Submission to the senate inquiry into the 'Value of a justice reinvestment approach to criminal justice in Australia'

The Victorian Aboriginal Community Controlled Health Organisation (VACCHO) was established in 1996. VACCHO is the peak Aboriginal health body representing all Aboriginal Community Controlled Health Organisations (ACCHOs) in Victoria. The role of VACCHO is to build the capacity of its membership and to advocate for issues on their behalf. Capacity is built amongst members through strengthening support networks, increasing workforce development opportunities and through leadership on particular health areas. Advocacy is carried out with a range of private, community and government agencies, at state and national levels, on all issues related to Aboriginal health. Nationally, VACCHO represents the Community Controlled Health sector through its affiliation and membership on the board of the National Aboriginal Community Controlled Health Organisation (NACCHO). State and Federal Governments formally recognise VACCHO as the peak representative organisation on Aboriginal health in Victoria. VACCHO's vision is that Aboriginal people will have a high quality of health and wellbeing, enabling individuals and communities to reach their full potential in life. This will be achieved through the philosophy of community control.

Recommendations

1. **Reducing rates and increasing support for young people in out-of-home care should be a priority.** There are strong links between out-of-home care and adult imprisonment, especially among Aboriginal and Torres Strait Islander people (1). Given one in fifteen Aboriginal children in Victoria aged 0 – 17 years was in out-of-home care on 30 June 2012 – compared to one in 222 among non-Aboriginal children (2,3) – there is a great need to reduce this overrepresentation. Reducing the number of people in out-of-home care and providing greater support to those presently in care addresses a major link with adult imprisonment.
2. **The number of young people in juvenile detention, especially Aboriginal and Torres Strait Islander children, must be addressed to reduce the adult imprisonment rate.** The extremely high number of young Aboriginal people in the juvenile justice system is driving up the adult Aboriginal prison population. Young Aboriginal and Torres Strait Islanders were 22.7 times more likely to be in juvenile detention than non-Aboriginal young people in 2009; an increase of 55.2 per cent between 2001 and 2009 compared to 14.4 per cent for non-Aboriginal young people (22). A recent Queensland study found 80 per cent of young offenders re-entered the criminal justice system as adults (21), while a study in New South Wales found over 60 per cent of adult male prisoners surveyed had been in juvenile justice (1). Poor mental health among young Aboriginal people in contact with the justice system must also be addressed. In one recent study, more than 80 per cent of Aboriginal and Torres Strait Islander young people in a Queensland youth detention centre scored above the cut off for a mental health problem (24).
3. **Significantly increasing investment in the transition between prison and community, especially with higher risk prisoners including Aboriginal and Torres Strait Islander people, would substantially reduce the economic and social costs associated with poor health, mental health, and re-imprisonment.** The period following release from prison represents a significant opportunity to reduce very high rates of morbidity and mortality and work alongside people to reduce rates of recidivism. Aboriginal and Torres Strait Islander people in particular have high rates of death and hospitalisation after being released from prison and are much more likely to return to prison (1,4–9).
4. **Diverting people with a substance abuse problem from prison sentences to community residential treatment** is associated with lower recidivism rates, better health outcomes, lower mortality rates and better quality of life (10). Each person diverted from prison to community residential rehabilitation would save more than $111,000 (10). Diverting Aboriginal and Torres Strait Islander people from prison to community-based rehabilitation represents a potential cost saving of up to $40,000,000 in Victoria alone in just one year or more than $500 million over the

next 10 years. Benefits extend beyond prison expenditure, for example cost reductions to the health system are estimated at $90,000 per person (10). Given the extremely high rates of substance abuse disorders among Aboriginal prisoners that VACCHO has found in its own research (in collaboration with Monash University and the Victorian Department of Justice) as well as others (11), diverting people from prison to residential treatment programs would be far more economically and socially effective.

