



# YOORROOK

## WITH PURPOSE

Interim Report  
June 2022



**YOORROOK**  
Justice Commission





Yoorrook Justice Commissioners

Order to be published

Victorian Government Printer

June 2022

No PP 352, Session 2018-22

©Yoorrook Justice Commission, 2022

ISBN. 978-0-6455219-1-7

This report should be cited as Yoorrook Justice Commission,  
Yoorrook with Purpose: Interim Report (2022)

The Hon. Linda Dessau AC  
Governor of the State of Victoria  
Government House Drive  
MELBOURNE VIC 3004

Ms Geraldine Atkinson & Mr Marcus Stewart  
Co-Chairs, First Peoples' Assembly of Victoria  
48 Cambridge St  
COLLINGWOOD VIC 3066

30 June 2022

Your Excellency, Ms Atkinson and Mr Stewart

In accordance with the Letters Patent dated 12 May 2021, we have the honour of presenting to you the interim report of the Yoorrook Justice Commission.

Yours sincerely,



**Professor Eleanor A Bourke AM**  
*Chair*



**Dr Wayne Atkinson**  
*Senior Elder  
(Dhamangalnya)*



**Ms Sue-Anne Hunter**  
*Deputy Chair*



**Distinguished Professor Emerita Maggie Walter**  
*Commissioner*



**Professor the Honourable Kevin Bell AM QC**  
*Commissioner*





Yoorrook Justice Commission launch

# CONTENTS

<b>Acknowledgements</b>	<b>vii</b>
<b>Chair’s foreword</b>	<b>viii</b>
<b>About this report</b>	<b>ix</b>
<b>Note on content</b>	<b>x</b>
<b>Terminology and language</b>	<b>xi</b>
<b>List of figures and illustrations</b>	<b>xii</b>
<b>Part A: Progress to date</b>	<b>2</b>
1. Yoorrook’s historic purpose	2
a. Establishing Yoorrook	2
b. Yoorrook’s objectives and mandate	2
2. Central goals and values	2
a. Commissioners’ appointment and ensuring the independence of the Commission	3
b. Expert Advisory Committee establishment	4
c. Appointment of Counsel and Solicitors Assisting	4
d. National and international context	4
3. The design of a Royal Commission – Yoorrook’s foundational steps	5
a. Yoorrook’s methodology	6
4. Centring the First Peoples of Victoria	9
a. Adopting terms from Victorian First Peoples’ languages	9
b. Avoiding further trauma and promoting healing	10
c. Indigenous Data Sovereignty	11
d. Our stories, our way	13
e. Embedding cultural practice in Yoorrook’s operations	13
f. Yoorrook’s establishment activity	14
5. Challenges faced and early lessons	15
a. Building a new organisation	15
b. COVID-19 pandemic	15
c. Structural racism	15
6. Guided by Elders’ voices: On-country yarning circles and wurrek tyerrang	16
a. On-country Elders’ yarning circles	16
b. Wurrek tyerrang	18
7. Truth-telling, advancing treaty and self-determination	19



Part B: Guided by Elders’ voices

20

1. Grounding Yoorrook’s inquiry in First Peoples’ voices and experience

20

a. Use of non-First Peoples’ materials and data

20

b. Self-determination and nation rebuilding in truth-telling.

21

2. Rights, responsibilities and accountability

21

a. Legal framework

22

b. Sources of law

24

c. Examples of rights

26

d. Obligations of the State

26

3. Themes emerging from Yoorrook’s first phase

27

a. Dispossession and dislocation

28

b. Political exclusion, representation and resistance

30

c. Families, kinship and stolen children

35

d. Stolen wages and economic marginalisation

40

e. Legal injustice and incarceration

42

f. Injuries to body and spirit

47

g. Disrespect and denial of culture

50

h. Damage to and denial of country

51

i. Stolen and misused knowledge, culture and data

53

j. A colonial education system

56

k. Public silencing and denial

62

Part C: The path forward

64

1. The next phase of Yoorrook’s work

65

a. Priority areas for the next phase of Yoorrook’s work (2022-2023)

65

b. Other areas of concern

68

2. Considerations that will inform Yoorrook’s way of working

70

3. Interim operational recommendations and conclusion

72

a. Extension of its timeframe

72

b. Legislate to protect Indigenous Data Sovereignty

73

Annexes

74

Annex 1: Letters Patent

74

Annex 2: Expert Advisory Committee

82

Annex 3: Yoorrook’s Organisational Structure

83

Annex 4: Overview of Yoorrook’s community engagement

84

Annex 5: Media engagement

88

Annex 6: References

90

Endnotes

98

vi

# ACKNOWLEDGEMENTS

The Yoorrook Justice Commission (Yoorrook) acknowledges the Traditional Owners of country of the lands and waters currently known as Victoria, and pays respect to them, their cultures and their Elders past and present. Yoorrook particularly acknowledges the importance of the contribution of Elders to the work of the Commission in its initial period of work.

Yoorrook’s logo and other design elements were created by artist, Dixon Patten. Dixon is a Gunnai, Gunditjmara and Yorta Yorta man who has bloodlines from Dhudhuroa/Jaithmathang, Djab Wurrung, Monaro, Wemba Wemba, Barapa Barapa, Wadi Wadi, Yuin and Wiradjuri. His website is: [bayila.com.au](http://bayila.com.au)

The artwork used to represent Yoorrook’s methodological framework was designed by proud Gurang and Ngarigo artist Anjee-Lee Bamblett.

The artwork used to represent Yoorrook’s social and emotional wellbeing was designed by Gunditjmara, Yorta Yorta, Dja Dja Wurrung, Boon Wurrung, and Bunitj artist Nakia Cadd.

Yoorrook’s Interim Report was designed by Little Rocket, an Indigenous-owned business with roots to the Gurindji people of the Northern Territory. Their website is: [littlerocket.com.au](http://littlerocket.com.au)

Yoorrook’s Interim Report was copy-edited by Dharawal woman Danika Davis at Neat Copy. Her website is: [neatcopy.com.au](http://neatcopy.com.au)

## Copyright notice

Yoorrook’s legal status as a Royal Commission means it does not have legal personality independent of the State of Victoria. One result of this is that copyright over its written products, including this report, is held by the State. This highlights the challenges associated with ensuring Indigenous Data Sovereignty over information about First Peoples, even when collected or produced in the context of a First Peoples’ led process such as Yoorrook.

Chair Eleanor Bourke and Aunty Geraldine Atkinson celebrate the launch of the Yoorrook Justice Commission

vii



# CHAIR'S FOREWORD

Yoorrook's establishment is a result of the generational advocacy by Victorian First Peoples for recognition that our existence spans millennia, and that we have cultural offerings which can benefit all Victorians.

The Commission promotes First Peoples as central within its work design and has Elders' wisdom at its centre.

Yoorrook's mandate is broad and far reaching. It covers a timespan from colonisation to the present. This includes the acts of colonisation and lawmaking, such as the Aboriginal Protection Act, Christianising and educating, 'smoothing the dying pillow', and excluding us from the census and constitution. And it includes assimilation, integration, and the welfare system.

Under this broad mandate, the Commission will identify the systemic injustices suffered by Victorian First Peoples in all areas of life. All Commissioners are aware of the great responsibility that rests with each of us.

We also recognise the significance Yoorrook holds for other States and Territories looking for a model for their own truth, justice and treaty making processes.

This report provides an overview of some issues identified from community members to date. It also outlines the significant challenges we have faced in establishing the Commission amid the global COVID-19 pandemic, locating and outfitting suitable premises, and securing appropriate staff.

Yoorrook's task is ambitious and daunting, but the Commissioners are buoyed by the strength and generosity of Victoria's First Peoples and the enduring spirit which sustains them.

On behalf of Yoorrook, Commissioners and I acknowledge and thank all First Peoples who have come forward so far and presented their stories.

I thank all who have contributed to the wurrek tyerrang (public hearings) at Charcoal Lane including Minister for Aboriginal Affairs, the Hon Gabrielle Williams MP, and Co- Chair of the First Peoples' Assembly of Victoria, Marcus Stewart.

I extend an invitation to all Victorians to support Yoorrook and participate in our work. Together we will work towards truth, understanding and transformation.

**Professor Eleanor A Bourke AM**

*Chairperson, Yoorrook Justice Commission*

# ABOUT THIS REPORT

This report fulfils the requirement in the Letters Patent for Yoorrook to deliver an interim report by 30 June 2022. It provides an update to First Peoples' communities across Victoria, as well as the broader public, government and the First Peoples' Assembly of Victoria, of Yoorrook's journey and work to date.

The report is divided into three parts:

- **Part A** provides an overview of Yoorrook's internal progress, beginning with a summary of Yoorrook's establishment, Letters Patent, goals, and values. It outlines Yoorrook's methodology, which places First Peoples in Victoria and their cultural values and practices at the centre of the Commission's processes. These include the use of First Peoples' languages, the design and delivery of social and emotional wellbeing and other support processes and services, and the integration of Indigenous Data Sovereignty and governance processes. This section of the report also describes challenges Yoorrook faced in the first year of operations and the Commission's steps to overcome these.
- **Part B** presents Yoorrook's approach to analysing the information it receives, the Commission's research tools and how it will determine relevant rights, responsibility, and accountability. Most importantly, it highlights Elders' voices heard during Yoorrook's initial evidence gathering phase from March-May 2022, across yarning circles on country and wurrek tyerrang (hearings) and organises them thematically.
- **Part C** outlines Yoorrook's next steps and path forward. Guided by Elders' voices, it identifies areas of concern and details initial steps to begin to address and remedy some of the already identified impacts of systemic injustices resulting from colonisation. It further describes the process and considerations Yoorrook will use to guide its inquiries and some initial intended priority focus areas. Lastly, the section makes some interim recommendations which are required for Yoorrook to effectively advance the Commission's goals of truth, understanding and transformation.

This report has an Annex of material on:

- Yoorrook's Letters Patent
- Yoorrook's Expert Advisory Committee
- how Yoorrook is organised
- where Commissioners visited and who Commissioners met with
- a sample of media coverage received by Yoorrook so far.

Throughout the report there are images and graphics from its work to date and a series of embedded video clips highlighting some of the Elders' voices which have guided Yoorrook's progress and way forward.



# NOTE ON CONTENT

Aboriginal and Torres Strait Islander people should be aware that this report may contain images, voices or names of deceased persons in photographs, film, audio recordings or printed material. Some content may be distressing. Anyone impacted by the issues raised in this report may like to contact #lifeline on 13 11 14 or 13YARN (13 92 76) for free and confidential support.

# LIST OF PHOTO CREDITS

Page ii	Yoorrook Justice Commissioners	David Callow/YJC
Page iv	Yoorrook Justice Commission launch	Greg Ford/YJC
Page vii	Chair Eleanor Bourke and Aunty Geraldine Atkinson celebrate the launch of the Yoorrook Justice Commission	Greg Ford/YJC
Page xiv	Uncle Rob Lowe, Warrnambool	Chris Franklin/YJC
Page 31	Uncle Johnny Lovett, Wannon Falls	Greg Ford/YJC
Page 39	Uncle Col Walker and family at Charcoal Lane	Holly Crocket/YJC
	Aunty Alma Thorpe with Granddaughter Lisa Thorpe at Charcoal Lane	Lisa Thorpe/YJC
	Yarning circles, Robinvale	David Callow/YJC
	Uncle Kevin Coombs with daughters Janine and Rose at Charcoal Lane	Holly Crocket/YJC
	Aunty Fay Carter	David Callow/YJC
Page 48	Uncle Larry Walsh and daughter Isobel Morphy Walsh	Holly Crocket/YJC
Page 52	Braydon Saunders, with Commissioner Sue-Anne Hunter, in the children’s dormitory of the Lake Condah Mission	Greg Ford/YJC
Page 61	Christopher Saunders at the Convincing Ground Massacre Site	Greg Ford/YJC
Page 72	Uncle Larry Walsh with Commissioner Sue-Anne Hunter	Holly Crocket/YJC
Page 82	Aunty Lois Peeler welcoming the Yoorrook Justice Commission at Worawa College	Chris Franklin/YJC
Page 94	Uncle Jack Charles, Charcoal Lane	Holly Crocket/YJC
Page 103	Wurrek tyerrang at Charcoal Lane	AAP

# TERMINOLOGY AND LANGUAGE

Yoorrook uses the term First Peoples to include all Traditional Owners of a place in the state of Victoria (including family and clan groups) and their ancestors, as well as Aboriginal and/ or Torres Strait Islander persons who are living or have lived in Victoria before or since the start of colonisation. This definition is provided in Yoorrook’s Letters Patent. Where appropriate, Yoorrook may also use other terms such as Traditional Owners or custodians, Aboriginal people, Indigenous or Koori to describe First Peoples, especially where they have identified themselves in this way.

