

# Yoorrook Justice Commission

## Witness Statement



### WITNESS STATEMENT OF THE HON. GABRIELLE WILLIAMS MP

I, Gabrielle Williams, Minister for Aboriginal Affairs, of 1 Treasury Place, East Melbourne, affirm and say as follows:

#### Acknowledgement

1. I acknowledge the Traditional Owners of the Country on which I live and work, and pay my respects to their Elders past and present. I also acknowledge the Traditional Owners of Country across our entire State. Sovereignty has never been ceded.
2. From time immemorial, First Peoples in Victoria have practised their law and lore, customs and languages, and nurtured Country through their spiritual, cultural, material and economic connections to land, water and resources.
3. Under international law, self-determination is an inalienable right of First Nations peoples.<sup>1</sup> The Victorian Government is committed to self-determination as a foundational and guiding principle.
4. It must be acknowledged that the long-lasting, far-reaching and intergenerational consequences of the dispossession of First Peoples of their Country in this part of the continent are a direct result of Colonisation and the establishment of the State of Victoria. The reality of Colonisation involved establishing Victoria with the specific intent of excluding Aboriginal people and their laws, cultures, customs and traditions, including through horrific violence perpetuated at individual, societal and systemic levels. This history, and the systems it gave rise to, continue to harm First Peoples today.
5. I acknowledge the extraordinary strength and resilience of First Peoples in the face of historical and ongoing injustices, and the survival of their living cultures, knowledge and traditions.
6. It is with humility that I make this statement to the Yoorrook Justice Commission (**Commission**) as Victoria's Minister for Aboriginal Affairs, which reflects the Victorian Government's position. Thank you to the Commissioners for the opportunity to provide this statement. In preparing this statement, I consulted with subject matter experts within the Department of Premier and Cabinet and other relevant portfolios in the Victorian Government. I confirm the contents of this statement are true and correct to the best of my knowledge.
7. It is important to note this statement includes information, statistics and examples that were collected by the State and are not fully informed by First Peoples' voices and experiences. The Government acknowledges that research and data can be influenced by the systemic racism and bias that the Commission was established to address. First Peoples are often misrepresented through deficit framing that denies sovereignty, does not support agency and self-determination, and enables disparate outcomes.<sup>2</sup>

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<sup>1</sup> United Nations Declaration on the Rights of Indigenous Peoples [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

<sup>2</sup> Chelsea Watego, David Singh & Alissa Macoun. *Partnership for justice in health: Scoping paper on race, racism and the Australian health system*, The Lowitja Institute, 2021.



8. The Government acknowledges that it should consider integrating Indigenous Data Sovereignty (IDS) principles and practices into its data and privacy policies. Without adequate and appropriate data, it is difficult to identify and evaluate system improvements.<sup>3</sup> The Government acknowledges the Commission will provide a more complete record of First Peoples' experiences of Colonisation and dispossession through its inquiry, and that the Commission may make recommendations relating to IDS.
9. The Victorian Government is deeply committed to the objectives of the Commission, and is committed to transforming current systems and building new ones – to creating a new relationship between First Peoples and the State of Victoria, based on equality, truth and justice.
10. I make this statement in response to an invitation from the Commission dated 30 March 2022 and in response to each of the specific questions that the Commission has asked me to address. Those questions are attached at Annexure A.

## **Part A – Foundational matters in the Letters Patent**

### ***Development and establishment of the Commission***

11. For most of Victoria's history, First Peoples have been denied the opportunity to make decisions for themselves. First Peoples' fundamental right to self-determination – as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – should never have been violated.
12. Justice in Victoria must mean a commitment to self-determination – supporting the transfer of relevant decision-making power from the State to First Peoples. That is why, in 2016, the Victorian Government committed to pursuing treaty.
13. Over the course of discussions with the State's treaty partner – the First Peoples' Assembly of Victoria (**Assembly**) – the Government came to understand that to achieve a new political and institutional agreement for First Peoples, we must first reach a definitive and shared understanding of our past, and how that past continues to impact the present. In June 2020, the Assembly passed a resolution to call on the Victorian Government to establish a formal truth-telling process, as a fundamental step in the process to treaty-making.
14. In establishing a truth and justice process in partnership with the Assembly, the Government acknowledged that inequalities between First Peoples and other Victorians are deeply ingrained in the architecture of our society and systems. To address these issues, the Commission needs to consider not just one system or structure, but what underpins and connects them.
15. The establishment of the Commission could not have occurred without the tireless advocacy of First Peoples in Australia across generations. The Black Lives Matter movement, which ignited a global and local discussion on contemporary racial injustice and inequality, also coincided with the ongoing and overdue public conversation about First Peoples' deaths in police custody and the profound, intergenerational impacts of systemic and structural racism that continue to be a feature of our contemporary society and harm First Peoples.
16. It was against this backdrop that the Victorian Government and the Assembly agreed upon foundational principles to guide the development of the Terms of Reference, ensuring an effective and fitting truth and justice process, which reflected the interests of all involved.

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<sup>3</sup> Commission for Children and Young People, *Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, 2021, 23, <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>



17. Establishing the Commission as a Royal Commission under the *Inquiries Act 2014* (Vic) ensured the process has appropriate powers, within the State's existing legal framework, to fulfil its objectives and provide recommendations for practical reforms needed to address Systemic Injustice and lead to real change. As empowered by the Letters Patent, the Commission operates in an independent and community-led way.
18. The Victorian Government and the Assembly also drew on international expertise and lessons learnt from similar truth-telling approaches. While the establishment of the Commission is the first of its kind in Australia, Victoria is far from the first jurisdiction to undertake such a reckoning. More than 40 truth-telling processes have been adopted in countries around the world since the 1980s, and in a wide variety of forms.<sup>4</sup> The Commission has the benefit of being able to build and improve on all of those experiences, in the unique Victorian context, and with an important scope of inquiry.
19. As well as acknowledging the historical and ongoing injustices committed since Colonisation began, the Victorian Government is committed to and embraces its responsibility to advance and uphold the human rights and interests of all Victorians under existing laws. In that context, it was essential the Terms of Reference would not adversely affect the rights and interests of Victorians, would prevent further harm, and provide a foundation from which we can build a new shared future together.
20. The Letters Patent outline this acknowledgement, including respecting the rights and interests established under any other process or law, such as the *Traditional Owner Settlement Act 2010* (Vic), native title rights, the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic), and the *Charter of Human Rights and Responsibilities Act 2006* (Vic).
21. The Commission's mandate includes outcomes conducive to healing. Given the difficult subject matter of this Commission, and the need to ask First Peoples to tell or retell their stories, there are serious risks of re-traumatisation for First Peoples already burdened with the intergenerational trauma of Colonisation. The importance of truth-telling centred on healing and the prevention of further harm, therefore, was a key guiding principle agreed to by the Assembly and the Government.
22. The broad mandate of the Commission reflects the Victorian Government's commitment to truth-telling, and to reform, reparation and the advancement of a treaty or treaties founded on a shared understanding of the truth. The Government must acknowledge and confront the grave wrongs that have been committed – and that may be ongoing.