5. **Any policy response must also direct significant support to children and young people**. Factors such as poor school performance and early school leaving are strongly associated with adult imprisonment of Aboriginal and Torres Strait Islander people (12). Interventions in the United States among disadvantaged children have found the most important factors predicting school performance among children occur prior to or early in a child's school career (13). Investing in early childhood – which aligns with and reflects Closing the Gap priorities as well as many Federal government health and social services policy directions since 2008 – is perhaps the most important stage to prevent adult imprisonment and is proven to extend cost-saving and quality of life benefits (14,15). Early childhood responses are particularly appropriate for Aboriginal and Torres Strait Islander people given the number of Aboriginal and Torres Strait Islander young people in Victoria aged 0 to four years increased 31 per cent between 2006 and 2011 and the youth cohort is growing at almost double the rate of non-Aboriginal people (3,16).
6. **Addressing substance abuse in the prisoner cohort through community-based diversion** would reduce future adult imprisonment by helping to improve social skills, school performance and employment outcomes among children of present prisoners. Family factors have been identified as the critical factor influencing inequality in school performance (13), and substance abuse among parents has been linked to children having factors strongly associated with adult imprisonment such as a lack of social skills, poor school performance and trouble finding and retaining employment (12).
7. **Access to prison alternatives for Aboriginal and Torres Strait Islander people in Victoria such as the Wulgunggo Ngalu Learning Place in Gippsland should increase and expand**. Wulgunggo Ngalu, open since 2008, has increased community correction order completion rates from 66.7 per cent in 2010/11 to 76.6 per cent in 2011/12 and 87.5 per cent in the first quarter of 2012/13 (17). This compares to 54.2 per cent in the mainstream justice system (17). More Aboriginal and Torres Strait Islander people should have access to successful models instead of being diverted to unsuccessful prison models with poor outcomes.
8. **Justice reinvestment should prioritise existing structures such as Aboriginal Community Controlled Health Organisations (ACCHOs) and policy forums such as the Aboriginal Justice**

Forum in Victoria that allow communities to make and influence decisions. ACCHOs are proven to engage Aboriginal people in contact with the justice system at higher rates than mainstream services (8). Investing in ACCHOs and other community organisations that people already access is a pragmatic and cost-effective strategy that augments the economic and social benefits to governments and communities engendered by a reduction in imprisonment rates.

9. **Long-term investment to establish a stable, specialised mental health and substance abuse workforce is required to achieve long-term reductions in imprisonment rates and address the underlying drivers of Aboriginal and Torres Strait Islander imprisonment**. ACCHOs possess mental health, substance abuse and the justice system expertise, although they operate under-resourced services with overburdened staff members. Utilising and investing in ACCHOs to build a strong, community-based alternative to prison that addresses high rates of mental health problems and substance abuse is more effective in reducing justice-system contact and more cost-effective than prisons.

The drivers behind the past 30 years of growth in the Australian imprisonment rate

In the past 30 years the prison population has increased significantly, especially among Aboriginal and Torres Strait Islander people. In 2012, Aboriginal people in Victoria were 13.4 times more likely to be in prison than non-Aboriginal people – up from 7.9 times in 2002 (18). Despite representing 0.7 per cent of the Victorian population, Aboriginal people represented 7.2 per cent of the prison population in September 2012 (359) – increasing from 5.8 per cent (215) six years ago (17,19). The number of male and female Aboriginal prisoners in Victoria has increased much faster than non-Aboriginal people (17).

There is no consensus on the drivers behind the growth in the Aboriginal imprisonment rate. Whilst numerous reports analyse and compare socio-economic status, employment outcomes, mental health and substance abuse, school engagement (12), and more, there has not been systematic, policy-supported intervention to address these factors. Transparency and data availability barriers, particularly in the justice system, encumber efforts to understand and respond to the high rates of Aboriginal imprisonment.

Alcohol abuse has been found to be the strongest correlate of arrest among Aboriginal and Torres Strait Islander people (20). VACCHO's recent research (in collaboration with Monash University and

the Victorian Department of Justice) found much higher rates of substance abuse disorders among Aboriginal prisoners in Victoria compared to non-Aboriginal prisoners, supporting the correlation between alcohol abuse and imprisonment. However, we also found much higher rates of mental health problems such as depression, bipolar and anxiety disorders in support of other studies (11). Further, we found that displacement, intergenerational trauma and grief, and isolation from country and mob were common among adult Aboriginal prisoners in Victoria. Many people also had a distrust of the "system" and those who work in it. These outcomes accumulate over time, beginning in childhood.