In certain contexts, Yoorrook and/or persons engaging with its processes may refer to Aboriginal and Torres Strait Islander peoples elsewhere in Australia as also being ‘First Peoples’, without those communities or individuals necessarily having a connection to Victoria.

Wherever possible, Yoorrook uses First Peoples’ words and ways of speaking. Yoorrook’s commitment to language revitalisation includes respecting the ability of First Peoples’ individuals and communities to identify themselves through their use of language and wherever possible reflects First Peoples’ own words.

## Abbreviations used in this report

ACCO	Aboriginal Community Controlled Organisation
IBR	International Bill of Rights
IDS	Indigenous Data Sovereignty
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KESO	Koorie Engagement Support Officer
NTP	Notice to Produce
PROV	Public Records Office of Victoria
SEWB	Social and emotional wellbeing
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VAHS	Victorian Aboriginal Health Service
VALS	Victorian Aboriginal Legal Service
VACL	Victorian Aboriginal Corporation for Languages
VAEAI	Victorian Aboriginal Education Association Inc.



# LIST OF FIGURES AND ILLUSTRATIONS

<b>Figure 1:</b>	Yoorrook’s guiding vales and goals. Artwork by Dixon Patten	3	<b>Box 1:</b>	Language terms adopted by Yoorrook	9
<b>Figure 2:</b>	Yoorrook’s methodological frame. Artwork by Anjee-Lee Bamblett	6	<b>Box 2:</b>	United Nations Declaration on the Rights of Indigenous Peoples	24
<b>Figure 3:</b>	Yoorrook’s social and emotional wellbeing model. Artwork by Nakia Cadd	10	<b>Box 3:</b>	Relevant international treaties	25
<b>Figure 4:</b>	Yoorrook’s logo designed by Dixon Patten	14	<b>Box 4:</b>	Cultural rights under the Victorian Charter of Human Rights and Responsibilities Act 2006	25
<b>Figure 5:</b>	Map of Commissioners’ visits and yarning circles	16	<b>Box 5:</b>	Race, citizenship and exclusion of First Peoples	32
<b>Figure 6:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	20	<b>Box 6:</b>	Selected dates of First Peoples’ political representation and resistance in Victoria	33
<b>Figure 7:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	23	<b>Box 7:</b>	Child removal and youth justice in Victoria	35
<b>Figure 8:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	29	<b>Box 8:</b>	The ‘Half-Caste Act’ - legislation can change the definition of ‘Aboriginal’	36
<b>Figure 9:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	35	<b>Box 9:</b>	Economic disparities in Victoria	42
<b>Figure 10:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	37	<b>Box 10:</b>	Expunging Elders’ childhood convictions	44
<b>Figure 11:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	41	<b>Box 11:</b>	Over-representation of First Peoples children in Victoria’s youth justice system	45
<b>Figure 12:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	42	<b>Box 12:</b>	Over-representation of First Peoples in Victoria’s prison population	46
<b>Figure 13:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	49	<b>Box 13:</b>	First Peoples’ health in Victoria	47
<b>Figure 14:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	51	<b>Box 14:</b>	Health of Stolen Generations survivors in Australia	48
<b>Figure 16:</b>	Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022	63	<b>Box 15:</b>	Housing stress and homelessness in Victoria	50
<b>Figure 17:</b>	Yoorrook Justice Commission organisational chart	83	<b>Box 16:</b>	First Peoples’ ownership and management of land and country in Victoria	54
			<b>Box 17:</b>	Educational attainment of First Peoples aged 15 and over in Victoria	58
			<b>Box 18:</b>	Impacts of racism and discrimination on First Peoples students	58
			<b>Box 19:</b>	Interactions between First Peoples and non-Indigenous Australians	63



Uncle Rob Lowe, Warrnambool





# PART A: PROGRESS TO DATE

## 1. Yoorrook's historic purpose

### a. Establishing Yoorrook

Yoorrook is the first formal truth-telling body for First Peoples in Australia. The Commission was established in May 2021 to hear, record and address the truths about First Peoples' experiences of colonisation in Victoria since 1788 to now.

Yoorrook's establishment is acknowledged as an outcome of the tireless and ongoing efforts of Elders and First Peoples' communities in Victoria over generations. Since the earliest days of colonisation, First Peoples in Victoria have consistently demanded recognition, justice and self-determination. The recent political outcomes to First Peoples' advocacy include a commitment to treaty. The state government appointed a Victorian Treaty Advancement Commissioner, Jill Gallagher AO, and Parliament passed the *Advancing the Treaty Process with Aboriginal Victorians Act 2018*. Over two years, in consultation with community, the Treaty Advancement Commissioner developed a model for a First Peoples' representative body, established an Aboriginal electoral roll and held elections.

In December 2019, the First Peoples' Assembly of Victoria (Assembly) – the elected voice for First Peoples in Victoria – began its work with the Victorian government to develop the foundations for treaty. In June 2020, the Assembly determined that without truth there could be no treaty and called on the government to establish a truth and justice process. Guided by community's views, the Assembly then worked with the state government to establish Yoorrook's historic mandate.

### b. Yoorrook's objectives and mandate

Yoorrook's Letters Patent set out its mandate to investigate, document and recommend remedy and reform for systemic injustices experienced by First Peoples in Victoria since the start of colonisation. The Letters Patent also provide the Commission's objectives and are included in full in the Annex to this report.<sup>1</sup>

## 2. Central goals and values

Yoorrook has summarised the core elements of the Commission's mandate into three central goals:

- **Truth** – Yoorrook will create a lasting public record of historic and ongoing systemic injustice, how it came to occur and who or what is responsible. It will draw on a wide range of sources and take a holistic approach that recognises both the diversity, commonalities, and continuities of First Peoples' experiences.
- **Understanding** – By deep listening to the voices of First Peoples, hearing their experiences, and learning how culture has evolved and survived amid trauma, Yoorrook will enable the broader Victorian community to understand the links between past, present and future.
- **Transformation** – Yoorrook will propose changes to laws, institutions and systems which can be taken up through treaty negotiations and other ways to build new relationships between all Victorians, including by holding the State accountable. These reforms must remedy injustices against First Peoples so that Victoria can turn a new page.

The Commission has also articulated a set of overarching values which place First Peoples at the heart of all Commission activity. These values guide Yoorrook's mission. The following diagram below shows the interaction between values and goals.

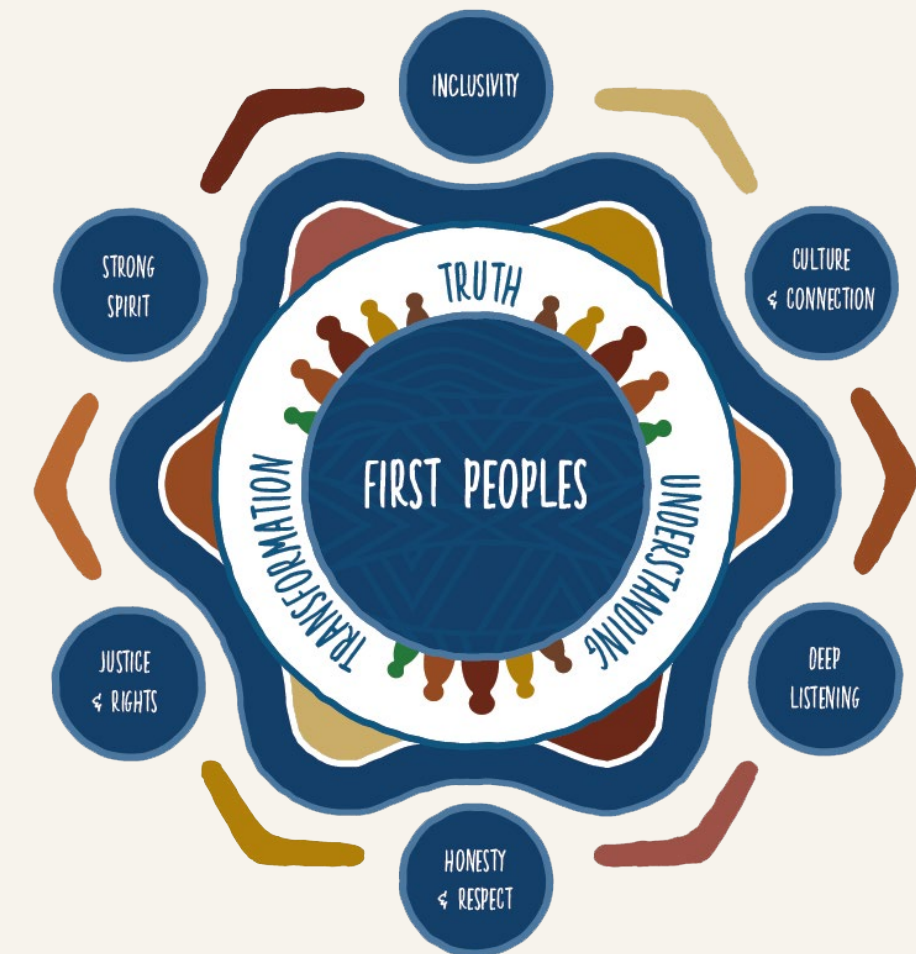


Figure 1: Yoorrook's guiding values and goals. Artwork by Dixon Patten

### a. Commissioners' appointment and ensuring the independence of the Commission

Yoorrook is a First Peoples-led Royal Commission – the first in Australian history. Of the five Commissioners, four are Aboriginal, three are Victorian Traditional Owners and two are Elders. Yoorrook's Commissioners are:

- Professor Eleanor A Bourke AM – Wergaia/Wamba Wamba Elder (Chair)
- Dr Wayne Atkinson – Yorta Yorta and Dja Dja Wurrung Elder (Dhamangalnya or Senior Elder)
- Ms Sue-Anne Hunter – Wurundjeri and Ngurai illum Wurrung woman (Deputy Chair)

- Distinguished Professor Emerita Maggie Walter – Palawa woman and descendant of the Pairrebenne People of the North East Nation (Tasmania)

- Professor the Honourable Kevin Bell AM QC – non-Aboriginal Victorian

For Commissioners biographies, please go to <https://yoorrookjusticecommission.org.au/commissioners/>

Commissioners were appointed via an open and transparent selection process which was designed jointly by the Assembly with the state government.

Yoorrook is independent from government and the Assembly. As a Royal Commission, Yoorrook has strong powers to compel government and others, if necessary, to produce documents and official records.



The Commissioners meet periodically with both the Minister for Aboriginal Affairs and the Co-Chairs of the Assembly. However, they remain fully autonomous in setting the strategic direction of Yoorrook's work and in the Commission's day-to-day functions and operations. Yoorrook's independence is supported by the Commission's information technology systems and website being completely standalone from government, unlike the arrangements in other Royal Commissions.

#### **b. Expert Advisory Committee establishment**

Following receipt of expressions of interest, Yoorrook established an Expert Advisory Committee in July 2021 in line with the requirements in para 4(e) of the Letters Patent. This group of experts provide group and individual expert advice to Yoorrook as requested. The Committee's terms of reference are published on Yoorrook's website and further details of members are annexed to this report.

#### **c. Appointment of Counsel and Solicitors Assisting**

In accordance with the *Inquiries Act 2014* (Vic), the Commissioners appointed the following Counsel Assisting:

- Tony McAvoy SC – Wurdi man
- Timothy Goodwin – Yuin man
- Fiona McLeod AO SC – non-Aboriginal Victorian
- Sarala Fitzgerald – non-Aboriginal Victorian

The Commissioners also appointed King & Wood Mallesons as Solicitors Assisting.