### **Objectives of the Commission**

#### *a) Establish an official public record of First Peoples' experiences of Systemic Injustice*

23. It is appropriate and necessary that First Peoples lead this historic process of truth-telling. The State has been a dominating force in the lives of First Peoples in Victoria since Colonisation began. Through this inquiry, the Commission has an opportunity to hear First Peoples' stories of their lived experiences and truths, and establish an official public record.
24. It is not the words of the Victorian Government or State institutions that matter in creating an official public record of the impacts of Colonisation. It is the words of First Peoples who have been trying to be heard for so long. Those who have never spoken before. Those who have been silenced. Those who have been creative, angry, forceful and persistent – who have spoken in community, in language, in art, in protest and in story. Those who died before the establishment of this Commission, and whose stories live on. These are the words Victorians need the Commission to bring together, to create a record like we have never heard or seen before.

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<sup>4</sup> Bonny Ibhawoh, 'Do truth and reconciliation commissions heal divided nations?', *The Conversation*, 24 January 2019, <https://theconversation.com/do-truth-and-reconciliation-commissions-heal-divided-nations-109925>





25. It is for these reasons that the majority of the Commissioners are First Peoples, with three being Victorian Traditional Owners.
26. The Victorian Government comes to this process with open hearts and open minds, and is committed to listening, to understanding, and to changing.
  - b) *Develop a shared understanding of the impact of Systemic Injustice*
27. The Commission is tasked with developing a shared understanding, among all Victorians, of the individual and collective impact of Systemic Injustice and the intergenerational trauma that has flowed from it since the start of Colonisation.
28. By referring to a “shared understanding”, the Government recognises the period of time being considered by the Commission – every event – will have occurred while First Peoples and non-Aboriginal people have lived together on the land now known as Victoria.
29. It is important that all Victorians hear and understand First Peoples' stories and history, and understand First Peoples' experiences. We must collectively own this history because it is our history – whether we are First Peoples or non-Aboriginal Victorians.
30. The Victorian Government does not shy away from its role in this complex and challenging process. It is a mammoth task to achieve a shared understanding across a community as diverse as Victoria. And it is unrealistic to expect this shared understanding to be achieved within the three years of the Commission. The Commission's inquiry is only the beginning.
  - c) *Determine the causes and consequences of Systemic Injustice*
31. ‘Systemic Injustice’ is defined as harm or impacts on human dignity, by reference to the application of current human rights instruments, that are part of a systemic or structural pattern.<sup>5</sup> This means that all policies, practices, conduct or laws – involving State and non-State entities – which existed in the time since 1788, are within the scope of the Commission's investigations. As individual stories are heard, and systems called into question, patterns of injustice will no doubt emerge.
32. The Victorian Government openly accepts the inherent risks of undertaking a truth-telling process. The Parliament of Victoria – of which I am a current representative – has historically participated in and witnessed violence, dispossession and the unfair treatment of First Peoples.
33. The Commission's inquiry cannot, however, focus solely on State entities – to do so would narrow the scope of the inquiry and impede efforts to form a holistic record of the impact of Colonisation. This would also exclude complex relationships between State and non-State entities that are jointly responsible for injustices, such as those that occurred at the hands of church-based missions without official approval and in the absence of appropriate State oversight.<sup>6</sup>
34. The Commission will hear stories about acts of individual violence. Though the Commission is not tasked with determining the guilt or innocence of individuals, examining these acts – often systemic in nature – will enable patterns of injustice to be identified and acknowledged.
  - d) *Develop a shared understanding of First Peoples' diversity, strength and resilience*
35. The State's rhetoric regarding First Peoples in Victoria has for too long focused on disparities and disadvantages, which has entrenched a deficit perspective of First Peoples into State policies,

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<sup>5</sup> Yoorrook Justice Commission, Letters Patent, clause 6.

<sup>6</sup> Australian Human Rights Commission, *Bringing them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their families*, 1997, ch. 19, <https://humanrights.gov.au/our-work/bringing-them-home-chapter-19#a>



practices and systems. This approach, only now slowly shifting, reflects the colonial lens of viewing First Peoples as “less than”, of dehumanising and “othering” communities and individuals.

36. While the Victorian Government understands that Victorians must talk about injustices that have been ignored and hidden from our story, we must also talk about the strength, resilience and resistance of First Peoples. We must talk about Marngrook, Uncle William Cooper’s petition to the King, the Cummeragunja walk-off, of the Aboriginal Advancement League and the tireless work of Aboriginal Community Controlled Organisations (**ACCOs**), and the World Heritage status for Budj Bim.
37. We need to acknowledge that Victoria’s First Peoples communities continue to strengthen and grow with the ongoing practice of language, law and lore and cultural knowledge. We must also embrace First Peoples’ diverse knowledge and cultural practices, and the potential they have to inform future innovation and policy development. This is our collective story, and every Victorian has a responsibility to learn it, to understand it, heed its lessons and celebrate its achievements.
  - e) *Build the foundations of a new relationship*
38. In establishing the Commission, Victoria became the first jurisdiction to act on the treaty and truth elements of the Uluru Statement from the Heart, which aspires to “a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.”<sup>7</sup>
39. By placing First Peoples’ history and experience at the centre of who we are as Victorians, we can build a very different shared future – a new relationship between the State of Victoria and First Peoples founded on justice and openness. A relationship that is committed to equity, unafraid to talk honestly about our colonial past and the long-lasting, far-reaching, ongoing and intergenerational consequences of Colonisation. The Victorian Government is committed to this new relationship.
40. While the Commission itself only has a three-year term, the foundation it will create for the slow process of healing, together, will continue long into the future.
  - f) *Support the treaty-making process*
41. Truth-telling and reckoning with past injustices are integral elements of Victoria’s treaty process. The Victorian Government understands that treaty and truth-telling are intrinsically linked – that without truth, there can be no treaty, and without treaty, there can be no justice.
42. Establishing a truth and justice process now, at this stage of the treaty process, provides an independent, evidentiary basis for systemic reform and redress that may be considered through the treaty process. The Victorian Government acknowledges that the Commission may also make recommendations that require action separate to the treaty process.
  - g) *Identify impediments to self-determination and equality, and make recommendations to address them*
43. The Victorian Government has already set an ambitious self-determination reform agenda, but we know that we can, and must, do more. While self-determination is driven by First Peoples, the Victorian Government is responsible for transforming its systems, structures and service delivery to better reflect and enable the aspirations of First Peoples’ communities.
44. The Government is committed to the transition of relevant decision-making control to First Peoples. The Government recognises that we have only begun this transition of power in some areas and there is a long way to go before self-determination has been genuinely achieved. We look forward to

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<sup>7</sup> First Nations National Constitutional Convention, *Uluru Statement from the Heart* (signed at Mutitjulu, the land of the Anangu people), 2017, <https://ulurustatement.org/the-statement/view-the-statement/>



the recommendations of the Commission – and the progression of treaty negotiations – to advance this process.

45. The Victorian Government looks to the Commission to help with understanding the connection between historical and contemporary injustices, in order to establish, for all Victorians and future governments, the consequences of denying First Peoples control over their own affairs. This is essential to ensure gross injustices are never again repeated or permitted to continue, and to ensure a future for First Peoples in Victoria that is truly community-led. The current Victorian Government assures the Commission that we are here, ready to listen, to act, and to be held to full account.