Adult imprisonment is strongly linked to experience in out-of-home care. We are alarmed that one in fifteen (6.5 per cent) Aboriginal children in Victoria aged 0 – 17 years was in out-of-home care on 30 June 2012, an increase of 103 per cent since 2003 (2,3). This compares to one in 222 non-Aboriginal children, less than half of one per cent (2,3). Further, there were 4,905 child protection notifications and 1,504 investigations finalised among Aboriginal people in Victoria in 2011/12, an increase of 102 per cent since 2002-03 (2). Due to a lack of Aboriginal-specific data, we don't know the number of Aboriginal people in Victorian prisons that had experience in out-of-home care, (anecdotally, the number is large), however in New South Wales almost half the Aboriginal prisoners surveyed in 2009 were in out-of-home care as young people, double the rate of both male and female non-Aboriginal prisoners (1). With this fact in mind, the number of Aboriginal children in out-of-home care does not augur well for future Aboriginal imprisonment rates. Without significant non-punitive intervention, which we advocate for in the strongest terms, we expect the number of Aboriginal prisoners to increase from the already high rate because pathways to adult imprisonment such as out-of-home care are not being systematically addressed at any stage of childhood **(Recommendation 1).**

The extremely high number of young Aboriginal people in the juvenile justice system is also driving up the adult Aboriginal prison population. A recent Queensland study found 80 per cent of young offenders re-entered the criminal justice system as adults (21), while a study in New South Wales found over 60 per cent of adult male prisoners surveyed had been in juvenile justice (1). Young Aboriginal and Torres Strait Islanders were 22.7 times more likely to be in juvenile detention than non-Aboriginal young people in 2009; an increase of 55.2 per cent between 2001 and 2009 compared to 14.4 per cent for non-Aboriginal young people (22). Recidivism among young people is affected by "early development issues, personal characteristics that remain stable over the entire life, the social and economic environment surrounding individuals, the age of onset to delinquency, the length and intensity of delinquent careers, and the responses of the justice system" (23).

Mental illness also afflicts young Aboriginal people in contact with the justice system, with more than 80 per cent in a Queensland youth detention centre scoring above the cut off for a mental health problem (24). These afflictions among Aboriginal people in the juvenile justice system should all be considered and addressed in programs under a justice reinvestment approach **(Recommendation 2).**

The economic and social costs of imprisonment

$600 million was spent on Victorian prisons in 2011-12, a rise of 23 per cent in five years (2). Spending accelerated in 2010-11 and 2011-12 and is budgeted to increase a further $100 million in 2012-13 (25). Across Australian prisons the estimated cost per prisoner per day in 2012-13 was $315 (10), however Victoria's prisons cost an additional 10 per cent (26).

In the five years to September 2012 the number of Aboriginal people in Victorian prisons rose by 144 people (17). This represents an increase in prison expenditure of $45,360 per day in just five years, or $16.6 million per annum. These figures do not price the consequent economic costs of imprisonment (e.g. increased health and mental health services as well as losses in productivity through inability to work) nor the social costs. Using recidivism rates among Aboriginal prisoners as a yardstick for the effectiveness of imprisonment and prisoner rehabilitation, the significant increase in prison expenditure has failed: more than half return to prison within two years, rates are consistently 15 – 20 per cent higher among Aboriginal prisoners, and despite some variability rates have actually worsened (24).

