



## ALRC SUBMISSION

To ALRC Inquiry into the Incarceration Rate of  
Aboriginal and Torres Strait Islander Peoples

From Judicial College of Victoria

Date September 2017

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### Acknowledgment

The Judicial College of Victoria pays its respects to Aboriginal and Torres Strait Islander peoples; their knowledge, culture, history, diversity and connection to their land. We recognise the influential role of judicial education in shaping community, and strengthening relationships between First Nations people and the judiciary.

### Submission

#### 1. Background

The Judicial College of Victoria ('the College') is an independent statutory authority which provides continuing education and training for Victorian judges, magistrates and Victorian Civil and Administrative Tribunal ('VCAT') members (collectively, 'judicial officers').

Commencing operation in 2002, the College has a proven track record of delivering education on topics relevant to all facets of the judicial role. We ground many of our programs in the stories of those with lived experience of the justice system and wider communities.

Our work includes educational programs that aim to enhance judicial officers' awareness of factors contributing to the disadvantage experienced by many Aboriginal and Torres Strait Islander persons. In this area, we work closely with the Victorian Judicial Officers' Aboriginal Cultural Awareness Committee ('JOACAC'), Victorian courts and VCAT, and members of the Koori and broader Aboriginal and Torres Strait Islander Community.

#### JOACAC

JOACAC was established in response to the 1991 report of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC'). In particular, its finding that judicial officers' lack of understanding of the cultural and socioeconomic issues affecting Aboriginal and Torres Strait Islander persons who come before the courts was one of the contributing factors to the overrepresentation of Aboriginal and Torres Strait Islander persons in our criminal justice system.

The Honourable Justice Stephen Kaye AM of the Victorian Court of Appeal is the current chair of JOACAC. Its members include judicial officers from each Victorian and Federal jurisdiction, and Aboriginal and non-Aboriginal Victorians who have an interest in



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educating judicial officers about Aboriginal and Torres Strait

Islander cultural awareness. The College has supported JOACAC to design and deliver educational programs since 2007. Our collaborative programs include an annual series of Koori Twilight seminars, visits to significant sites, and multi-day cultural immersion events known as 'Back to Country'.

### Community partnership

The College is committed to developing cultural awareness education that is supported by the Victorian Aboriginal and Torres Strait Islander Community. Aboriginal and Torres Strait Islander people contribute to the development and delivery of events, and the events are culturally safe. All Aboriginal cultural awareness programs include Community perspectives, and embrace story-telling as the preferred mode of delivery. For example, a 2016 seminar on the Stolen Generations involved members of the Stolen Generations sharing their personal experiences with the judicial audience, to help attendees understand how the traumatic legacy of those policies continue to affect Aboriginal and Torres Strait Islander people.

The College is a member of the Courts Koori Reference Group. We also participate in the Aboriginal Justice Forum to contribute to the development of Victoria's Aboriginal Justice Agreement ('AJA'), now in its fourth iteration. We also offer educational opportunities independently of JOACAC (as described above). For example, sessions relating to Aboriginal and Torres Strait Islander cultural awareness are included in orientation programs for newly appointed judicial officers, and in our collaborative court conferences. We also host a 'Koori Practice Page' on our judicial intranet to collate relevant resources that judicial officers may find useful.

To further our work in this area, the College recruited a Koori Research and Education Manager in August, 2017, who will commence in October 2017. Their role will build upon the work we have already done in relation to the specific issues Aboriginal and Torres Strait Islander people face within the justice system, both in Victoria, and more broadly.

## **2. Successful reform requires education**

Since the RCIADIC handed down its report, Victorian justice authorities have worked closely with Victoria's Aboriginal and Torres Strait Islander Community on initiatives to reduce Aboriginal and Torres Strait Islander incarceration rates in Victoria. However, between March 2014 and March 2015, Victoria recorded one of Australia's largest increases in Aboriginal and Torres Strait Islander imprisonment rates.<sup>1</sup> This rate continues to rise.<sup>2</sup>

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<sup>1</sup> Australian Bureau of Statistics, 4512.0 - Corrective Services, Australia, March Quarter 2015 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4512.0Main+Features1March%20Quarter%202015?OpenDocument>>.