## **Part B – Dispossession of First Peoples of their lands and waters**

46. In 1834, when European settlers arrived in the lands that later became the State of Victoria, they undertook a process of dispossessing First Peoples of their land and waters. First Peoples were evicted from their homelands by squatters and others seeking wealth. This took place over the entirety of Victoria and in a heartbeat attempted to destroy the more than 60,000-year<sup>8</sup> rich cultural life of Australia's First Peoples.
47. Dispossession occurred through a range of means, often violent. The Victorian Government acknowledges that the State's active and tacit involvement in violence – including massacres, killings, rape and pillaging – are part of Victoria's history. For generations, First Peoples have been sharing these stories – and calling for justice – and the State has not wanted to listen.
48. The reality of the vesting of sovereignty in the British Crown, on the basis of the now rejected application of the doctrine of *terra nullius*, was the State-sanctioned dispossession of First Peoples' land and waters on a devastating scale.
49. As First Peoples were not recognised as having pre-existing rights, they were not considered in land legislation or policy until very recently. Accordingly, early and successive land legislation was silent on First Peoples rights and was often enacted as matters of expediency in recognition of otherwise illegal settlements, to cater for the gold rush, or opening Victoria for grazing.<sup>9</sup>
50. The Victorian Government acknowledges that water rights were granted to settlers to the exclusion of First Peoples, and the State made decisions without regard to First Peoples or the deep significance of water to them. As settlers moved across Victoria, they diverted, dammed and drained landscapes of water to suit and supply their specific needs. By 1857 the Yan Yean Reservoir was completed, and water infrastructure has continued to be developed to support the growing population of Melbourne and Victoria. There are now more than 70 water storages with capacities greater than 1000 megalitres across Victoria that hold back and divert water.<sup>10</sup>
51. Traditional Owners have been denied any voice in these far-reaching decisions. Until the 2010 amendments, the *Water Act 1989* (Vic) was silent on First Peoples' interests or rights in water.<sup>11</sup> The Government acknowledges that silence in legislation reinforced the exclusion of Traditional Owners from decisions about the management of water, prevented the practice of culture, and led to loss of economic opportunities.

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<sup>8</sup> First Nations National Constitutional Convention, *Uluru Statement from the Heart*.

<sup>9</sup> See, for example, the *Waste Lands Act 1842* (Vic) and the *Land Act 1860* (Vic).

<sup>10</sup> Melbourne Water, 'History of our water supply system,' 2017, <https://www.melbournewater.com.au/water-data-and-education/water-facts-and-history/history-and-heritage/history-our-water-supply>

<sup>11</sup> *Water Act 1989* (Vic), S. 8A.





52. Dispossession by the State has included acts of environmental degradation by European land uses, including the introduction of exotic flora and fauna.<sup>12</sup> Traditional Owners have observed significant biodiversity decline.<sup>13</sup> Food and water sources and sites of significance to First Peoples have been damaged or destroyed.<sup>14</sup> The effects of a violent colonial history have curtailed the ability of First Peoples to utilise traditional ecological knowledge to protect and promote biodiversity.<sup>15</sup> Rather than working with First Peoples to sustainably manage Victoria's lands and waters, the State imposed processes of land and water management derived from foreign lands and climates.
53. The economic loss for First Peoples from dispossession has been enormous, including the loss of economies that existed prior to Colonisation. First Peoples continue to face economic disadvantage as a result of the State's denial of pre-existing rights to and traditional ownership of land and waters.
54. Over time, the State's dispossession of First Peoples from their land and water has involved alternative, and no less insidious, processes including forcing First Peoples onto missions and reserves.<sup>16</sup> The State forcibly removed First Peoples from their traditional lands and placed them on missions and reserves run by State or non-State entities, including religious organisations.<sup>17</sup> This process was justified by the State on the basis of 'protection', control and paternalism.
55. By the late 1800s many First Peoples were restricted to living on missions and reserves, where managers enforced tight restraints on movement, employment and cultural practices. First Peoples tell of their family members being punished for the use of traditional language and customs.<sup>18</sup>
56. Dispossession was also achieved under adoption practices, "child protection" practices, and the dispersal of families. For example, the *Aborigines Act 1957* (Vic), the *Aborigines Protection Act 1886* (Vic) and the *Aborigines Protection Act 1869* (Vic) facilitated, in differing ways, the forced removal of First Peoples children from their families and communities. In many circumstances this caused children to lose connection with their Country, history, community and culture.
57. In many instances where land was merely temporarily reserved and missions were closed, the land was re-allocated and not returned to First Peoples. For example, following its closure in 1918 the majority of the Lake Condah mission reserve land was, in the 1940s, handed over to the Soldier Settlement Scheme, a scheme from which First Peoples soldiers were excluded.<sup>19</sup>
58. Up until the 1960s, the policies of successive governments dictated where First Peoples could live, work, and marry, whether on or off missions and reserves.<sup>20</sup> Government policies sought to either

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<sup>12</sup> See, for example, Recognition and Settlement Agreement for the recognition of the Dja Dja Wurrung and settlement of native title claims, 28 March 2013, 2, <https://files.justice.vic.gov.au/2021-06/vol1recognitionandsettlementagreement.pdf>

<sup>13</sup> Legislative Council Environmental and Planning Committee, Parliament of Victoria, *Inquiry into Ecosystem Decline in Victoria* (Final Report, December 2021, Volume 1), 46 (Finding 1),

[https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Ecosystem\\_Decline/Report/LCEPC\\_59-05\\_Ecosystem\\_decline\\_in\\_Vic.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCEP/Ecosystem_Decline/Report/LCEPC_59-05_Ecosystem_decline_in_Vic.pdf)

<sup>14</sup> See, for example, Recognition and Settlement Agreement for the recognition of the Dja Dja Wurrung and settlement of native title claims, 28 March 2013, 2.

<sup>15</sup> Department of Environment, Land, Water and Planning, *Protecting Victoria's Environment – Biodiversity 2037*, 2017, 37, [https://www.environment.vic.gov.au/\\_data/assets/pdf\\_file/0022/51259/Protecting-Victorias-Environment-Biodiversity-2037.pdf](https://www.environment.vic.gov.au/_data/assets/pdf_file/0022/51259/Protecting-Victorias-Environment-Biodiversity-2037.pdf)

<sup>16</sup> Michael Pickering, 'Where are the stories?' *The Public Historian*, 32, no. 1 (2010): 79-95.

<sup>17</sup> Department of Justice & Regulation, *Threshold Guidelines for Victorian traditional owner groups seeking a settlement under the Traditional Owner Settlement Act 2010*, 2015, 3.

<sup>18</sup> Recognition and Settlement Agreement for the recognition of the Dja Dja Wurrung and settlement of native title claims 28 March 2013, 2.