#### **d. National and international context**

Yoorrook is one of more than 40 truth commissions established across the world since the early 1970s. There is a wide range of diversity in the mandate and institutional designs of truth commissions.<sup>2</sup> Most often, they are designed to provide an official record of what happened and to give voice to the victims of mass atrocity and human rights violations after the end of a conflict. They also perform other functions, such as:

- identifying individual perpetrators for prosecution
- identifying the causes of conflict
- recommending accountability or reform measures to prevent future harm

More recently, truth commissions have been established to examine the experiences of First Peoples in the context of ongoing colonisation. These include the Truth and Reconciliation Commission of Canada that examined Canada's residential schools for Indigenous children and the Maine-Wabanaki Truth Commission examining the US state of Maine's Child Welfare system.<sup>3</sup> Similar Commissions are under development in Sweden, Norway and Finland to examine the forced assimilation of the Sami people.

A range of Royal Commissions, inquiries and reviews that have examined specific instances of injustice experienced by First Peoples have been undertaken in Australia. In Victoria this included the 1836 and 1877 inquiries,<sup>4</sup> both of which failed to call any Aboriginal witnesses. In 1881, the residents of Coranderrk detailed their experiences of injustice at the Coranderrk Parliamentary Inquiry.<sup>5</sup> Recent national examples include the Royal Commission into Aboriginal Deaths in Custody (1991), the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families (the 1997 'Bringing them Home' report) and the Australian Law Reform Commission's Pathways to Justice Inquiry

(1998). There have also been a range of First Peoples-focused inquiries in Victoria, primarily in the areas of youth justice and child protection.<sup>6</sup>

The mandate of Yoorrook is unique internationally and nationally in its First Peoples' leadership, its level of power as a Royal Commission and in the range and breadth of its inquiry. Yoorrook was designed and is led by First Peoples and is conducted in line with First Peoples' ways of knowing, being and doing (see Yoorrook's methodology page 6). Yoorrook's period of inquiry is significantly longer than other inquiries, extending from colonisation to present day.<sup>7</sup> The subject matter scope of Yoorrook's mandate is also extremely broad, covering all historic and ongoing injustices perpetrated by state and non-state entities against First Peoples since the start of colonisation. Although the Letters Patent provides examples of areas to inquire into, Yoorrook is not limited by them and is empowered to investigate any systemic injustice it considers appropriate.

Yoorrook, therefore, sets a precedent for truth-telling processes. Since its establishment, truth processes for First Peoples have been recommended in Queensland, the Northern Territory and Tasmania, all in connection with treaty. In May this year, the incoming Federal Government also committed to a truth-telling process as part of its commitment to implementing the Uluru Statement from the Heart. The processes and progress of Yoorrook are also of international interest.<sup>8</sup>

### **3. The design of a Royal Commission – Yoorrook's foundational steps**

Yoorrook's first strategic priority focused on laying strong foundations for trust and cultural legitimacy with First Peoples. This meant ensuring its design, institutional structure and processes are First People-centred, culturally appropriate and trauma-informed. The Commission also initiated new and adapted existing Royal Commission processes and practices. This work required significant time, leadership and engagement to ensure it was done right. The Assembly's *Tyerri Yoorrook* (Seed of Truth) report – a report collating First Peoples' views and hopes for Yoorrook – helped guide Yoorrook's thinking about how to approach this task.<sup>9</sup>

In September 2021, Yoorrook published a set of draft strategic priorities for community feedback. These emphasised the importance of:

- laying strong foundations for trust and cultural legitimacy
- honouring First Peoples' Elders' guidance and prioritising Elders' knowledge sharing and truth-telling
- developing a clear methodology
- reviewing the state of existing knowledge sources and beginning a public conversation

This report documents Yoorrook's progress in these areas.



### a. Yoorrook's methodology

Yoorrook's Letters Patent require it to develop a methodology to guide its endeavours. Yoorrook's methodology (Figure 2) shows the distinctiveness and significance of its design and task. It applies to all aspects of the Commission's work.<sup>10</sup> In essence, this methodology weaves Western methodological rigour into the methodological foundation of Aboriginal ways of knowing, being and doing in how the Commission:

- hears stories and gathers information from First Peoples about experiences of past and ongoing injustices
- hears and demonstrates how First Peoples' cultures and knowledge have survived

- supports First Peoples to choose how they wish to share their experiences and to avoid experiencing further trauma
- supports First Peoples to choose how they wish to protect their evidence
- is structured and operates to ensure Aboriginal leadership
- prioritises Victorian First Peoples' perspectives in the interpretation of the Letters Patent, the conduct of the Commission's inquiries, and in the recommendations for systemic change and practical changes to laws, policies and practices

#### CENTRE CIRCLE

- Letters Patent

#### SECOND CIRCLE

- UNDRIP
- International Bill of Rights
- Victorian Charter

#### THIRD CIRCLE

- Truth
- Understanding
- Transformation

#### OUTSIDE CIRCLE

- Aboriginal ways of knowing, being and doing
- Self Determination
- Indigenous Data Sovereignty
- First Peoples Nation Rebuilding

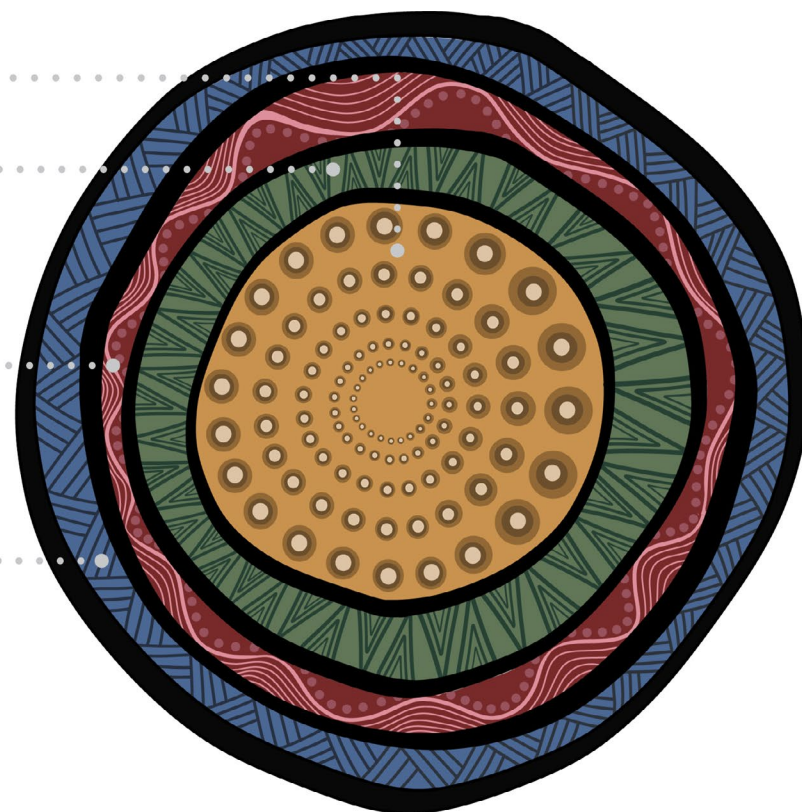


Figure 2: Yoorrook's methodological frame. Artwork by Anjee-Lee Bamblett

### Centre Circle: The Letters Patent

The central ring is Yoorrook's Letters Patent issued on the 12 May 2021. The Letters Patent is the legal document which formally appoints the Commissioners to lead the Commission. It sets out the objectives of the Commission and directs the Commission on what to investigate and how to conduct its inquiry.

### Second Circle: Primary Legal Instruments

The second ring includes the domestic and international legal instruments that frame Yoorrook's work. These instruments directly shape the Commission's inquiry into and understanding of historic and ongoing systemic injustices and how these can be addressed and/or redressed.

Yoorrook's inquiry is underpinned by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP establishes a universal framework of minimum standards for the survival, dignity and wellbeing of the Indigenous peoples of the world.

Although itself non-binding, UNDRIP catalogues and elaborates on existing human rights standards in binding international instruments as they apply to Indigenous peoples. In particular, Yoorrook is guided by the International Bill of Rights of the United Nations (IBR) which consists of:

- *Universal Declaration of Human Rights (1948)*
- *International Covenant on Civil and Political Rights (1966) (ICCPR)*
- *International Covenant on Economic, Social and Cultural Rights (1966) (ICESCR)*

These instruments are recognised in the list of relevant international instruments in Yoorrook's Letters Patent, which also includes key international conventions targeting racial discrimination, genocide, torture, and specific rights of women, children and persons with disabilities. As a party to these instruments, Australia has committed to respect, protect and fulfill human rights. Non-state entities also have human rights obligations.

In Victoria, the *Charter of Human Rights and Responsibilities Act 2006* (Charter) gives express effect to the key parts of the ICCPR and includes cultural rights specific to First Peoples. The *Equal Opportunity Act 2010* (Vic) and *Racial and Religious Tolerance Act 2001* (Vic) also protect equality rights. Federally, various pieces of anti-discrimination legislation give effect to international obligations to protect particularly vulnerable groups from discrimination.

The purpose of including relevant international and domestic instruments in the second circle is to bring international human rights into Yoorrook's methodological frame.<sup>11</sup> Part B of this report elaborates on how Yoorrook will use these instruments in fulfilling its mandate.

### The Third Circle: Overarching Goals

The third circle incorporates the three goals underpinning the Commission's vision for the future, summarising how these direct and guide the work of the Commission:

- **Truth:** How will this work assist in creating a record of truth and who or what is responsible?
- **Understanding:** How will this work assist in creating a Victorian community that will understand the links between the past, present and future?
- **Transformation:** How will this work lead to a better understanding of the remedies required to address and/or redress systemic injustices experienced by First Peoples in Victoria?



The Outer Circle: Encircling Culture and Practices

Yoorrook’s distinctive nature and purpose is encapsulated in the outside ring. This layer is envisaged as the possum skin cloak wrapped around the Commission, keeping all within the Commission and all the Commission’s work culturally safe and strong.

Aboriginal worldviews

The possum skin cloak has three pelts, representing Aboriginal ways of knowing, being and doing. These frame the conduct of the Commission, setting the tone for cultural accountability and privileging the voices, experiences, and lives of Victorian First Peoples.

- 1. Aboriginal ways of knowing shape the Commission’s understanding and prioritising of knowledge and ways of knowing.
- 2. Aboriginal ways of being shape how the Commission understands its structure, roles, priorities and strategic direction.
- 3. Aboriginal ways of doing shape the Commission’s values and creation of intersectional points.

Self-determination

Cloaked by the three pelts is the fundamental First Peoples’ right to self-determination. The Commission takes its definition of self-determination from UNDRIP:

Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4: Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal affairs and local affairs, as well as ways and means for financing their autonomous functions.

Article 5: Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they chose to do so, in the political, economic and cultural life of the State.

Indigenous Data Sovereignty

Yoorrook is the first inquiry, anywhere, to apply Indigenous Data Sovereignty (IDS) principles to its work. Indigenous Data Sovereignty is the right of Indigenous Peoples to own, control, access and possess data that derive from them or which pertain to their members, knowledge systems, customs, resources or territories. The next section of this report provides a more detailed outline of how Yoorrook is enacting IDS and governance.

First Peoples’ nation rebuilding

What is now known as the state of Victoria is made up of many different and distinct First Peoples’ clans, tribes, and nations. Each has its own culture, language or languages, beliefs and practices. First Peoples’ nation rebuilding acknowledges the devastating impact of colonisation on First Peoples’ governance, infrastructure and leadership mechanisms. Underpinned by self-determination, nation rebuilding occurs when First Peoples’ governance, infrastructure and leadership are rebuilt to empower First Peoples to implement decisions about their own business.

4. Centring the First Peoples of Victoria

The First Peoples of Victoria are at the heart of the Commission’s inquiry. This centring is evident in the practices and processes adopted by the Commission.

a. Adopting terms from Victorian First Peoples’ languages

Yoorrook draws upon Victorian First Peoples’ languages for important concepts. Language use is in accordance with the appropriate permissions, cultural protocols and guidance from Traditional Owners and the Victorian Aboriginal Corporation for Languages (VACL) in collaboration with the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation.