<sup>2</sup> Australian Bureau of Statistics, 4512.0 - Corrective Services, Australia, March Quarter 2017 <<http://www.abs.gov.au/AUSSTATS/abs@.nsf/ProductsbyCatalogue/9B3F80C43A73AF6CCA2568B7001B4595?OpenDocument>>.

Many of the current inquiry's proposals would require legislative reform to implement. We consider that successful implementation requires education for all those involved in the justice system. The College looks forward to consulting with Victorian judicial officers and the Aboriginal and Torres Strait Islander Community to develop appropriate educational activities aimed at ensuring the reforms achieve desired reductions in Aboriginal and Torres Strait Islander incarceration rates.

**In addition to education on specific reforms, the College believes that successful implementation requires that all involved in delivering justice, including the judiciary, receive cultural awareness and cultural competence education relating to Aboriginal and Torres Strait Islander people.**

#### Cultural awareness education

**Cultural awareness training for judicial officers should include material relating to the historical and ongoing impact of colonisation on Aboriginal and Torres Strait Islander people, identity, intergenerational trauma, in addition to education about contemporary issues such as the exposure to racism that many experience daily.**

This education would assist judicial officers to better understand the unique systemic and background factors affecting Aboriginal and Torres Strait Islander people, and would be essential to underpin any legislative requirement to consider such factors in sentencing. While information about an individual offender's circumstances would still be required, sentencers' general understanding of cultural and historical disadvantage may be supported by providing consistent education to all judicial officers working in the criminal jurisdiction.<sup>3</sup> New judicial officers could receive such training as part of their orientation to the role. Current judicial officers could be invited to attend programs appropriately tailored to their existing level of knowledge.

#### Cultural competence education

**In addition to building judicial officers' cultural awareness, education should contribute to judicial officers acquiring cultural competence regarding how to work with Aboriginal and Torres Strait Islander peoples. This would include training about modes of communication, body language, the need for and use of interpreters, and related issues. The development of this training must involve substantial consultation with Community, who must also lead its delivery.**

An educational curriculum encompassing both cultural awareness and cultural competence would help those involved in justice, including judicial officers, to be appropriately aware

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<sup>3</sup> In Victoria, judicial officers often move between the criminal and civil jurisdictions. As such, it would be preferable to offer this education to all judicial officers, regardless of what jurisdiction they predominantly sit in. This would also benefit Aboriginal and Torres Strait Islander people appearing in civil matters, and may encourage more individuals to exercise their rights in this area.

disadvantage.

Education about services available

**Educational programs should highlight culturally-appropriate programs and services that support Aboriginal and Torres Strait Islander people who are on bail, community-based sentences or parole.** Generally judicial officers or other relevant decision-makers are not responsible for referring individuals to specific services. For example, in Victoria, sentencers who attach a cultural or personal development program as a condition of a Community Correction Order are not generally able to prescribe a specific program that an offender must complete. This falls to Corrections Victoria, and will depend on availability of appropriate services.

It is possible, however, for sentencers to suggest particular programs when they are aware of one that may be appropriate. Judicial officers and members of the Courts Koori Reference Group consistently observe that it is difficult for judicial officers to suggest services. Even when they are aware of them, availability and referral pathways are not always clear. While the College has run programs to highlight particular services and has prepared resource directories, these are generally point-in-time references that are quickly outdated. Additional resources would be required to create and maintain a live service directory.

Education highlighting services available must be coupled with cultural awareness education. It is important that judicial officers are aware that not all Aboriginal and Torres Strait Islander people will necessarily benefit from a particular service, even one with high success rates. Each offender's suitability must be individually assessed to consider issues such as proximity to family and Country, or potential conflicts within the community where the service is located.

### 3. Specific questions or proposals requiring judicial education

We consider that the long term success of several proposals outlined in this inquiry would depend on significant education. For example:

- Proposal 2-1: While the *Bail Act 1977* (Vic) already requires bail authorities to consider any 'issues that arise due to the person's Aboriginality', Victorian Equal Opportunity and Human Rights Commission research indicated that s 3A is underutilised, and recommended further education for the judiciary and legal profession.<sup>4</sup> In addition to specific education about how and when to refer to s 3A, general Aboriginal cultural awareness education would support its success by ensuring that bail authorities are aware of the cultural issues it refers to.