<sup>19</sup> Heritage Council Victoria, 'Case Study 4 - Lake Condah, Budj Bim National Heritage Landscape,'

<https://heritagecouncil.vic.gov.au/research-projects/past-projects/framework-of-historical-themes/case-study-4-lake-condah-budj-bim-national-heritage-landscape/>

<sup>20</sup> Department of Justice & Regulation, *Threshold Guidelines for Victorian traditional owner groups seeking a settlement under the Traditional Owner Settlement Act 2010*, 2015, 3.



exclude First Peoples from the population or to assimilate them within it, which threatened to, or in many instances did, sever ties to Country. This history has made it difficult to meet the legal test for establishing connection to Country under Commonwealth native title legislation.<sup>21</sup>

59. It was not until 1992, in the landmark *Mabo* judgment, that the High Court of Australia rejected the notion that, at Colonisation, Australia was *terra nullius*.<sup>22</sup> For many First Peoples in Victoria, the hope provided by the *Mabo* decision has not translated into either true self-determination or formal recognition by the State as Traditional Owners through native title or other means, nor has it prevented ongoing Systemic Injustice that is linked to dispossession.
60. Although overturned by the High Court, the Government acknowledges that the injustices the application of the doctrine of *terra nullius* enabled are on such a scale that they cannot be readily disentangled. The reality is that *terra nullius* and the acquisition of sovereignty enabled the State to effectively and legally take control of land – an injustice that continues to have consequences today.<sup>23</sup>
61. Until native title was recognised by the *Mabo* decision, the reservation and development of land and water for the purposes of roads, railways, fisheries, ports and transportation infrastructure proceeded largely without any consideration of First Peoples. As part of colonial practice, large tracts of Crown land were also divided up for lease and subsequent sale as freehold land, which had the effect, over time, of extinguishing native title, without compensation, to a large proportion of land in Victoria.<sup>24</sup>
62. While First Peoples have a long history of seeking both recognition of their distinctive spiritual, cultural, historical and material relationships to Country, and acknowledgement of the grave injustices they have suffered as a result of their violent dispossession, the State has traditionally preferred silence over justice in developing legislation or policy to address past wrongs.
63. Despite Traditional Owners in Victoria achieving some land justice under Commonwealth native title legislation, Crown sovereignty and the application of State laws still inform the principles and processes of the legal and administrative systems.<sup>25</sup> This denies First Peoples their fundamental rights to care for, and to maintain custodianship of, their lands and waters. The Government acknowledges the legal requirements for formal recognition of First Peoples' ties to Country, rights and interests can be difficult to establish, and reliance on this has inhibited First Peoples' self-determination and ability to care for and connect with Country.
64. While the State has taken some positive steps to advancing, recognising and protecting First Peoples' access and rights to land and water in Victoria through legislation – including the landmark *Aboriginal Lands Act 1970 (Vic)*, the *Traditional Owner Settlement Act 2010 (Vic)* and the *Advancing the Treaty Process with Aboriginal Victorians Act 2018 (Vic)* – this work has just begun.
65. The Government acknowledges the full extent, and impact, of the dispossession of First Peoples is not within the State's knowledge and the purpose of this Commission is to establish an accurate record of that dispossession. The events of the past resonate in the present and this Commission

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<sup>21</sup> Parliament of Victoria, Parliamentary Debates, Legislative Council, 28 July 2010 (Second Reading Speech, Traditional Owner Settlement Bill 2010), 2750.

<sup>22</sup> [1992] HCA 23; (1992) 175 CLR 1.

<sup>23</sup> Department of Environment, Land, Water and Planning, 'What is government land?' 2020, <https://www.land.vic.gov.au/government-land/first-time-here/what-is-government-land>

<sup>24</sup> See, for example, *Waste Lands Act 1842 (Vic)*, *Land Act 1860 (Vic)*, *Land Act 1869 (Vic)*, *Crown Land (Reserves) Act 1978 (Vic)*.

<sup>25</sup> See Brennan J, *Mabo* (1992), 83.





represents an opportunity to hear the voices of the dispossessed and oppressed, and of their descendants, and go some way to establishing a new, truthful record.

66. In this witness statement I have only touched on the dispossession experienced by Victorian First Peoples and the State's role in this. The Government can provide more comprehensive information it holds relevant to land and water dispossession, if and when it would assist the Commission.

### Part C – Systemic Injustice

67. The Victorian Government acknowledges that historical wrongs against First Peoples – committed by both State and non-State actors – have resulted in intergenerational trauma and ongoing inequality.
68. The dispossession of First Peoples involved violence systematically perpetrated against First Peoples. At times this violence was sanctioned or perpetrated by government forces. Victorian laws and the criminal justice system regularly failed to deliver justice for First Peoples victims.
69. The Government acknowledges First Peoples were deliberately killed on their Country. This occurred in isolated instances of extra-judicial killing, as well as *en masse*, as part of the Frontier Wars, with many massacres. It is estimated there were 49 massacres of First Peoples in Victoria between the 1830s and the 1850s.<sup>26</sup>
70. The first recorded instance of a massacre of First Peoples in Victoria was the Convincing Ground Massacre. Through the Guditjmarra people, we understand that there was a massacre of Traditional Owners during a dispute over a beached whale on a beach at Allestree, near Portland, in 1833 or 1834.<sup>27</sup> Guditjmarra descendants live with this trauma, and continue to defend this location from land development.<sup>28</sup>
71. This event preceded the Eumeralla Wars, a more than 20-year period of violent encounters between colonists and the Guditjmarra people throughout south-west Victoria.<sup>29</sup> The Wars were defined by strong resistance of the Guditjmarra people and violence by colonists.
72. The Victorian Government acknowledges that the extent and the truths of violence against First Peoples were often deliberately covered up, which makes the contemporary academic citation of events difficult and problematic. This inquiry will assist in further uncovering these truths.
73. The State's protectionist and assimilationist policies were also a key tool used in the oppression of First Peoples. The State gave itself power over the lives of First Peoples under successive Acts of Parliament in the nineteenth and twentieth centuries, including in relation to personal matters such as residence, marriage, social life and employment. I acknowledge how particularly insidious and harmful it is that these laws, policies and practices were often couched in terms of 'charity' and 'protection'.
74. As a result of the *Aboriginal Protection Act 1886* (Vic), colonially imposed divisions were created within families through offensive distinctions based on degrees of Aboriginal ancestry and a view that where a person had both non-Aboriginal and First Peoples' ancestry, they would be considered to have greater social acceptance in non-Aboriginal society. Those considered to be Aboriginal

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<sup>26</sup> Lyndall Ryan et al., 'Colonial Frontier Massacres in Australia, 1788-1930,' University of Newcastle, 2017-2022, <https://c21ch.newcastle.edu.au/colonialmassacres/statistics.php>

<sup>27</sup> *Lovett on behalf of the Guditjmarra People v State of Victoria* [2007] FCA 474, [54]. **Error! Hyperlink reference not valid.**

<sup>28</sup> Walter Saunders, interviewed by Message Stick, 'Message Stick – the Convincing Ground' (Australian Screen: 2007), transcript at <https://web.archive.org/web/20121108111943/http://www.abc.net.au/tv/messagestick/stories/s1869519.htm>

<sup>29</sup> Gaye Sculthorpe, 'Recognising Difference: Contested Issues in Native Title and Cultural Heritage,' *Anthropological Forum*, 15, no. 2 (2005): 185.



could receive support and remain on reserves, while those with mixed ancestry were forced to leave reserves and denied government assistance, which often led to loss of connection to family and culture, and severe disadvantage and hardship.<sup>30</sup>