Yoorrook recognises that the revival and restoration of First Peoples’ languages are essential. Use of language:

- helps keep First Peoples connected to culture and grounds First Peoples’ identity in who they are as a community
- demonstrates the survival of First Peoples’ knowledge and contributes to Yoorrook’s goal of creating shared understanding of these issues for the broader public
- lessens the impact of terms associated with formal legal settings, to build trust and inclusion

Yoorrook’s work is also taking place during the International Decade for Indigenous Languages (2022–2032), which highlights the importance of the right to language as central to identity and culture for Indigenous Peoples everywhere.

To date Yoorrook has adopted the following language terms:

Language terms adopted by Yoorrook	Meaning
Dhamangalnya	The title given to Commissioner Atkinson, meaning ‘Senior Elder’. ‘Dhamangalnya’ is a compound word of two Yorta Yorta words: <ul style="list-style-type: none"><li>• dhamanga, meaning older person of senior respected authority</li><li>• galnya, meaning goodness, honesty, integrity, and right, and the right way in traditional law.</li></ul>
Nuther-mooyoop	Boonwurrung word for ‘truth’. This is what is often referred to as making ‘a submission’.
Pil’kneango mirnk	Djab Wurrung for ‘open eyes’. This is what is often referred to as ‘evidence’.
Balert keetyarra	Wathaurong phrase for ‘strong talk’. This is what is often referred to as a ‘witness statement’.
Wurrek tyerrang	Wergaia word for ‘speaking together’. This is what Yoorrook will convene as public hearings.

Box 1: Language terms adopted by Yoorrook

**b. Avoiding further trauma and promoting healing**

The Letters Patent stipulate that Yoorrook must adopt practices to minimise harm and re-traumatisation for First Peoples and preserve the safety and wellbeing of all participants. Professionals working with individuals and communities impacted by trauma can be adversely impacted by issues such as vicarious trauma, compassion fatigue, and burnout. In recognition of these factors, the

*Tyerri Yoorrook* report recommended the need for culturally safe support services to accompany the truth-telling process for participants as well as Commission staff.

Through its methodology, Yoorrook employs the social and emotional wellbeing (SEWB) support model.

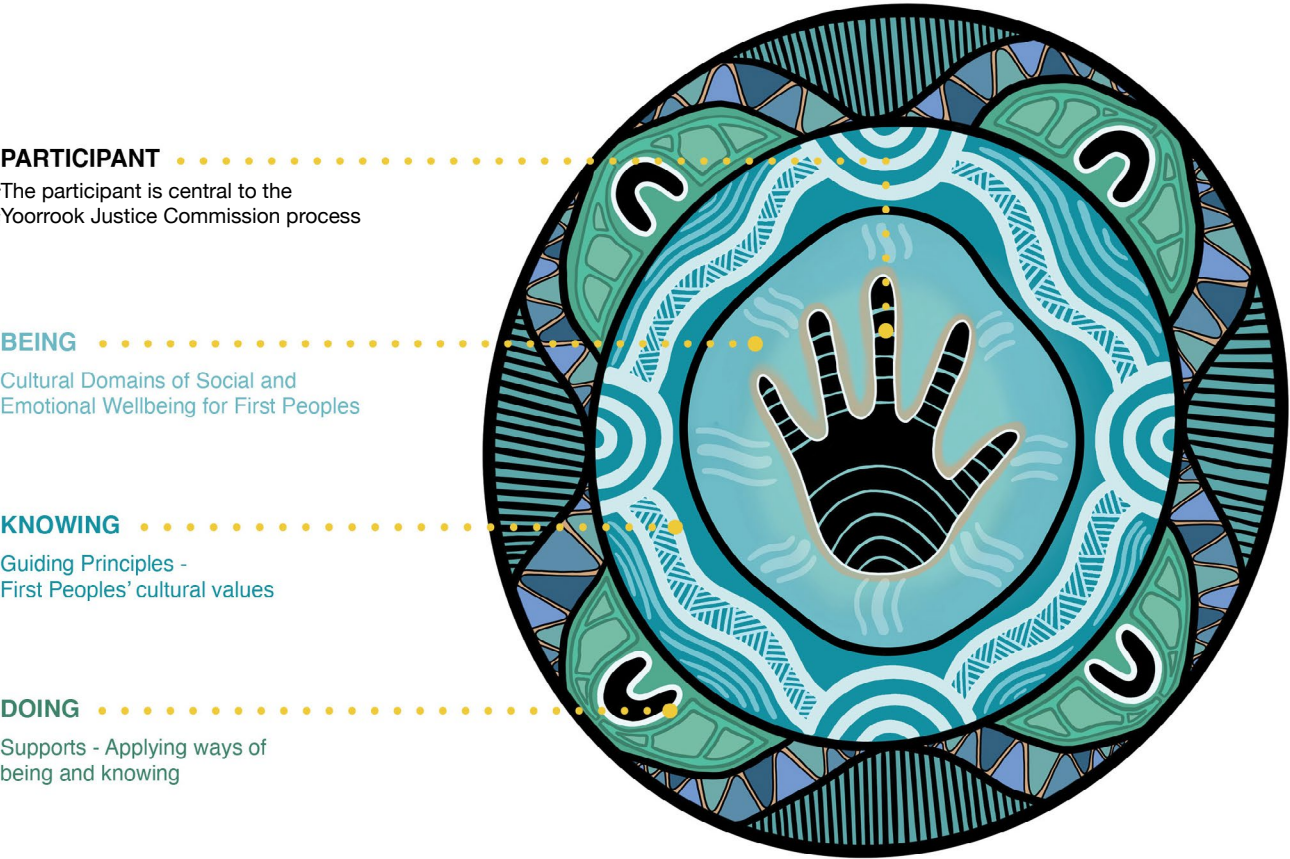


Figure 3: Yoorrook’s social and emotional wellbeing model. Artwork by Nakia Cadd

The SEWB model takes a strengths-based approach to those who wish to participate with Yoorrook. First Peoples’ led Commissioners at Yoorrook want to emphasise the importance of using the strengths, resilience and connectedness of First Peoples and their communities to provide a safe, supportive and culturally appropriate forum for First Peoples to exercise their rights to truth and justice with dignity while demonstrating their cultural resilience and survival.

Connectedness is essential to a safe, supportive and culturally appropriate forum that privileges collaboration and respect in the truth-telling journey. The SEWB Framework encapsulates First Peoples’ worldviews by categorising the framework in three distinct areas representing First Peoples ways of **being, knowing and doing** for the work of Yoorrook:

- **Being - Cultural domains of social and emotional wellbeing for First Peoples.** Social and emotional wellbeing views the self as inseparable from, and embedded within, family and community: the self is surrounded by seven overlapping domains that are sources of wellbeing and connection. The domains support a strong and positive First Peoples’ identity. The model also acknowledges that history, politics and society all affect the social and emotional wellbeing of First Peoples.<sup>16</sup>
- **Knowing - First Peoples’ cultural values as guiding principles.** First Peoples’ cultural values underpin social and emotional wellbeing. These knowledges and ways of knowing are prioritised and provide the foundation of the Yoorrook’s social and emotional wellbeing framework.
- **Doing - Applying ways of being and knowing.** The ways of doing are shaped by knowledge and shared understanding within community. Ways of doing express individual and group identity and are reliant first, on being and knowing.<sup>17</sup>

Yoorrook’s SEWB team offers wellbeing support to participants at all stages of the participant journey including before, during and after their participation in truth-telling. SEWB support is confidentially provided through the First Peoples’ Health and Wellbeing service. Counsellors offer holistic, culturally safe, person-centred, and strengths-focused wellbeing support to participants. Further, participants self-determine their support needs. Support can involve counselling for participants and their supporters and can be individually offered or group based. The SEWB team can also assist with connecting participants with appropriate cultural and other wellbeing supports and services within the community.

To ensure all participants are aware of their rights and can participate in Yoorrook with informed consent, Yoorrook funds a free, independent and culturally safe legal service, Lotjpa Independent Legal Service. Lotjpa Independent Legal Service is run by the Victorian Aboriginal Legal Service and Victoria Legal Aid.

Yoorrook also has a dedicated psychologist to provide trauma-informed support to its staff.

**c. Indigenous Data Sovereignty**

The Letters Patent specify Yoorrook must uphold the sovereignty of First Peoples over their knowledge and stories by consulting with First Peoples on how their information should be treated and ensuring adequate information and data protection in the conduct of the inquiry.<sup>18</sup> To meet this requirement, the Commission has implemented a set of IDS protocols that apply to all dimensions of Yoorrook’s work, and Indigenous data governance systems to enact these.



The concept of IDS was developed at a workshop in 2016 by Indigenous researchers from Australia, Aotearoa (New Zealand) and Turtle Island (the United States of America and Canada) in response to the lack of control by First People of their own data.<sup>19</sup> In 2018, an IDS Summit in Canberra developed a set of Australian IDS protocols that include:

- that Aboriginal and Torres Strait Islander People/s have the right to data that is relevant and empowers sustainable self-determination
- data structures that are accountable to Indigenous peoples
- data that is protective and respects their individual and collective interests.<sup>20</sup>

Yoorrook's IDS and data governance protocols aim to ensure free, informed, prior consent to any relevant use, publication and/or access of information shared by First Peoples. They provide appropriate protection of the information sharer's sovereignty over that information. Yoorrook asks all First Peoples providing information to the Commission to include:

- how the information should be attributed (to them, or to a group)
- whether the information is culturally sensitive, secret or sacred and/or women's business or men's business
- how information should be used by Yoorrook (whether Yoorrook can use extracts publicly, and whether the information should be publicly attributed to the owner or used anonymously)
- once Yoorrook's work is archived, who should be able to access their information in the future and for what purpose

Yoorrook uses electronic Traditional Knowledge Labels in its internal data management systems to make sure these choices are known and respected.<sup>21</sup> Yoorrook is in the process of establishing a First Peoples' Data Governance Council. They will advise on attribution, use and access of information in cases where:

- the data owner cannot be determined
- it is not feasible for all those with links to the data to nominate information protections

Further, it is important to Yoorrook and to First Peoples engaging with Yoorrook that IDS protocols are applied to their data in perpetuity, consistent with their preferences. The current legal requirement is that, generally, all Royal Commission records are to be transferred to the Public Records Office of Victoria (PROV) when the Commission's work has concluded.<sup>22</sup> However, Yoorrook's initial consultations with First Peoples identified concerns regarding future government ownership and general public access to their data. Further, the *Tyerri Yoorrook* report noted, 'community have expressed a hope that materials collected as a result of this process would be managed by an Aboriginal-led body upon its conclusion'.<sup>23</sup>

To ensure that the future storage and management of records complies with IDS, and in line with requirements in the Letters Patent to uphold First Peoples' sovereignty over their knowledge,<sup>24</sup> Yoorrook wrote to the Minister for Aboriginal Affairs in February 2022 to request legislative reform as a matter of priority. Minister Williams noted this issue in her pil'kneango mirnk.<sup>25</sup>

#### d. Our stories, our way

Yoorrook is committed to ensuring First Peoples can tell their truth in way that suits them best, so that the truth-telling is self-determined. On 26 April 2022, Yoorrook held its first wurrek tyerrang (public hearings) and opened its nuther-mooyoop (submissions) process to Elders and vulnerable First Peoples whose nuther-mooyoop may be time sensitive. Yoorrook will open its truth-telling processes more broadly to First Peoples and organisations in the second half of 2022, and to the broader Victorian community in early 2023.

Yoorrook accepts nuther-mooyoop in any form, such as writing, an audio or video recording, or through a material item such as an artwork, archival or handwritten physical documents, cultural artefact or photo. Nuther-mooyoop can be made by individuals, families, communities or Traditional Owner groups.

#### e. Embedding cultural practice in Yoorrook's operations

Yoorrook has embedded cultural practices into its processes and operational work. Yoorrook welcomes feedback on how it can continue to improve and deepen its practices in line with First Peoples' needs.