The impact of imprisonment extends beyond prison expenditure. Prisoners are more likely to die or be hospitalised, especially Aboriginal prisoners (4–6). Hospitalisation costs (based on bed days) of Aboriginal prisoners in the first year of release has been costed at $5.4 million in Western Australia alone, driven predominantly by mental and behavioural disorders and injuries (6). More than a third of Aboriginal women released from prison were hospitalised (6). This is just one area of the health system, in one state, over a relatively short period. Aboriginal people are also much more likely to die after they are released from prison, most commonly through suicide, motor vehicle accidents, circulatory system diseases and drug-related deaths (4,5). These outcomes remain elevated throughout the first year of release (4,5). Aboriginal prisoners also experience poorer health, with much higher rates of sexually transmitted infections, blood borne viruses, high blood sugar and diabetes, liver-disease markers, asthma and more (1,7,8,27). These afflictions lead to poor quality of

life and premature death, and engender grief, loss, and trauma among family, friends, and communities. These imprisonment costs bear a significant economic burden and an unquantifiable social cost. The period following release from prison represents a significant opportunity to reduce very high rates of morbidity and mortality and work alongside people to reduce rates of recidivism. Significant investment at the transition period between prison and the community could substantially reduce economic and social costs associated with health, mental health, and re-imprisonment **(Recommendation 3).**

The over-representation of disadvantaged groups within Australian prisons, including Aboriginal and Torres Strait Islander peoples and people experiencing mental ill-health, cognitive disability and hearing loss

Overrepresentation and inequality are synonymous with Aboriginal people in contact with the justice system. Aboriginal people in Victoria and across Australia are significantly overrepresented: Aboriginal people in Victoria were 13.4 times more likely to be in prison than non-Aboriginal people in 2012 – up from 7.9 times in 2002 (18). Despite representing 0.7 per cent of the Victorian population, Aboriginal people represented 7.2 per cent of the prison population in September 2012 (359) – increasing from 5.8 per cent (215) six years ago (17,19). Since 2007 the number of male Aboriginal prisoners in Victoria has increased three times more than non-Aboriginal prisoners, while the number of imprisoned Aboriginal women has increased almost four times that of non-Aboriginal women (17). Recidivism rates have consistently remained 15 – 20 per cent higher among Aboriginal people, with over 50 per cent returning to prison within two years of leaving (17). Just as continual increases in the imprisonment rate have not led to a decrease in recidivism (just the unwanted outcome of more people in prison) completion rates among Aboriginal people on Community Correction Orders (CCOs) are poor and the number of successful completions declining (17). The number of Aboriginal people on CCOs was on track to increase more than 70 per cent since 2007 as of September 2012 (17,19). Despite the ominous statistics, there is great potential for non-prison, community-based interventions that make up a justice reinvestment response to reverse the situation engendered by past and present law and order responses.

Unequal outcomes are prevalent among prison sentences and parole applications. A lack of statistics prevents Victorian comparisons, however lower courts in New South Wales are three times more likely to imprison Aboriginal people than non-Aboriginal people once convicted, and they are more than twice as likely to be refused bail (12). In Victoria, Aboriginal women are much more likely to be

in prison without a prison sentence (i.e. on remand) than non-Aboriginal women (9) – an unequal position that adversely affects family responsibilities among many other things. Aboriginal people are also more likely to be imprisoned within maximum security than minimum security prisons: almost one quarter of male Aboriginal prisoners in Victoria were in maximum security Port Phillip Prison in September 2012 (9,17). Maximum security is synonymous with restricted access to and isolation from family and community, which has implications for mental health and social and emotional wellbeing. Further, recent trends among parole applications show that fewer Aboriginal people are registering for parole applications in Victoria, while applications among non-Aboriginal people is increasing (17).

The cost, availability and effectiveness of alternatives to imprisonment, including prevention, early intervention, diversionary and rehabilitation measures

Policy and law reform that aims to reduce Aboriginal arrest and imprisonment rates is a prerequisite if justice reinvestment is to work. VACCHO believes the rising number of Aboriginal people imprisoned and growing overrepresentation indicates a failure of present and past imprisonment and justice system policies. Punitive responses have proven themselves adept at worsening mental health, social and emotional wellbeing and substance abuse problems, while driving up the number of people in prison – especially Aboriginal people. The Aboriginal population in Victoria is projected to increase 20 per cent by 2021 (28), continuing higher than average population growth (3,16). To reduce contact between Aboriginal people and the justice system we require policy and law reform that recognises sending Aboriginal people with substance abuse and mental health problems to prison is not a solution, and in fact increases Indigenous imprisonment, recidivism, and justice system contact.

