been no progress in Victoria.⁵¹ A unique opportunity to prevent the torture and ill-treatment of people deprived of their liberty, detention oversight must be culturally appropriate for Aboriginal people.⁵² This requires proper consultation with Aboriginal community controlled organisations and Aboriginal people.

Conclusion

64. Thank you for the opportunity to make this submission regarding the important work being undertaken by this review. If you have any questions regarding this submission, please do not hesitate to contact Liberty Victoria President Michael Stanton or the Liberty office on 9670 6422 or info@libertyvictoria.org.au.

⁵⁰ Ibid 25, 6.

⁵¹ Lachsz, Dragging its feet on torture prevention: Australia's international shame <<https://theconversation.com/dragging-its-feet-on-torture-prevention-australias-international-shame-171729>>

⁵² Victorian Aboriginal Legal Service, The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment - An opportunity to prevent the ill-treatment, torture and death of Aboriginal and Torres Strait Islander people in custody, <<https://www.vals.org.au/wp-content/uploads/2021/04/OPCAT-fact-sheet.pdf>>

Michael Stanton

Michael Stanton

President

Liberty Victoria