Yoorrook formally launched on 24 March 2022 - the United Nations International Day of the Right to Truth. The launch was held at the Stolen Generations marker in the Atherton Gardens Housing Estate in Fitzroy.<sup>26</sup> Fitzroy is historically significant as a place of gathering and community for First Peoples in Melbourne. Yoorrook's launch started with a Welcome to country by Uncle Colin Hunter, a smoking ceremony and a cultural performance by the Djirri Djirri dancers. This was followed by a ceremonial sitting with Commissioners.

In line with requirements in the Letters Patent, Yoorrook designed its wurrek tyerrang process to minimise trauma and provide First Peoples

with self-determination in how to participate. Yoorrook's approach to wurrek tyerrang is grounded in an understanding that trauma is not restricted to memory but is often experienced viscerally, in the present.

Yoorrook held its first round of wurrek tyerrang at Charcoal Lane in Fitzroy. The Charcoal Lane building was the site of the first Aboriginal community-controlled health and dental service in Victoria, established by the Victorian Aboriginal Health Service (VAHS) in 1973. Yoorrook chose Charcoal Lane for its significance to Victorian First Peoples: a symbol of cultural strength and self-determination for Aboriginal people in Victoria and beyond.

Yoorrook invites First Peoples' witnesses to make a culturally appropriate truth declaration using an object of personal or cultural significance. They may also request to have a wurrek tyerrang restricted or 'closed' and their pil'kneango mirnk protected through non-publication, including for cultural sensitivity reasons. Each Elder is guided through a process to prepare their pil'kneango mirnk and balert keetyarra (witness statement) through a series of conferences with Yoorrook staff, Counsel and Solicitors Assisting Yoorrook. With consent, and aligned with IDS protocols, these meetings are recorded and used to form the basis of the Elders' balert keetyarra, along with existing published sources that document the Elders' stories in their own voices. Care is taken to ensure the balert keetyarra reflect the Elders' words, language and priorities for truth-telling. Elders can visit the wurrek tyerrang location in advance to help them become familiar with the space and proceedings and to meet staff who would be present on the day. Wurrek tyerrang are live streamed and are available to view on Yoorrook's website unless Elders request that some or parts of a wurrek tyerrang not be public. Elders can also request sensitive materials in balert keetyarra be redacted.

During the wurrek tyerrang, two to three support people are able to sit directly beside the witness, with space for additional family and support people to sit in a small, closed gallery space. Two Yoorrook counsellors are on site to offer support to witnesses and another Yoorrook health professional is on site to provide support to staff. Further information about the first group of Elder witnesses and what Yoorrook heard follows in the section below.

#### f. Yoorrook's establishment activity

While other Royal Commissions traditionally use government buildings as their premises, Yoorrook decided a government-linked building could not be culturally appropriate for participants. Seeking suitable premises proved very difficult during 2021's rolling COVID-19-related lockdowns in Melbourne.

Yoorrook occupied temporary premises in central Melbourne until its move to Collingwood in June 2022. Cultural design considerations and reflection of First Peoples' values feature in Yoorrook's new office space, as well as in the procurement of providers.

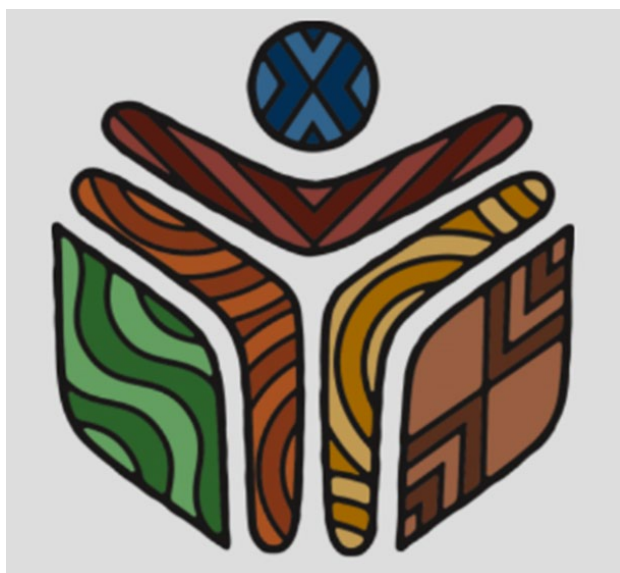


Figure 4: Yoorrook's logo designed by Dixon Patten

For example, Yoorrook's cultural values guided the design, procurement and building of its website. After running a competition to design the logo, Yoorrook chose the winning design by artist Dixon Patten, a Gunnai, Gunditjmara and Yorta Yorta man who has bloodlines from Dhudhuroa/Jaithmathang, Djab Wurrung, Monaro, Wemba Wemba, Barapa Barapa, Wadi Wadi, Yuin and Wiradjuri. A detailed explanation of the logo is on Yoorrook's website.<sup>27</sup>

Other Royal Commissions use a government website provider and adopt the Victorian government domain name. Instead, Yoorrook procured a First Peoples-owned digital agency, Ngakkan Nyaguu (NGNY), to develop its website and procured a 'dot org' domain name. This ensures cultural integrity, strengthens public perceptions, especially First Peoples' perceptions of its operational independence, and allows for Yoorrook to institute IDS practices.

## 5. Challenges faced and early lessons

Yoorrook's first year of operations involved many complex design and conceptual decisions about what its model should be. This was a unique challenge as every step required:

- an evaluation of the cultural appropriateness of how a Royal Commission 'ordinarily' operates
- adaptation to Yoorrook's mandate of upholding self-determination principles, being trauma-informed and First Peoples-led.

#### a. Building a new organisation

Building a new organisation that actively and critically examines its own colonial foundations and assumptions requires dedicated time for consultation, planning, design and feedback. Repeated rounds of reflective practice are essential to adapt and iterate, and this takes significant time.

Using IDS principles in a truth-telling process that gathers information and collects evidence required careful thought and significant systems design and testing. As the treaty process may also lead to new forms of organisations, an early lesson is to factor in the time needed for this, including community consultation and feedback and the development of culturally appropriate processes and practices.

#### b. COVID-19 pandemic

A compounding challenge for all aspects of Yoorrook's set-up phase was the impact of the COVID-19 pandemic. Public health restrictions, including multiple lengthy lockdowns, meant that Yoorrook business was primarily virtually conducted between June and December 2021. Commissioners and staff could only gather in-person sporadically in 2021, during a critical time for building professional relationships and doing complex planning and design work of a new and landmark institution.

These circumstances made it difficult for the Commission to quickly appoint staff members. Many new staff started work during long periods of remote work. Commissioners and staff were in a range of geographical areas and for many months could not meet face-to-face.

COVID-19 restrictions also meant repeated delays in Yoorrook meeting face-to-face with community members to introduce its work and begin the vital process of building trust. This made it hard to meet with First Peoples who do not access or use virtual meeting technology, particularly Elders. For example, to coincide with United Nations International Day of the World's Indigenous Peoples on 9 August 2021, Yoorrook announced its 'Yoorrook on country' visits. After this program was cancelled due to the reintroduction of restrictions, Commissioners held a series of virtual meetings with Traditional Owners and held a Facebook live event on 26 October 2021.

The Commission is grateful to the Traditional Owners who were prepared to attend online meetings but acknowledges that these are not a substitute for face-to-face meetings. Commissioners were finally able to safely meet with community members in March 2022, 10 months after Yoorrook's establishment. These visits are described in the next section.

#### c. Structural racism

A further challenge faced by Yoorrook to date reflects the reality of structural racism and unconscious bias in society, which Yoorrook is mandated to investigate. At various points in its setup phase, Yoorrook encountered misunderstandings or resistance in its interactions, including in seeking accommodation for the Commission's operations. Yoorrook will continue to document these experiences for further reflection at the conclusion of its life.



## 6. Guided by Elders' voices: On-country yarning circles and wurrek tyerrang

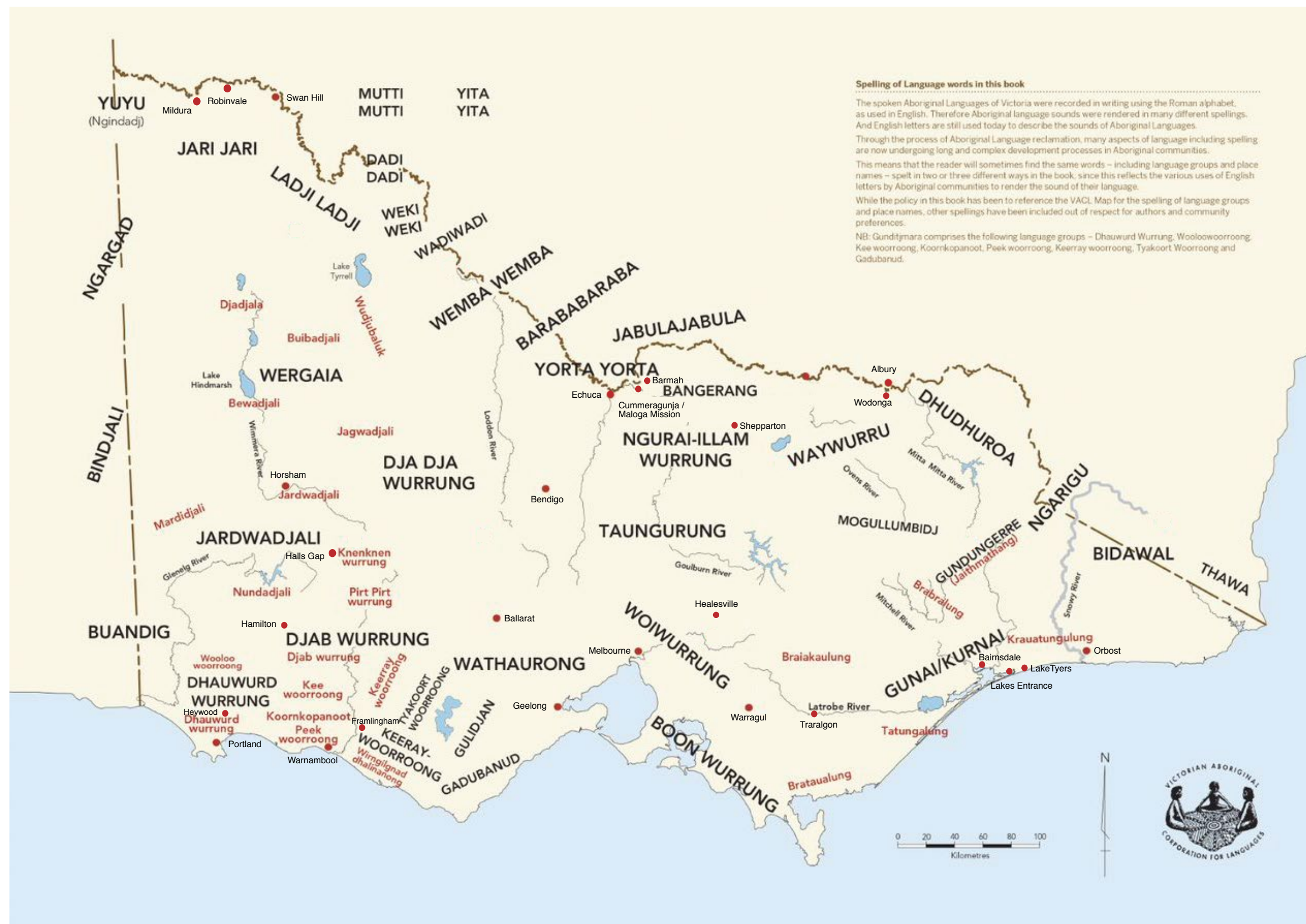
A defining feature of Yoorrook's processes is that they acknowledge cultural authority of Elders through guidance and prioritise the hearing of Elders' truth-telling.

### a. On-country Elders' yarning circles

From March to June 2022, Commissioners travelled across Victoria to meet with Elders. Supported by Yoorrook staff and legal team members, the Commissioners visited 29 locations and met with a total of 199 people. Commissioners travelled to a wide range of Traditional Owners' countries including, Dja Dja Wurrung, Eastern Maar (Kirrae Whurrung, Djab Wurrung), Gunaikurnai, Gunditjmara, Latje Latje, Tati Tati, Taungurung; Wadawurrung, Wemba Wemba/Wamba Wamba, Wiradjuri, Wurundjeri, and Yorta Yorta. For details of these visits, see Annex 4.