75. Under these policies the State perpetrated the horrific practice of forced removal of children, in what became known as the Stolen Generations. From 1869 on, the State passed laws and implemented policies, underpinned by racism and assimilation, of stealing Aboriginal children with mixed ancestry from their families and merging them into the settler population, while those considered to be Aboriginal were expected to die out.
76. For many years successive government institutions maintained assimilationist policies and continued the separation of children and families. First Peoples children were often placed in institutions, where they were subject to abuse and neglect, or with non-Aboriginal families.
77. Children who were separated from their families were also separated from their Country, community, culture and language. They often lost core connections to their identity, and were forcibly and violently prevented from speaking their language or using their names. These laws and policies tore families and communities apart, resulting in unimaginable pain, sorrow and trauma.
78. The Victorian Government acknowledges the hurt and suffering that resulted from these forced removals and recognises the resilience of First Peoples children, families and communities. It was through First Peoples' tireless advocacy and dedication to the truth that the injustice of these policies came to light.
79. Through deliberate government policies aimed at eradicating First Peoples language and culture, the rich linguistic traditions of First Peoples were close to decimated. It is estimated that more than 350 First Nations languages were spoken across Australia prior to the arrival of Europeans. Fewer than 50 of these remain in wide usage. In Victoria, more than 40 First Nations languages were spoken prior to 1835. Today, none of these are considered to be in wide, everyday use.<sup>31</sup> Despite this, there is a language revival and revitalisation movement underway at a community level across Victoria.<sup>32</sup>
80. Although governments began to move away from overtly assimilationist policies in the 1970s, beginning with the introduction of the *Aboriginal Lands Act 1970* (Vic), assimilationist practices remain. Likewise, the racism that marked invasion and dispossession continues within State structures and systems today.
81. The legacy of Colonisation is perhaps no more evident than in the fact that First Peoples are one of the most imprisoned groups of people in the world.<sup>33</sup> Systemic racism, unconscious bias in the application of the law, and the criminalisation of social and economic disadvantage all contribute to the over-representation of First Peoples in the criminal justice system.<sup>34</sup>

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<sup>30</sup> Stolen Generations Reparations Steering Committee, *Stolen Generations Reparation Steering Committee Report*, 2022, ch. 2, <https://content.vic.gov.au/sites/default/files/2022-02/SGRP%20Steering%20Committee%20Final%20Report%20-%20dated%2020%20July%202021.PDF>

<sup>31</sup> Jack Latimore, "The embodiment of everything": Preserving the language of Indigenous Victorians,' *The Age*, 13 October 2021.

<sup>32</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 101, <https://content.vic.gov.au/sites/default/files/2021-06/Victoria-Government-Aboriginal-Affairs-Report-2020.pdf>

<sup>33</sup> Thalia Anthony, 'Fact check: are First Australians the most imprisoned people on earth?' *The Conversation*, 6 June 2017, <https://theconversation.com/factcheck-are-first-australians-the-most-imprisoned-people-on-earth-78528>

<sup>34</sup> Department of Premier and Cabinet, *Victorian Aboriginal Affairs Framework 2018–2023*, 2018, 49, [https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework\\_1.pdf](https://content.vic.gov.au/sites/default/files/2019-09/Victorian-Aboriginal-Affairs-Framework_1.pdf)



82. In Victoria, in 2018–19, the average daily rate of Aboriginal women in prison was almost 22 times higher than for non-Aboriginal women,<sup>35</sup> and Aboriginal men were around 14 times more likely to be in prison than non-Aboriginal men.<sup>36</sup> Aboriginal young people are approximately ten times more likely to be detained than non-Aboriginal young people, and Aboriginal children consistently experience contact with police at younger ages than their non-Aboriginal peers.<sup>37</sup>
83. This Systemic Injustice is not just reflected in statistics – but in the individual lives that are upended by imprisonment. Families are fractured, communities are disrupted, jobs are lost, childhoods are denied, housing is foregone, physical and mental health is undermined, and trauma is entrenched. The responsibility for addressing the over-representation of First Peoples in the criminal justice system lies with the State. The Government is committed to reform and will look to the Commission’s findings for guidance in ending this injustice.
84. For many First Peoples, the injustice of the out-of-home care and criminal justice systems are interconnected. In 2019–20, the rate of Aboriginal children in care services was 20 times the rate for non-Aboriginal children.<sup>38</sup>
85. The Aboriginal Child Placement Principle, long advocated for by ACCOs, was first incorporated into Victorian legislation in 1984. The principle states that First Peoples children have the right to be raised in their own family, culture and community, and governs the practice of child protection when seeking a placement for First Peoples children.<sup>39</sup> Even with this principle in place, the over-representation of First Peoples children within the Victorian child protection system is the highest in the nation.<sup>40</sup>
86. First Peoples children also continue to face barriers to education stemming from historical and ongoing institutional racism, and denial of language, culture and identity.<sup>41</sup> In 2021, the average high school attendance rate for First Peoples students was 10.6 percentage points lower than for non-Aboriginal students, which speaks to exclusionary teaching and learning practices and curriculum standards.<sup>42</sup>
87. The exclusion of First Peoples’ languages, cultures, histories and perspectives from classrooms has contributed immeasurably to the loss of language, to the silencing of First Peoples’ truths, and to the systemic erosion of the culture and history of First Peoples. Some inclusion of First Peoples’ language and perspectives in formal curriculum documentation has only occurred in relatively recent times, but more needs to be done. The Government acknowledges how important and foundational the curriculum is, which is why the Commission is empowered to make recommendations for its improvement.

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<sup>35</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 84.

<sup>36</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 86.

<sup>37</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 82.

<sup>38</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 34.

<sup>39</sup> Victorian Aboriginal Child Care Agency, ‘Aboriginal Child Placement Principle,’ <https://www.vacca.org/page/about/aboriginal-child-placement-principle>

<sup>40</sup> Australian Institute of Health and Welfare, *Child Protection Australia 2019-2020*, 2021, data table S2.3,

<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2019-20/data>

<sup>41</sup> Department of Education and Training, *The State of Victoria’s Children 2019: Aboriginal Children and Young People*, 39, [https://www.education.vic.gov.au/Documents/about/research/State%20of%20Victoria%27s%20Children%202019%20Electronic\\_FINAL\\_LR.pdf](https://www.education.vic.gov.au/Documents/about/research/State%20of%20Victoria%27s%20Children%202019%20Electronic_FINAL_LR.pdf)

<sup>42</sup> Australian Curriculum, Assessment and Reporting Authority, ‘National Report on Schooling in Australia – Data Portal, Student Attendance,’ <https://www.acara.edu.au/reporting/national-report-on-schooling-in-australia/national-report-on-schooling-in-australia-data-portal/student-attendance#view4>