Diverting people with a substance abuse problem from prison sentences to community residential treatment is associated with lower recidivism rates, better health outcomes, lower mortality rates and better quality of life (10). A counselling service in Sydney that reduces recidivism to eight per cent (compared to 43 per cent in the New South Wales prison system) costs $12 per client per day – a small fraction of imprisonment costs (2,10,26,29). Given the extremely high rates of substance abuse disorders among Aboriginal prisoners, diverting people from prison to residential treatment programs would be far more effective **(Recommendation 4).**

Each person diverted from prison to community residential rehabilitation would save more than $111,000 (10). With 359 Aboriginal people imprisoned in Victoria, this policy represents a potential economic cost saving of up to $40,000,000 in just one year. Given the increase in Aboriginal imprisonment rates, it could obviate the need to spend more than $500 million imprisoning Aboriginal people over the next 10 years. In addition, benefits of diversion flow through to reduce costs in the health system by an estimated $90,000 per person (10).

Any policy response must also direct significant support to children and young people. Aboriginal and Torres Strait Islander population growth in Victoria is driven by a very large youth cohort, with 46 per cent aged between 0 to 19 years in 2011 – almost double the rate of non-Aboriginal people – while the number of Aboriginal and Torres Strait Islander young people aged 0 to four years increased 31 per cent between 2006 and 2011 (3,16). Factors such as poor school performance and early school leaving are strongly associated with Aboriginal imprisonment (12). However the most important factors predicting school performance among children in the United States occur prior or early in a child's school career (13). This suggests investing in early childhood – which aligns with and reflects Closing the Gap priorities as well as many Federal government health and social services policy directions since 2008 – is perhaps the most important stage to prevent adult imprisonment. Indeed a two year intervention among disadvantaged African-American children in the United States that involved morning programs at school and afternoon teacher visits to the child's home, the Perry Preschool Program, resulted in higher achievement test scores at 10 years of age, and by the age of 40 years the group had higher graduation rates, higher salaries, higher home ownership, lower rates of welfare receipts, and fewer arrests than children that did not participate (15). The cost benefit was calculated at $244,812 per person (15). Another intensive intervention offered to families of disadvantaged US children aged four months over a five year period was found to permanently raise IQ and non-cognitive skills and significantly improved employment outcomes (especially skilled employment) and activity levels (14). Investing in children from an early age is proven to extend cost-saving and quality of life benefits **(Recommendation 5).**

Family factors have been identified as the critical factor influencing inequality in school performance (13). Substance abuse among parents has been linked to poor childhood development – with children lacking social skills, performing poorly at school and having trouble finding and retaining employment (12), all factors associated with adult imprisonment. Addressing substance abuse in the prisoner cohort would reduce future adult imprisonment by helping to improve social skills, school performance and employment outcomes among children of present prisoners **(Recommendation 6).**

In addition to community residential treatment, prison alternatives for Aboriginal people in Victoria such as the Wulgunggo Ngalu Learning Place in Gippsland for Aboriginal men on community-based orders have achieved excellent results that continue to improve. The centre has been open since just 2008, however 66.7 per cent of those referred in 2010/11 successfully completed the program, a figure increasing to 76.6 per cent in 2011/12 and 87.5 per cent in the first quarter of 2012/13 (17). Prison alternatives such as the Wulgunggo Ngalu Learning Place should be expanded so that more Aboriginal people access successful models instead of being diverted to unsuccessful prison models with poor outcomes **(Recommendation 7).**

The methodology and objectives of justice reinvestment

The past and present approach to crime has significantly increased the number of people imprisoned, especially Aboriginal and Torres Strait Islander people, has driven up government expenditure substantially – both directly through prison costs and indirectly through higher health, mental health, productivity costs and more – and seen poor health and mental health among prisoners become the norm. By all of these measures the present approach to imprisonment has failed to benefit society.