Most meetings were conducted as yarning circles, in which small groups of Elders met with some or all Commissioners. Some Elders requested private meetings. Commissioners visited significant local sites to hear the history and meaning of those places. These included the former mission sites at Lake Condah, Lake Tyers, Coranderrk cemetery and Cummeragunja, as well as other sites of cultural importance, locations of massacres, and places of resistance and protest.

Figure 5: Map of Commissioners' visits and yarning circles. Map produced by Victorian Aboriginal Corporation for Languages, 2014





The primary purpose of the Elders' yarning circles was to provide information to Elders about Yoorrook, to build trust in Yoorrook's approach, and to hear from Elders their priorities for the Commission's focus in the next phase of work. Elders also took the opportunity to share parts of their own experiences or stories of their families and ancestors. Many expressed frustrations with, and cynicism towards, prior government efforts and official inquiries, noting that nothing had changed as a result. Many Elders had questions about Yoorrook, such as how it would be different, or expressed concern about how it is distinct from the First Peoples' Assembly of Victoria or government. These meetings were a powerful source of ideas and information that have informed and will continue to guide Yoorrook's work.

All meetings were video recorded and transcribed after obtaining the necessary permissions from participants. A team of sketch artists also visually recorded key themes and moments in real time. These graphic illustrations feature throughout this report.

## b. Wurrek tyerrang

Two blocks of wurrek tyerrang were held between 26 April to 6 May and 16 to 27 May 2022. In each wurrek tyerrang, Commissioners, Counsel, witnesses and support people sat at the same height. This allowed Elders to engage with Commissioners in a way that aligns with First Peoples' protocols, reinforcing relational safety in the room.

Seven Elders appeared as the first witnesses before Yoorrook's wurrek tyerrang (public hearings). These were:

- Uncle Jack Charles, Boonwurrung, Dja Dja Wurrung, Taungurung, Wurundjeri, Yorta Yorta, Wiradjuri and Palawa Elder
- Uncle Johnny Lovett, Gunditjmara and Boandik Elder

- Aunty Fay Carter, Yorta Yorta and Dja Dja Wurrung Elder
- Alma Thorpe, Gunditjmara Elder
- Uncle Larry Walsh, Nirai Bulluk Elder of the Daung Whurrung
- Uncle Colin Walker, Yorta Yorta Elder
- Uncle Kevin Coombs, Wotjobaluk, Wemba Wemba and Wiradjuri Elder.

The Elders who were invited to the first round of wurrek tyerrang reflect voices from a range of different Nations. Commissioners also considered the community standings of the Elders, the prominence of their stories, their abilities to speak to a range of issues of importance to Yoorrook, and their familiarity with telling their own story in public contexts. This prioritisation was in keeping with Yoorrook's objective to ground the first phase of pil'kneango mirnk (evidence) in Elders' cultural authority.

Guided by the Commission's Counsel Assisting, these Elders told their stories in their own words and at their own pace. For example, Uncle Johnny Lovett sang two songs as part of his pil'kneango mirnk, and Aunty Fay Carter recited lines from a song she had written. Uncle Larry Walsh provided pil'kneango mirnk together with his daughter Isobel. Uncle Colin Walker took Commissioners to see important sites during their visit to Cummeragunja, which he then referred to in his pil'kneango mirnk.

The issues raised by Elders in the yarning circles and wurrek tyerrang contribute to the emerging themes and initial recommendations, which are set out in detail in Part B of this report. Yoorrook thanks all participants for their generosity and participation in wurrek tyerrang, yarning circles and significant site visits. Yoorrook is planning further visits to regional areas, including to follow up on matters raised in initial yarning circles.

## 7. Truth-telling, advancing treaty and self-determination

Yoorrook is established as a landmark truth and justice process, the impact of which is being watched closely around Australia and the world.<sup>28</sup> The Commission's platform will amplify First Peoples' voices and show the importance of truth-telling as a fundamental right and necessary basis for the pursuit and delivery of justice for First Peoples. Yoorrook acknowledges the potential for its work – especially findings and recommendations – to inform the treaty-making process while not being limited to that function.

Yoorrook acknowledges that truth-telling has occurred and does occur in families and in communities, and has been the subject of generations of activism by First Peoples. During the first round of wurrek tyerrang, Yoorrook also called as witnesses the Victorian Minister for Aboriginal Affairs (the Hon Gabrielle Williams MP) and the Co-Chair of the First Peoples' Assembly (Marcus Stewart), to hear further context and evidence from both sides to inform its future inquiries.

Marcus Stewart's balert keetyarra sets out the rationale for truth telling as a precursor to treaty.

*'[F]or Treaty to be meaningful, the Victorian community needs properly to understand the impetus for change – to understand why what has been done in the State for over two centuries has not served First Peoples and why the status quo cannot be maintained.'*

**Marcus Stewart**<sup>29</sup>

Marcus Stewart also emphasised the importance of treaty as the primary mechanism for First Peoples in Victoria to achieve self-determination.

*'First Peoples in Victoria live in the shadow of colonisation. It follows them wherever they go within Australian society, tarnishing all interactions they may have with the systems and instrumentalists of the State.'*

*Accordingly, while targeted, issue-specific reform may cast discrete beams of light into the lives of First Peoples, only more profound structural change can remove the shadow of Colonisation.*

*To that end, the Assembly considers that the kind of structural change needed to start to address the legacy of Colonisation can only be achieved through a Treaty which enshrines First Peoples political voice and power.'*

**Marcus Stewart**<sup>30</sup>

This need for structural change was echoed in the *Tyerri Yoorrook* report which made clear the expectation that 'the recommendations and reports from Yoorrook must lead to fundamental change in our systems and institutions of government, service delivery, and Victorian culture'.<sup>31</sup>

The government's Victorian Aboriginal Affairs Framework (VAAF) has included self-determination as its underpinning principle since 2018. It is clear, however, from the Commissioners' early discussions with Elders through yarning circles, nuther-mooyoop, and wurrek tyerrang, that current systems and policies have not delivered self-determination. First Peoples continue to experience discrimination, dispossession, exclusion, and re-traumatisation. In his testimony and balert keetyarra, Marcus Stewart noted that true self-determination is 'being in the driver's seat about decisions that affect our lives'.<sup>32</sup> The task now is how 'we can start reimagining the systems'.<sup>33</sup>

One of Yoorrook's objectives under the Letters Patent described above is to identify topics which may be included in a treaty or treaties. The next section of this report identifies early indications for this purpose collected from Elders' voices to date.



# PART B: GUIDED BY ELDERS' VOICES

## 1. Grounding Yoorrook's inquiry in First Peoples' voices and experience

Yoorrook's methodology described in Part A of this report explains how the Commission's processes are informed by Aboriginal worldviews and ways of knowing, being and doing. All the Commission's work links back to advancing its ultimate goals of truth, understanding and transformation.



Figure 6: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

The Commission is using varied methods of inquiry and analysis:

- **Primary sources** are the nuther-mooyoop and pil'kneango mirnk it receives from truth-telling forums, including wurrek tyerrang and yarning circles.
- **Secondary material** includes colonial archives and documentation which may be held by the government or other institutions.
- **Qualitative analysis tools** will help demonstrate how colonisation and the resultant past and present systemic injustices are experienced; the nature and depth of harm and other impacts, inclusive of First Peoples' strategies for survival, resistance and knowledge preservation; and the effectiveness of policies and systems.
- **Quantitative analysis** tools will help identify trends and diversity of experience of systemic injustices, including demographic variance by age, gender, country, geographic spread, and measurable economic impacts.

### a. Use of non-First Peoples' materials and data

In line with the Letters Patent requirement to uphold First Peoples' sovereignty over their knowledge and stories, Yoorrook will prioritise information and literature from First Peoples. It will consider with caution secondary materials, including statistical data that relate to Victorian First Peoples but are not from First Peoples.

This is because those materials and data reflect what non-Aboriginal people deem to be important. They do not necessarily reflect what First Peoples deem as important to know about themselves.

In Australia, as elsewhere, the absence of First Peoples from data decisions has led to the establishment of a huge pool of official statistics, whose overwhelming focus is Aboriginal and Torres Strait Islander socio-economic and health inequalities. These data are frequently referred to as '5D data': data that define Indigenous Difference,

Disparity, Disadvantage, Dysfunction and Deprivation.<sup>34</sup> These data provide only a very narrow window into First Peoples' realities and contribute to a negative view of who First Peoples are. These data also do not provide First Peoples with the data they need for effective self determination and nation rebuilding. The statistics in this report provide context to the matters raised within the themes below.

### b. Self-determination and nation rebuilding in truth-telling

Self-determination and nation rebuilding are central to how Yoorrook receives truth. Yoorrook supplements this truth with further research in order to make findings. By using the Boonwurrung word for truth (nuther-mooyoop), Yoorrook centres truth-telling within its inquiry and recognises First Peoples' practices of story-telling and witnessing as legitimate and valid sources of evidence. Likewise, wurrek tyerrang (Wergaia for 'speaking together') are places where people talk together to share balert keetyarra (Wathaurong for 'strong talk') and pil'kneango mirnk (Djab Wurrung for 'open eyes'). Both forms of collecting truth recognise not only what First Peoples say but how. The emotions of individual and collective experiences are valid, important manifestations of culture, connection and strong spirit. They are part of the demands for justice and rights for community. In other words, Yoorrook analyses both the content and the discursive structure of nuther-mooyoop, balert keetyarra and pil'kneango mirnk.

Elders have also emphasised that it is important that this record is grounded in their specific places. First Peoples are the knowledge keepers of their countries. The communities living in those places know their own unique histories of what has happened since colonisation, and its impacts. This local First Peoples' knowledge is vital to informing how Yoorrook recommends ways forward for justice and rights.

## 2. Rights, responsibilities and accountability

Under the Letters Patent, Yoorrook is tasked to examine historic and ongoing 'Systemic Injustice', which is defined broadly as:

*'harm and/or impacts on human dignity (including, but not limited to, those as understood by reference to the application of current human rights instruments, including to events prior to the making of such instruments) experienced by First Peoples, that are part of a systemic or structural pattern, and which involve any policies, practices, conduct or laws which existed since the start of colonisation.'*<sup>35</sup>

Yoorrook must determine the causes and consequences of systemic injustice<sup>36</sup> and, based on the Commission's findings, make recommendations to address and provide redress for systemic injustice, and promote healing for First Peoples and the broader community.<sup>37</sup> This includes considering how the State of Victoria and non-State entities<sup>38</sup> can be held accountable for addressing these injustices and preventing future injustice.<sup>39</sup> A guiding consideration is the rights of First Peoples and international best practice in transitional justice.<sup>40</sup>

Human rights are incorporated into Yoorrook's mandate not only by addressing historical and ongoing violations of rights and holding responsible parties to account. The positive dimension of respecting, protecting and fulfilling human rights is also inherent in Yoorrook's work. As detailed in its methodology, Yoorrook will adopt a rights-based approach to the Commission's inquiry.



Yoorrook must positively respect, protect and fulfill human rights in the way it carries out its work. The way that First Peoples’ truth is obtained and recorded will influence the development of a shared understanding amongst all Victorians of the individual, collective and inter-generational impacts of systemic injustice and the diversity, strength and resilience of First Peoples. This in turn will help build foundations for a new relationship between First Peoples, the State and all Victorians, based on truth and justice.

**a. Legal framework**

Yoorrook will use a rights-based analytical framework to assess systemic injustices across key time periods. With First Peoples’ rights at its core, this framework draws on a range of widely-accepted human rights standards across international and domestic sources of law.