88. In adulthood, First Peoples are denied social and economic opportunities as demonstrated by the facts that First Peoples have lower rates of home ownership,<sup>43</sup> earn lower wages,<sup>44</sup> and are largely excluded from equitable participation in the economy. In 2018–19, 17.2 per cent of First Peoples in Victoria accessed homelessness services, compared with 1.5 per cent of non-Aboriginal Victorians.<sup>45</sup>
89. Colonisation resulted in the introduction of deadly diseases, the disruption of First Peoples' lifestyles and connections to Country, the destruction of language and cultural heritage. This has had a significant impact on the health and wellbeing of First Peoples from the beginning of Colonisation to the present day and the Commission's evidence, findings and recommendations will be critical to identifying the changes required to address the significant Systemic Injustice First Peoples' experience across the health and healthcare system.
90. Victoria's political structures and institutions – founded on British conventions of representative democracy – have overwhelmingly excluded First Peoples. In its history, the Victorian Parliament has had only four First Peoples parliamentarians. The first election of an Aboriginal member of parliament – Cyril Kennedy – did not occur until 1979.<sup>46</sup> Victoria's political institutions do not sufficiently include and respond to the legitimacy of First Peoples community-based institutions.
91. What connects all of these injustices is systemic racism, pervasive inequality and structural disadvantage. A 2012 survey of 755 First Peoples in Victoria by the Victorian Health Promotion Foundation found that more than 97 per cent of participants had experienced at least one instance of racism in the previous 12 months. Research has found that people who frequently experience racism also report high psychological distress and poor health outcomes.<sup>47</sup>
92. The Victorian Government acknowledges that patterns of power, paternalism and racism are enduring.<sup>48</sup> To truly address Systemic Injustice across disparate settings, the Government must consider that injustice in a holistic way, not in silos. Structural changes and culturally safe environments are required to address these disparities. Racism and denial are features of contemporary Victoria, but they need not be a feature of our future. The discrimination that First Peoples continue to endure must be remedied. The Commission has a key role in drawing together these threads of injustice and demonstrating what underpins them. This work will be foundational in creating a blueprint for a new Victoria.

## Part D – Reform Priorities

93. The Government acknowledges that to achieve true self-determination and justice, reform and structural change is needed, and indeed, is overdue. Systemic Injustice is ongoing. Through this historic Commission the State will be held accountable. The Government is committed to action, not only rhetoric, as demonstrated by the commitment to treaty and the establishment of Australia's first truth-telling commission. The importance of this truth-telling process in parallel with treaty cannot be

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<sup>43</sup> Australian Institute of Health and Welfare, 'Indigenous housing,' 2021, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>

<sup>44</sup> Australian Institute of Health and Welfare, 'Indigenous income and finance,' 2021, <https://www.aihw.gov.au/reports/australias-welfare/indigenous-income-and-finance>.

<sup>45</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 39.

<sup>46</sup> Parliamentary Library, 'Indigenous Australian Parliamentarians in Federal and State/Territory Parliaments,' 2021, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp2021/Quick\\_Guides/IndigenousParliamentarians2021](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp2021/Quick_Guides/IndigenousParliamentarians2021).

<sup>47</sup> Department of Health and Human Services, *Racism in Victoria and what it means for the health of Victorians*, 2017, 16-17, <https://www.health.vic.gov.au/sites/default/files/migrated/files/collections/research-and-reports/r/racism-in-victoria.pdf>

<sup>48</sup> Watego, Singh & Macoun, *Partnership for justice in health: Scoping paper on race, racism and the Australian health system*.



understated – future Government policy and institutional structural reforms will be guided, and will continue to evolve, based on outcomes from these processes.

### **Constitutional and structural reforms**

94. Victoria's Constitution was drafted in 1854, and redrafted in 1975, without formally recognising First Peoples' contribution to this State. It took until 2004 for the Constitution to be amended to recognise the unique status of Aboriginal peoples, and to recognise that Aboriginal peoples have made a unique and irreplaceable contribution to the identity of Victoria.
95. The Victorian Aboriginal Affairs Framework 2018–2023 (**VAAF**) is Victoria's guiding document for self-determination.<sup>49</sup> The VAAF was prepared in collaboration with more than 600 Victorian First Peoples, in recognition of the fundamental truth that better outcomes for First Peoples, and genuine transformation of structures and institutions, can only be achieved through First Peoples-led reform.
96. Victoria passed Australia's first treaty legislation in June 2018.<sup>50</sup> Victoria's treaty process seeks to redefine and restructure the relationship between First Peoples and the State and all Victorians, and deliver genuine self-determination.
97. Other efforts to embed self-determination include the foundational *Aboriginal Heritage Act 2006* (Vic), which transfers decision making powers to Traditional Owners. The Victorian Aboriginal Heritage Council, a council of Traditional Owners, appoints Registered Aboriginal Parties to make statutory decisions about the protection and management of their cultural heritage, rather than Government.<sup>51</sup>
98. The Government recognises that its reform strategies and policies must be open to revision to accommodate treaty and truth outcomes. However, not all reform must wait for treaty. The Commission's Letters Patent empower it to make recommendations for reform to Government policy and practice in advance of treaty, particularly where there is a clear and demonstrable need for urgent action to address ongoing injustices in contemporary systems and settings.

### **Justice related reforms**

99. The over-representation of First Peoples in the criminal justice systems demonstrates a pattern of injustice from Colonisation to the current day. The over-representation of First Peoples in custodial settings is a grave wrong that is evident across all jurisdictions in Australia – and indeed other settler countries including New Zealand, Canada and the United States.
100. In 1991, the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) found First Peoples across Australia are incarcerated in grossly disproportionate numbers – more than 20 times the rate for non-Aboriginal people.<sup>52</sup> First Peoples have campaigned for many decades for wide-scale reform of the justice system. This campaign has recently been spurred on by the global Black Lives Matter movements and the national spotlight on First Peoples' deaths in custody, with the 30th anniversary of the RCIADIC.
101. The Victorian Government recognises the gross over-representation of First Peoples in the criminal justice system is inextricably linked to systemic racism, Colonisation and policies of exclusion.<sup>53</sup> The

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<sup>49</sup> Department of Premier and Cabinet, *Victorian Aboriginal Affairs Framework 2018–2023*.

<sup>50</sup> *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

<sup>51</sup> Victorian Aboriginal Heritage Council, 'Victoria's current registered Aboriginal Parties,' 2021, <https://www.aboriginalheritagecouncil.vic.gov.au/victorias-current-registered-aboriginal-parties>

<sup>52</sup> Royal Commission into Aboriginal Deaths in Custody (Final Report, Volume 1, 1991), Preface.

<sup>53</sup> Department of Justice and Community Safety, *Burra Lotjpa Dungaludja – Victorian Aboriginal Justice Agreement Phase 4*, 2021, 18, <https://files.aboriginaljustice.vic.gov.au/2021-02/Victorian%20Aboriginal%20Justice%20Agreement%20Phase%204.pdf>



Government also acknowledges that justice reforms currently underway are the direct result of strong First Peoples' and ACCO advocacy over many decades. The Government accepts that it must continue to change the way the justice system operates to ensure that long-standing injustices are properly addressed.