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<sup>4</sup> Victorian Equal Opportunity and Human Rights Commission, 'Unfinished Business: Koori women and the justice system' (2013) 49-50.

- Questions 3-1 and 3-3: For sentencers to effectively

consider the unique systemic and background factors affecting Aboriginal and Torres Strait Islander offenders, it is essential that they receive education on those factors. Such education should complement any report that is provided. This is so regardless of how the legislative provision is framed.

- Question 4-1: Victoria has recently legislated to introduce mandatory minimum non-parole periods to a range of serious offences, and a standard sentencing scheme. Education may be required to address how these provisions will affect Aboriginal and Torres Strait Islander offenders.
- Proposal 7-1: Education relating to the availability and referral pathways of successful culturally-appropriate community-based sentencing options would assist sentencers to recommend such options in appropriate situations. In Victoria, such training should include information about sentencing conditions that may be inappropriate for Aboriginal and Torres Strait Islander offenders. For example, it is possible for Community Correction Orders to include non-association, curfew or exclusion conditions. Cultural obligations which conflict with such conditions may lead Aboriginal or Torres Strait Islander offenders to breach an Order.
- Question 11-1: Reforms to laws and legal frameworks affecting Victoria's Koori Court system may require multi-disciplinary education of all involved in Koori Courts including judicial officers and the large network of Elders who sit in Courts across Victoria. If this were to occur, careful consideration would need to be given to the scope and provider/s of such training.

#### 4. The need to support ongoing Aboriginal Cultural Awareness education at a local level

We acknowledge that the Commission has a national focus, and that education would similarly be required at a national level. However, we consider that the Commission should recommend that funding for judicial education be allocated to the relevant state judicial education authority, where such a body exists.

This is because Aboriginal and Torres Strait Islander communities are diverse. The needs of communities in Victoria differ to those in other states and territories, and the needs of regional Victorian communities are different to metropolitan communities. **Only a localised approach will adequately support judicial officers to understand the specific issues affecting those who come before their particular court.** It will also help them to highlight relevant services. Education must include tailored messages for judicial officers who sit in regional areas, including consultation with the relevant local communities to ensure content is tailored to the needs of the regions (for example, it must identify any particular cultural factors, and highlight relevant community services).

As has been noted, the College has forged strong relationships within Victoria's Aboriginal and Torres Strait Islander Community. This position of trust means we are uniquely well placed to utilise our existing partnerships to develop effective approaches to education.



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## 5. Summary

Successful implementation of the Commission's recommendations will require that all involved in delivering justice, including the judiciary, receive cultural awareness and cultural competence education relating to Aboriginal and Torres Strait Islander people. Additionally, education in relation to particular legislative reforms will be vital.

Education for judicial officers should include:

- background information regarding the historical and ongoing impact of colonisation on Aboriginal and Torres Strait Islander people;
- an explanation of intergenerational trauma;
- contemporary issues such as daily exposure to racism;
- cultural competency information about modes of communication, body language, the need for and use of interpreters, and related issues aimed at improving cultural safety in court; and
- information about culturally-appropriate programs and services that support Aboriginal and Torres Strait Islander people who are on bail, community-based sentences or parole.

The development of all education must have the support of and involve substantial consultation with Community, who must also be included in education delivery. Only a localised approach will adequately support judicial officers to understand the specific issues affecting those who come before their particular court.

The development and delivery of education programs and materials is resource intensive. However, given the fundamental role education plays in achieving successful reform, it is essential that there be sufficient funding allocated to this component of the reform process. Thus, the Commonwealth government should provide funding for judicial education in relation to any legislative reforms, as well as education programs designed to develop judicial officers' Aboriginal and Torres Strait Islander cultural awareness and cultural competence. To account for the differences in the needs and dynamics of Aboriginal and Torres Strait Islander people across individual states and territories, this funding should be provided to the relevant judicial education body in each state or territory, wherever such a body exists.