The framework provides a reference point for Yoorrook to analyse the harms and impacts of systemic injustices and what these may mean for findings of ‘responsibility’ and ‘accountability’ (see explanation of these terms below). In doing so, Yoorrook notes the following:

- Yoorrook is not constrained by the application of legal standards derived from formal instruments. Yoorrook will adopt a broad interpretation of systemic injustice that encapsulates all kinds of harm and impacts on human dignity.
- First Peoples’ traditional laws and customs pre-date colonisation and continue today, despite the devastating impacts of colonisation. Part of Yoorrook’s mandate is to inquire into the breach and denial of First Peoples’ law and lore.<sup>41</sup> Yoorrook recognises and respects the traditional laws and customs across what is now Victoria. Where appropriate, and guided by community, Yoorrook will draw on First Peoples’ law and lore as part of Yoorrook’s framework to assess systemic injustice.

- Human rights standards, by contrast, are relatively modern. The rising prominence and status of First Peoples’ rights within the field of international human rights law is even more recent and follows the belated global recognition of not only the unique and distinct cultures, identities, legal systems and histories of First Peoples, but also the commonality of experience between First Peoples around the world. First Peoples share strong connection to country, culture and community but also the ongoing legacies of colonisation and widespread dispossession, violence, discrimination, destruction of cultures and accompanying human rights violations. Yoorrook is tasked to inquire into all systemic injustice experienced by First Peoples resulting from colonisation in Victoria – both historic and ongoing.<sup>42</sup>
- The law, both domestic and international, is constantly evolving. In fact, colonial law has been a tool to harm and oppress First Peoples, and some current laws remain inadequate to protect First Peoples’ rights and interests. Part of Yoorrook’s mandate is to inquire into the role of law in causing and/or perpetuating systemic injustice against First Peoples, and to make recommendations about law reform.<sup>43</sup>
- Yoorrook may also consider applicable legal sources and standards relevant to the early colonial period, including those specific to the administration of British colonies and those more broadly regarding slavery and related crimes. It may also consider comparative efforts to attribute liability for the acts of former colonial powers.



Figure 7: Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022

The Letters Patent empower Yoorrook to investigate the role of both State and non-State entities in causing harm to First Peoples in Victoria since the start of colonisation.<sup>44</sup> Yoorrook is not a court and cannot make findings of legal liability. However, the framework will enable Yoorrook to identify and, where appropriate, assign responsibility and ‘accountability’ for historic and ongoing systemic injustice against First Peoples. Yoorrook views the concepts of responsibility and accountability as related but distinct concepts:

Responsibility	Accountability
Yoorrook may make findings of ‘responsibility’ for systemic injustice where evidence supports its assessment that conduct was or is contrary to currently acceptable human rights standards. It may do so even where there was no applicable international or domestic law in operation at the time, or where racist, unjust or ineffective laws were in force. Where appropriate, Yoorrook may also consider varying levels or types of responsibility, including political, historical, moral and legal.	In some cases, Yoorrook may make findings of State and/or non-State entities’ ‘accountability’ for specific conduct. It will do so only where the conduct in question contravened applicable international or domestic law in force at the time of the conduct, in accordance with the fundamental principle of legality. For example, Yoorrook may make a finding of accountability over historic acts where the conduct contravened enforceable laws of that time or where it finds there is an ongoing obligation under current law. Yoorrook may also make a finding of accountability over current acts where the conduct is assessed as having possibly contravened current laws.



## b. Sources of law

Yoorrook's framework will be underpinned by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

**The United Nations Declaration on the Rights of Indigenous Peoples** (UNDRIP) was adopted by the United Nations General Assembly in 2007 and endorsed by Australia in 2009. The result of decades of tireless advocacy by Indigenous peoples around the world, UNDRIP is the most comprehensive international instrument on the rights of Indigenous peoples. It establishes a universal framework of minimum standards for the survival, dignity and wellbeing of Indigenous peoples.

### Box 2: United Nations Declaration on the Rights of Indigenous Peoples

In recognition of the collective character inherent in Indigenous cultures, UNDRIP gives prominence to collective rights to ensure the continuing existence, development and wellbeing of First Peoples as distinct peoples. It catalogues all existing human rights as they apply to First Peoples, whether civil and political; economic, social and cultural; individual; or collective. Central to the ability to enjoy all rights is the right to self-determination of First Peoples – to freely determine their political status and freely pursue their economic, social and cultural development.<sup>45</sup> As described above in Yoorrook's methodology, the right to self-determination guides every aspect of Yoorrook's work.

Although itself non-binding, UNDRIP declares how existing human rights standards, all of which are contained in binding international instruments, apply to First Peoples.<sup>46</sup> It advances international human rights law by bolstering the obligations on governments to respect, protect and fulfil the rights of First Peoples worldwide.<sup>47</sup> Non-government entities also have responsibilities to respect human rights.<sup>48</sup>

In Australia, some of the rights contained in relevant human rights instruments have been implemented through domestic legislation. At a federal level, this is reflected in legislation including:

- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Australian Human Rights Commission Act 1986* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)

### Australia is a party to these relevant international treaties:

- *Convention on the Prevention and Punishment of the Crime of Genocide* (1948)
- *International Convention on the Elimination of All Forms of Racial Discrimination* (1965)
- *International Covenant on Economic, Social and Cultural Rights* (1966)
- *International Covenant on Civil and Political Rights* (1966)
- *Convention on the Elimination of All Forms of Discrimination against Women* (1979)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984)
- *Convention on the Rights of the Child* (1989)
- *ICC Rome Statute* (2002)
- *Convention on the Rights of Persons with Disabilities* (2006)

### Box 3: Relevant international treaties

In Victoria, the *Equal Opportunity Act 2010* (Vic) and *Racial and Religious Tolerance Act 2001* (Vic) protect against various forms of discrimination and vilification. The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter) gives express effect to key parts of the ICCPR and contains distinct cultural rights held by First Peoples.

### Section 19(2) of the Charter recognises First Peoples' cultural rights:

Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—

- a. to enjoy their identity and culture
- b. to maintain and use their language
- c. to maintain their kinship ties
- d. to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.

### Box 4: Cultural rights under the Victorian Charter of Human Rights and Responsibilities Act 2006

Yoorrook will draw on all applicable international and domestic sources of law in developing and applying its framework.



### c. Examples of rights

The types of rights that are protected under relevant international instruments and domestic legislation reflect the categories of systemic injustice that Yoorrook is mandated to inquire into. While Yoorrook's inquiry will be guided by community and its findings based on evidence, it expects that relevant rights will include the following:

- self-determination, autonomy, participation, consultation and consent
- culture including cultural heritage, knowledge, traditions and customs
- identity including language and religion
- land, territories, waters and resources
- economic development
- labour (including freedom from forced labour and slavery)
- health (including physical and mental health) and wellbeing
- education
- adequate housing and freedom from homelessness
- privacy, freedom of expression and data rights (including IDS)
- life, physical and mental integrity, liberty and security of person
- humane treatment when deprived of liberty
- equality and freedom from discrimination
- freedom from violence (including gender-based and/or sexual violence), killing, massacres, genocide, forced assimilation and forcible removal of children
- freedom from eviction, displacement and dispossession
- freedom from torture and cruel, inhuman or degrading treatment

- access to justice and criminal justice rights (including in relation to policing, bail and incarceration)
- reproductive rights
- distinct rights of particularly vulnerable groups (including children, youth, women, the elderly, LGBTIQ+ community, and persons with disability including from trauma)
- truth, justice, reparation and guarantees of non-recurrence

Yoorrook will also draw on rights derived from international humanitarian law to examine periods of armed conflict, as well as relevant parts of international criminal law standards such as crimes against humanity, which Australia has been a leader in developing internationally.

### d. Obligations of the State

The State has obligations and responsibilities to respect, protect and fulfill the human rights of First Peoples, whether held by individuals, groups or both. This includes:

- taking appropriate measures to prevent violations
- investigating violations effectively, promptly, thoroughly and impartially
- where appropriate, taking action against those responsible to ensure accountability.

This also includes providing those who have suffered harm with:

- equal and effective access to justice
- adequate, effective and prompt remedies for acts or omissions that constitute violations of human rights, including reparation
- access to relevant information concerning violations and reparation mechanisms<sup>49</sup>

Yoorrook will consider these among relevant factors in determining responsibility and accountability and recommending reparative measures and necessary reforms.

## 3. Themes emerging from Yoorrook's first phase

During Elder yarning circles and wurrek tyerrang (hearings) Commissioners heard Elders speak of some of the many ways First Peoples experienced systemic injustices, both historic and ongoing. Elders consistently tied ongoing injustices to past injustices as a continued impact of colonisation. Consistent with Yoorrook's objectives in the Letters Patent, this evidence will contribute to the creation of an official public record based on First Peoples' experiences of systemic injustice. While Yoorrook's truth-seeking processes are still at an early stage, the evidence gathered so far is substantive.<sup>50</sup> Yoorrook notes that neither the State nor relevant third parties have had the opportunity to respond to this evidence yet.

For ease of understanding, the Commission has organised what it heard during the wurrek tyerrang and the yarning circles into a number of themes:

- a. Dispossession and dislocation
- b. Political exclusion, representation and resistance
- c. Families, kinship and stolen children
- d. Stolen wages and economic marginalisation
- e. Legal injustice and incarceration
- f. Injuries to body and spirit
- g. Disrespect and denial of culture
- h. Damage to and denial of country
- i. Stolen and misused knowledge, culture and data
- j. A colonial education system
- k. Public silencing and denial

These thematic areas all link to the terms of reference set out in Yoorrook's Letters Patent (Annex 1).

In summary, Yoorrook's terms of reference describe a variety of examples of systemic injustice, grouped into categories of historical and ongoing, while noting that Yoorrook may also inquire into other areas of systemic injustice it decides are necessary. In doing so, the Commission is guided by the information and evidence it hears from First Peoples. A clear message Commissioners heard is that for many First Peoples, historical injustice continues to affect the present. Ongoing injustices are part of systems still governed by their historical colonial underpinnings. While some events, laws and policies have ended or changed, exposing the continuity of impact and effect is integral to:

- creating a comprehensive official record
- building shared understanding
- identifying what reforms and redress a transformed Victoria needs

Like the terms of reference, these themes are not mutually exclusive categories, and many issues relate to multiple themes. In particular, Elders' pil'kneango mirnk from the yarning circles and the wurrek tyerrang revealed three prominent cross-cutting issues:

### 1. The impact of racism

For many First Peoples, everyday life was and continues to be punctuated and framed by experiences of systemic and specific discrimination, particularly in dealings with the State. Specific accounts of racism and its individual and systemic effects were identified by Elders at every yarning circle and at every wurrek tyerrang.

[Click here to hear voices from the yarning circles](#)

*Uncle Ken James Murray*



## 2. The continuity of culture and identity

While the breakup of families, loss of language and exclusion from economic or social networks cause a range of specific harms, this trauma which crosses generations can be lessened if a person knows who they are, where they came from and who their people are. Elders continually talked about the importance of knowing who they are, their people and their country, especially for youth, as well as dismay at the difficulty of accessing such information, especially when it is held by the State.

[Click here to hear voices from the yarning circles](#)

Trent Nelson

## 3. Self-determination

Colonial dispossession not only is at the root of issues of land and economic power, but it began the assault on First Peoples' basic dignity that comes from autonomy and decisionmaking over our present and future. At each yarning circle and at each wurrek tyerrang, Elders were vehement in their calls for self-determination while deeply distressed at the continuing denial of self-determination they and their communities experience.

[Click here to hear voices from the yarning circles](#)

Uncle Colin Walker

### a. Dispossession and dislocation

Yoorrook is mandated to inquire into dispossession and the colonial violence perpetrated against First Peoples, including:

- massacres, wars, killing and genocide
- evictions and displacements
- the theft, misappropriation and destruction of First Peoples' property.<sup>51</sup>

Dispossession, and the impact of the dislocation and violence which accompanied this, is ongoing as well as historical.<sup>52</sup>

During yarning circles, Elders told Commissioners that settlers colonised through violent invasion and wars to seize land, and that settlers continue to colonise today through various forms of dispossession and violence. Elders emphasised that Aboriginal communities know this side of Victoria's history.