102. Victoria's approach to First Peoples justice reform is shaped by the Aboriginal Justice Agreement (AJA), the first iteration of which was introduced in 2000. Now in its fourth phase, the AJA is a partnership between First Peoples and Government to improve outcomes for individuals and families, and to address the ways the State's laws and policies contribute to First Peoples' contact with the justice system. The AJA is supported by the Aboriginal Justice Forum and the Aboriginal Justice Caucus (AJC).
103. The Victorian Government is committed to achieving the justice related targets set out in the National Agreement on Closing the Gap, and its own more ambitious targets in Victorian strategies, such as the AJA. Under the VAAF, the Government is committed to reducing the number, and eliminating the over-representation, of First Peoples adults and children in the justice system.<sup>54</sup> Victoria's Closing the Gap Implementation Plan guides action to meet these objectives. Future iterations of the Implementation Plan will span the life of the National Agreement and will include increasingly ambitious targets and have regard to treaty and Commission outcomes.
  - a) *Repeal of public drunkenness laws*
104. Harrison Day was one of the three Victorians whose deaths were investigated by the RCIADIC. All three deaths occurred in the context of arrest for public drunkenness related offences. Almost 30 years later, Harrison Day's niece, Yorta Yorta woman Tanya Day, died in police custody after being arrested for being drunk in public. The Victorian Government acknowledges that more needs to be done to stop Aboriginal deaths in custody and that it is the same underlying system of discrimination that contributed to the death of Harrison Day, Tanya Day and many other First Peoples who have died in custody.
105. In 1988 the RCIADIC recommended repeal of public drunkenness offences. Decriminalisation of public drunkenness was also recommended by a 1989 Victorian Law Reform Commission report, a 2001 Victorian Parliamentary Inquiry, and finally by the Coroner presiding over the inquest into the tragic death in police custody of Tanya Day. The Government recognises the strength and advocacy of the Day family and the broader First Peoples community in the campaign to repeal public drunkenness laws.
106. In February 2021, the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Act 2021 (Vic)* passed Parliament to decriminalise public drunkenness and related offences. The Act was due to commence in November 2022, however, the COVID-19 pandemic has resulted in delays in developing a health-based response. Due to these delays, commencement of the Act will now be moved to November 2023 to allow for the establishment of a health-based response.
107. Repealing public drunkenness laws is critically important, but the Government, with the help of this truth-telling Commission, must reckon with the causes of injustice – with the reality that laws and policies not only exclude First Peoples, but can be applied differently, and in discriminatory ways.

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<sup>54</sup> Department of Premier and Cabinet, *Victorian Aboriginal Affairs Framework 2018–2023*, 49.





b) *Raising the age of criminal responsibility*

108. First Peoples children and young people in Victoria are approximately ten times more likely to be involved in the criminal justice system as a result of systemic failures and over-policing.<sup>55</sup> Although this rate of over-representation is slowly declining,<sup>56</sup> the Victorian Government acknowledges that any over-representation is unacceptable.
109. The 2021 Commission for Children and Young People (CCYP) inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system, found that “custody removes Aboriginal children from their families, communities and culture, often compounding the trauma and disconnection experienced by Aboriginal communities as a result of longstanding child removal practices and intergenerational incarceration.”<sup>57</sup>
110. The CCYP inquiry also recommended that the Victorian Government raise the age of criminal responsibility to 14 years, describing the low age of criminal responsibility as having devastating consequences for Aboriginal children and their families. To address the findings from the CCYP inquiry, the Government released the Victorian Aboriginal Youth Justice Strategy, *Wirkara Kulpa*, in 2021. The AJC led development of the strategy, with contribution from First Peoples communities, including children and young people.
111. The Victorian Government recognises that First Peoples and ACCOs have long been calling for an end to the detention of children and for the Government to raise the age of criminal responsibility to at least 14 years, to reflect the international minimum standard.<sup>58</sup> The Co-Chairs of the Assembly recently reiterated the importance of this reform.<sup>59</sup> The AJC likewise supports raising the age of criminal responsibility and have called for First Peoples children to be kept in the care of family and community, rather than punished through the justice system.
112. Keeping children out of the Victorian justice system is a government priority. Victoria’s Youth Justice Strategic Plan 2020–2030 also commits to age-appropriate responses to keep 10 to 14-year-olds out of the youth justice system.<sup>60</sup> The Government’s Youth Justice Diversion Statement reinforces the importance of these efforts.<sup>61</sup>

c) *Independent oversight of police interaction with Victorian First Peoples*

113. The history of First Peoples being discriminated against by police has created deep distrust. First Peoples communities’ concern about abuse of power is compounded by deaths in custody, high imprisonment rates and the detrimental role of Victorian justice agencies in the lives of First

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<sup>55</sup> Department of Justice and Community Safety, *Wirkara Kulpa – Aboriginal Youth Justice Strategy 2022–2032*, 2022, 6, [https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara\\_Kulpa\\_AYJS.pdf](https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara_Kulpa_AYJS.pdf)

<sup>56</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 82.

<sup>57</sup> Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, 166.

<sup>58</sup> The UN Committee on the Rights of the Child recommended a minimum age of 14 years in 2019. Australia was encouraged to raise the age to this minimum at its Universal Period Review in 2021. Oliver Gordon, ‘Australia urged by 31 countries at UN meeting to raise age of criminal responsibility,’ *ABC News*, 21 January 2021, <https://www.abc.net.au/news/2021-01-21/un-australia-raise-the-age-of-criminal-responsibility/13078380>

<sup>59</sup> First Peoples’ Assembly of Victoria, ‘Raise the Age Now, Don’t Wait for Treaty: First Peoples’ Assembly Co-Chairs’ (media release), 21 December 2021, <https://www.firstpeoplesvic.org/media/raise-the-age-now/>; Department of Justice and Community Safety, *Burra Lotjpa Dungaludja – Victorian Aboriginal Justice Agreement Phase 4*, 7.

<sup>60</sup> Department of Justice and Community Safety, *Youth Justice Strategic Plan 2020-2030*, 2020, [https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan\\_0.pdf](https://files.justice.vic.gov.au/2021-06/Youth%20Justice%20Strategic%20Plan_0.pdf)

<sup>61</sup> Department of Justice and Community Safety, *Diversion: Keeping Young People Out of Youth Justice to Lead Successful Lives*, 2022, <https://files.justice.vic.gov.au/2022-03/Youth-diversion-statement.pdf>



Peoples, including the forced removal of children, high arrest rates and instances of inadequate checks for people in police custody.

114. In May 2021, the Government announced that the Department of Justice and Community Safety would undertake a systemic review into police oversight. This includes reviewing the existing oversight powers of the Independent Broad-based Anti-Corruption Commission (IBAC), in response to the Royal Commission into the Management of Police Informants and the findings of the 2018 Parliamentary IBAC Inquiry into the external oversight of police corruption and misconduct in Victoria.<sup>62</sup> The review is an important part of ensuring public confidence in the system and ensuring that Victoria has a police complaints and oversight system that is robust, transparent and effective in meeting the needs of Victoria's diverse communities.
115. The Parliamentary IBAC Inquiry noted First Peoples tend to under-report police misconduct complaints.<sup>63</sup> This can be attributed to distrust of police, disenfranchisement with complaints systems, and fears that complaints may lead to repercussions against complainants or their families. Lack of confidence in complaints systems is rooted in historic and current experiences of police responses, and is exacerbated where complaints are referred back to police.<sup>64</sup>
116. Understanding the lived experiences of First Peoples' interactions with Victoria's police oversight system is vital, and therefore First Peoples stakeholders have been actively engaged in the IBAC review. The Government acknowledges there have been strong calls from First Peoples and ACCOs for a fully independent body outside of IBAC to provide oversight of police, akin to the model used in Northern Ireland,<sup>65</sup> to address the loss of faith between First Peoples, police and existing oversight bodies. The Government is considering feedback received during consultations.