Justice reinvestment, encompassing policy reform that obviates expensive and damaging punitive responses and invests the savings in community-based prison alternatives, prevention and early intervention programs, and intensive support in the transition out of prison would engender enormous social and economic benefits in the community.

VACCHO believes justice reinvestment represents an opportunity to support changes to laws and policies to address high and growing imprisonment rates for both State and Federal governments. Both levels should partner with Aboriginal communities and their representative organisations. We see justice reinvestment as investing the enormous cost savings of diversionary policies that reduce the number of people imprisoned into community-based alternatives that address the underlying drivers of imprisonment.

The benefits of, and challenges to, implementing a justice reinvestment approach in Australia

Targeting funds under a justice reinvestment approach must be closely monitored. As one sceptic of justice reinvestment expounded in a review, “In the fight against Indigenous disadvantage and incarceration, justice reinvestment threatens to become a distraction from focusing on the fundamentals such as education and employment that will lead to change” (30). Legislation is needed to ensure any funds redirected as a result of a justice reinvestment policy are in addition to existing funding.

Justice reinvestment should prioritise existing structures such as Aboriginal Community Controlled Health Organisations and policy forums such as the Aboriginal Justice Forum in Victoria that allow communities to make and influence decisions. ACCHOs are proven to engage Aboriginal people in contact with the justice system at higher rates than mainstream services (8). Investing in ACCHOs and other community organisations that people already access is a pragmatic and cost-effective strategy that augments the economic and social benefits to governments and communities engendered by a reduction in imprisonment rates **(Recommendation 8).**

To achieve long-term reductions in imprisonment rates and address the underlying drivers of Aboriginal imprisonment, long-term investment in establishing a stable, specialised mental health and substance abuse workforce is required. Program timeframes and goals should be appropriate; short timeframes in the justice system are unlikely to meet anyone’s expectations. Many ACCHOs possess mental health, substance abuse and the justice system expertise, although they operate under-resourced services with overburdened staff members. Utilising and investing in ACCHOs to build a strong, community-based alternative to prison that addresses high rates of mental health problems and substance abuse is far more effective in reducing justice-system contact and more cost-effective than prisons **(Recommendation 9).**

An early challenge of a justice reinvestment approach will be to create a culture of evaluation and data sharing to reduce duplication and ineffective programs. Identification of Aboriginality remains a problem in some areas. All justice reinvestment funding must be transparent and reported upon to increase cost-effectiveness, a challenge for some traditionally data-shy government departments.

The collection, availability and sharing of data necessary to implement a justice reinvestment approach

Transparency and sharing data should be a priority under any justice reinvestment initiative. Data availability in particular is an ongoing problem in Victoria as pointed out by the Australian Institute of Health and Welfare and the Productivity Commission. The Victorian prison system's lack of electronic health care records has also been the target of criticism from the Australian Institute of Health and Welfare and the Victorian Ombudsman on multiple occasions (8,31,32). The fact that there is little availability of health and mental health statistics of prisoners – people who have high rates of sexually transmitted infections, blood borne viruses, poor health outcomes, and extremely high rates of mental health problems (1,4–7,11,31) – is a systematic failure encumbering efforts of community organisations to offer specialised services to such a vulnerable population.

The scope for federal government action which would encourage the adoption of justice reinvestment policies by state and territory governments

The Federal government is responsible for many aspects of public health and education, and can bring parties together by seeking supportive police and prison policy and law reform from State governments. The Federal government as a stakeholder in the Closing the Gap strategy is capable of seeking support for justice reinvestment and should establish targets and funding obligations that seek to close the gap in substance abuse and mental health problems among Aboriginal and Torres Strait Islander people in contact with the justice system. In addition to the Closing the Gap agreement, justice reinvestment can be aligned and linked with the principles and priorities of the National Aboriginal and Torres Strait Islander Health Plan, the Aboriginal and Torres Strait Islander Social and Emotional Wellbeing Framework, the Australian Social Inclusion Framework in addition to the new anti-racism strategy.

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