### **Indigenous Data Sovereignty**

117. Since Colonisation, successive Victorian governments and agencies have imposed their ways of counting populations, cultures and territories. These practices have denied First Peoples' own approaches to collecting and recording data, and contributed to deficit framing that focus on First Peoples' disadvantage, disparity and deprivation.
118. The Government acknowledges its informed consent practices for the collection, use and storage of First Peoples' data and knowledge are not best practice, and can be harmful to First Peoples. The Government appreciates the importance of IDS as a First Peoples-led movement that seeks to change the way First Peoples' data is collected, understood and used.
119. The Government recognises the importance of embedding IDS principles in relation to First Peoples' records held and collected across Government. The Government and the Assembly worked in partnership to design the Commission's Terms of Reference, which included respecting the sovereignty of First Peoples' knowledge and stories.
120. The Commission has requested the Government amend the *Inquiries Act 2014* (Vic) to enable First Peoples' ongoing control of records provided to the Commission, and to provide an exemption from the *Freedom of Information Act 1982* (Vic) for the Commission's records. The Government acknowledges the importance of First Peoples' control over their own stories and data in the context

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<sup>62</sup> Jaclyn Symes MLC, 'Strengthening Police Oversight for a Fairer Victoria' (media release), 3 December 2021,

<https://www.premier.vic.gov.au/strengthening-police-oversight-fairer-victoria>

<sup>63</sup> Independent Broad-based Anti-corruption Commission Committee, Parliament of Victoria, 'Inquiry into the external oversight of police corruption and misconduct in Victoria,' 2018, 134 and 154, [https://www.parliament.vic.gov.au/file\\_uploads/IBACC\\_58-06\\_Text\\_WEB\\_2wVYTGrf.pdf](https://www.parliament.vic.gov.au/file_uploads/IBACC_58-06_Text_WEB_2wVYTGrf.pdf)

<sup>64</sup> Remy Varga, 'Corruption unit probes "serious" police complaints,' *The Australian*, 30 August 2019.

<sup>65</sup> Victorian Aboriginal Legal Service, 'VALS Policy Brief: Reforming Police Oversight in Victoria,' <http://www.vals.org.au/wp-content/uploads/2022/01/Reforming-Police-Oversight.pdf>



of this truth-telling Commission, which asks First Peoples to lay bare their stories, traumas and truths.

121. To ensure that the State meets IDS best practice, the Government will be guided on a holistic reform agenda by First Peoples, including through the Commission's recommendations on the implementation of IDS principles, and proposals raised as part of the treaty process.

### **Language and culture**

122. To address the ongoing impacts of Colonisation on First Peoples' language and culture, the VAAF includes goals which aim to recognise and uphold the distinct cultural rights of First Peoples in accordance with the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**). This includes supporting the preservation, promotion and practice of culture and languages.<sup>66</sup>
123. The Victorian Government particularly recognises culture as a protective factor critical to countering the poorer outcomes that are statistically experienced by First Peoples in Victoria.<sup>67</sup> The protective function of culture, identity and connection to Country was emphasised in the Royal Commission into Victoria's Mental Health System final report.<sup>68</sup> The Government further recognises the importance of a wider understanding of First Peoples culture and language in building new and positive relationships between First Peoples and all Victorians.
124. Victorian Government efforts to preserve and promote First Peoples' language and culture are embedded within its Education State agenda. Promotion of First Peoples' culture and strength of identity is recognised as core components of a positive learning climate under the Marrung Aboriginal Education Plan 2016–2026.<sup>69</sup>
125. In April 2021, the Government announced a co-design initiative to further self-determination in schools, by supporting community organisations to partner with schools, and funding ACCOs to host community-led conversations on self-determination in education.
126. The Government is also providing support for Traditional Owner-led programs seeking to preserve and promote First Peoples' language and culture.<sup>70</sup> Likewise, work is underway to preserve First Peoples' culture as it relates to land and water. In 2019, the Government joined with Traditional Owners to announce the Victorian Traditional Owner Cultural Fire Strategy (CFS). The CFS was authored by Traditional Owners and seeks to address the impact Colonisation has had on Traditional Owner rights and obligations to care for Country by restoring knowledge systems and cultural land management practices.<sup>71</sup>
127. But the Government can and must do more. It is shameful that First Peoples have been denied connection to their language by policies of the State. It is a sad reality that most non-Aboriginal Victorians know little First Peoples' language and history.

### **Human rights**

128. The Victorian Government acknowledges that in the history of the State, the human rights of First Peoples have rarely been specifically considered, protected or upheld. Some protections have been

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<sup>66</sup> Department of Premier and Cabinet, *Victorian Aboriginal Affairs Framework 2018–2023*, 54.

<sup>67</sup> Department of Health and Human Services, *Balit Murrup – Aboriginal social and emotional wellbeing framework 2017–2027*, 2017, 27, <https://content.health.vic.gov.au/sites/default/files/migrated/files/collections/policies-and-guidelines/b/balit-murrup.pdf>

<sup>68</sup> Royal Commission into Victoria's Mental Health System (Final Report, Volume 3, Parl Paper No. 202, Session 2018–21, document 4 of 6), 142.

<sup>69</sup> Department of Education and Training, *Marrung: Aboriginal Education Plan 2016–2026*, 2016, [https://www.education.vic.gov.au/Documents/about/programs/aboriginal/Marrung\\_Aboriginal\\_Education\\_Plan\\_2016-2026.pdf](https://www.education.vic.gov.au/Documents/about/programs/aboriginal/Marrung_Aboriginal_Education_Plan_2016-2026.pdf)

<sup>70</sup> Department of Premier and Cabinet, *Victorian Government Aboriginal Affairs Report 2020*, 101.

<sup>71</sup> Victorian Traditional Owner Cultural Fire Knowledge Group, *The Victorian Traditional Owner Cultural Fire Strategy* <https://knowledge.aidr.org.au/media/6817/fireplusstrategyplusfinal.pdf>





provided in more recent times, including through the *Equal Opportunity Act 2010* (Vic) and the Charter, but much more needs to be done.

- 129. The Charter plays a role in protecting First Peoples' specific human rights by legislating that Aboriginal persons hold distinct cultural rights and must not be denied their rights, with other members of their community, to culture, kinship, identity and language. The Preamble to the Charter also recognises that human rights have a special importance for First Peoples of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.
- 130. UNDRIP is the most comprehensive international instrument on the rights of Indigenous peoples and Australian First Peoples were involved in its drafting.<sup>72</sup> UNDRIP establishes a universal framework of minimum standards for the survival, dignity and wellbeing of Indigenous peoples.
- 131. UNDRIP was endorsed by the Australian Government in 2009, affirming, among other rights, the right to self-determination for Indigenous peoples. The Victorian Government acknowledges the importance of First Peoples' human rights under UNDRIP and has demonstrated its commitment to the principles of UNDRIP in the treaty process in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

**Conclusion**

- 132. I am grateful for the opportunity to make this statement. First Peoples have my deepest respect, and the Commissioners, my sincere appreciation. The work the Commission is undertaking is truly historic. The Government cannot do what you are doing. It cannot bring the important and necessary First Peoples' voices together, it cannot create this unprecedented record of truth. You are tasked with this great responsibility, and all Victorians need you to succeed.
- 133. The Commission's work will no doubt lead to a profound reckoning with Victoria's past and a pathway to a shared future. The Victorian Government passes this great challenge to you, Commissioners – not to avoid our responsibility, but to do this right. Only by acknowledging and wrestling with injustices – both historic and ongoing – can we begin to heal and move forward.

Sign here: *Gabrielle Williams*

Print name: *Gabrielle Williams*

Date: *3/5/2022*

<sup>72</sup> 'UN Declaration on the Rights of Indigenous Peoples,' Australian Human Rights Commission, <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>