*'I believe that in Victoria, the government truly wanted to wipe out the Aboriginal people to the point where there would be no knowledge of them. The Victorian government were so intent on dispersing Aboriginal people, and when they used the word dispersing, it also meant killing and massacring them.'*

Uncle Johnny Lovett<sup>53</sup>

[Click here to hear voices from the yarning circles](#)

Aunty Stephanie Charles

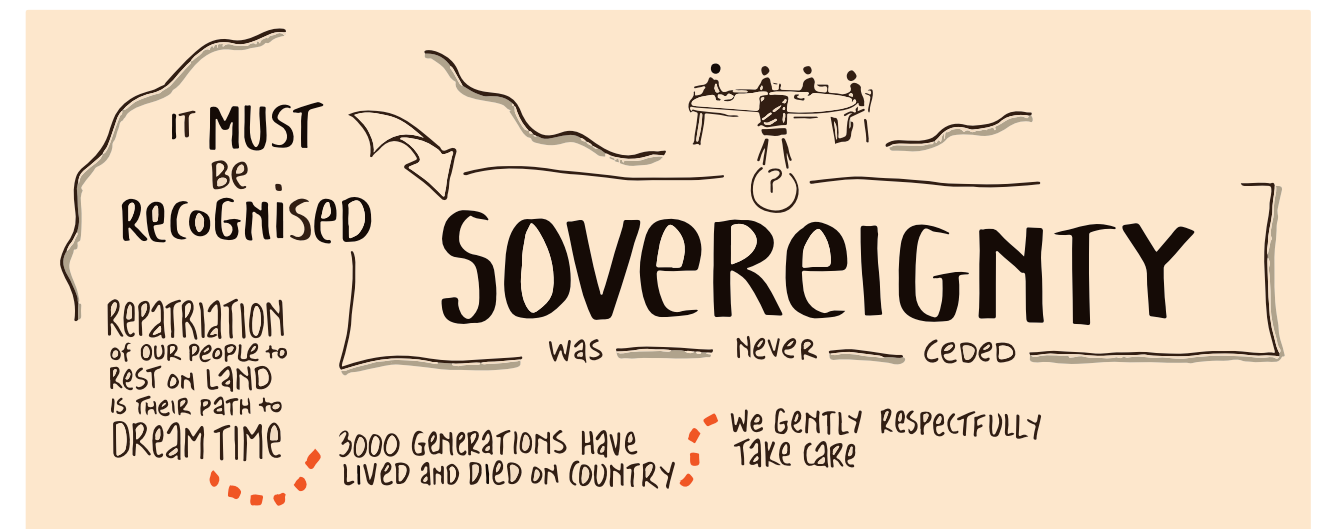


Figure 8: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

Elders noted the effects of frontier violence and massacres are ongoing and have a negative impact on the health of contemporary communities.

*'The spirit of the ancestors that were massacred, and the country that is still there, is still in unrest. And therefore the people living today are affected just as much as them ancestors that were massacred.'*

Wayne Thorpe<sup>54</sup>

*'It took me up until 2006 to find out what really happened in this country! I didn't know about terra nullius, I didn't know about the massacres, I didn't know about the smallpox. What a mind boggling thing! If I had of knew that back further, maybe I wouldn't be in the state I am now, you know? I go back to '66 when I first fronted the court, if I had of known what I know now, things might have been different, I could have contested the court's jurisdiction! You don't have a treaty, you ain't got consent, no jurisdiction.'*

Uncle Talgium Chocko Howard Edwards<sup>55</sup>

*'We need our story told. What's the solution? How do we get justice for all the blood? I don't call it dispossession. We still on our country. We still claim that we possess, it is a legal argument, that we are the sovereigns here. We are the authority – just not recognised. We never gave it up, there's no documentation to say otherwise, and that's our law. We know how to do business, we know how to do it peaceful, it's a divine thing, which I don't see coloniser's law being able to do.'*

Robbie Thorpe<sup>56</sup>

There are few safe spaces for Elders to tell their truths. Parallel to re-telling histories of colonial violence, Elders told Commissioners that the truth from settlers – especially about how Europeans dispossessed First Peoples – is the missing piece of the historical puzzle that needs to be told.



*'White settlement played a major part on our destruction and disadvantage and everything we have gone through has been because of white settlement. Some very wealthy people here today, their families are part of the terrible atrocities that happened to us. When are they going to put their hands up for us? Guilt makes them just bury their heads in the sand and they suffer a fair bit because of it. They need to get it off their chest. I think we could all do that together.'*

**Uncle Johnny Lovett**<sup>57</sup>

In the yarning circles, Elders also referred to how colonial processes use knowledge in ways that cause real harm to real people. For example, when the legal system prioritises the concept of 'reliable evidence' or 'professional experts' more than historically contextualised oral knowledge, it undermines the dignity and authority of First Peoples about their own country.

A senior staff member from a Traditional Owner group pointed out that while there was a large of volume of material written about this particular Traditional Owner group, not a single sentence had been written by a person from that group.

Some Elders also noted that some First Peoples are writing their own histories. Wayne Thorpe and Rob Hudson in Gunai Kurnai country, for example, have both recently published history books.<sup>58</sup>

[Click here to hear voices from the yarning circles](#)

**Commissioner Kevin Bell**

#### **b. Political exclusion, representation and resistance**

The Letters Patent direct Yoorrook to inquire into systemic injustices associated with protectionist and assimilationist policies intent on excluding and oppressing First Peoples, including:

- attempts to eradicate language, culture or identity
- other practices of structural and systemic exclusion of First Peoples from economic, social and political life.<sup>59</sup>

This exclusion and oppression is also historical and ongoing.<sup>60</sup>

[Click here to hear voices from the yarning circles](#)

**Geoff and Jidah Clark**

In relation to these terms of reference, the Commission heard from Elders how First Peoples have consistently resisted exclusion from colonial institutions and society.

*'There is no piece of paper that exists from 1788 or whenever that says that we ceded our country, and we sold our land. If there was, then this treaty that is currently being negotiated by the Victorian government would have existed back then in 1788. We are still the keepers of this land, and we still own this land. There is no bill of sale for this country. So, we need to be recognised today by the government as the owners, and they need to negotiate the terms and conditions with us. The way it is now, the cart is coming before the horse.'*

**Uncle Johnny Lovett**<sup>61</sup>



Uncle Johnny Lovett, Wannon Falls



- 1829 The British Parliament ruled that every person born on the country now called Australia is a British subject by birth <sup>62</sup>
- 1857 *An Act to Extend the Right of Voting and to Provide for the Registration of Parliamentary Electors 1857* (Vic) gave all men in Victoria the right to vote, including First Nations men, for Lower House elections
- 1869 *An Act for the Protection and Management of the Aboriginal Natives of Victoria 1869* (Vic) – known as the Aboriginal Protection Act -controlled all aspects of Aboriginal peoples' lives, included restricting First Nations peoples' right to vote
- 1902 *Commonwealth Act 1902* (Cth) granted those who already enjoyed the right to vote at state level the right to vote federally
- 1908 While Victoria granted non-Aboriginal women the right to vote, Aboriginal women could not
- 1962 *Commonwealth Electoral Act 1962* (Cth) gave all Aboriginal people the right to vote in federal elections<sup>63</sup>

**Box 5: Race, citizenship and exclusion of First Peoples**

[Click here to hear voices from the yarning circles](#)

Aunty Claudette Lovett

- 1863 Coranderrk Aboriginal Reserve founded<sup>64</sup>
- 1863-1886: Deputations of residents from Coranderrk walk to Melbourne to covey messages and protests to their treatment to the Victorian government and Queen <sup>65</sup>
- 1899 Residents of Framlingham resist closure of the station and forced displacement to Lake Tyres
- 1932 In Melbourne, William Cooper, Marge Tucker, Doug Nichols and Shadrach James formed the Australian Aborigines League to educate colonial society and argue for welfare support and citizenship rights for First Peoples
- 1938 First Day of Mourning protest on January 26 held by the Australian Aborigines League and Aborigines Progressive Association <sup>66</sup>
- 1939 Cummeragunja Mission walk off on Yorta Yorta Country
- 1957 Founding of the Victorian Aborigines Advancement League
- 1970 and onwards: Fighting to regain title over First Peoples' lands
- 1973 Victorian Aboriginal Legal Service Co-operative Limited (VALS) established, Victorian Aboriginal Health Service (VAHS) established on Gertrude St, Fitzroy
- 1976 Victorian Aboriginal Childcare Agency (VACCA) established, Victorian Aboriginal Education Association Inc. (VAEAI) established

continued next page

- 1981 Aboriginal Housing Board of Victoria established, which would become Aboriginal Housing Victoria
- 1982 Koori Information Centre established in Fitzroy
- 1996 Victorian Aboriginal Community Controlled Health Organisation established
- 2014 Warriors of the Aboriginal Resistance (WAR) founded <sup>67</sup>

**Box 6: Selected dates of First Peoples' political representation and resistance in Victoria**

In late March 2022, Commissioners visited the Coranderrk cemetery near Healesville. Commissioners heard from Wurundjeri Elders how the Coranderrk community, founded by Kulin clans after petitioning the Governor to set aside land for an Aboriginal reserve in 1863, became a profitable small station but faced attacks and undermining by local white settlers during the 1870s and 1880s. The sense of injustice from these occurrences is still felt with Elders referring directly to this time during their wurrek tyerrang.

*'It was running successfully, Coranderrk. They were selling produce into the town of Healesville. So that's how well Coranderrk was seen. But it upset the local squatters that the blackfellas would have this – this ability to sell produce, cheese, milk, meat, into the town of – bread, into the town of Healesville. They said, no, the blacks shouldn't be doing this. So they did all they could to make it look as though the blacks couldn't work the land successfully.'*

Uncle Jack Charles <sup>68</sup>

Uncle Jack Charles further described how the residents of Coranderrk represented themselves at a parliamentary inquiry in 1881, which was re-enacted in the play Coranderrk: *We Will Show the Country*, based entirely on the inquiry's minutes of evidence.<sup>69</sup> He noted how the colonial administration adapted its legal strategies to maintain control over First Peoples' lives:

*'So many people gave evidence they mulled it over for three years, and in ... 1884, the Parliament ... just said yes, this is Aboriginal land, blackfellas, this is their land. So they had a win. And there was a lot of firing of rifles and celebration up there ... at Coranderrk, I believe. And this really upset the black hats in Parliament and the local squatters. So ... two years later in 1886, to counteract this win, they invented the Aboriginal Half-Caste Act 1886. So all the full bloods were left there. All the half-castes had to remove themselves and put themselves at great risk wandering around the state of Victoria. If you were a blackfella, you know, wandering alone or with your family and etcetera, you were still at risk of being shot. Especially after church. After church, as they normally used to mount their horses and go hunting blacks. Like they would hunt the fox. So, yes, we were at risk. We had that win but - but then they developed the - and we are still confounded and bedevilled with the Aboriginal Half-Caste Act right to today.'*

Uncle Jack Charles <sup>70</sup>



Commissioners heard repeated references in Elders' accounts of how colonial legislation such as the 1886 Amendment to the *Aborigines Protection Act* used concepts of 'blood quota' to separate families and communities and remove children from missions and stations. Elders spoke of how this contributed to the formation of new urban Aboriginal communities, specifically in the Melbourne suburbs of Fitzroy and Northcote. Elders described how these communities shared knowledge and resistance strategies from other communities outside Victoria, especially the Black Power movement based on Gadigal country.

*'One of the inspirations for the health services was the Black Power movement in the 1970s and having a voice. We never had a voice until the 1970s, when we set up a hundred and something health services across Australia. Part of the role of the health service was to believe in who you were and bring back some of who you were, to make people feel good about themselves. Self-determination, sovereignty, land rights were the values that sat under, and the service developed around the same time as the tent embassy, with the same philosophies.'*

**Alma Thorpe**<sup>71</sup>

Commissioners also visited the site of the former Cummeragunja Reserve and the old Maloga Mission on Yorta Yorta country in April 2022. Cummeragunja is where, in 1939, First People residents walked in protest against surveillance and forced poverty on the mission. The walk-off event is considered the first mass strike of Aboriginal people in Australia. Elders who spoke to Commissioners described how the community made a new home for themselves on the Mooroopna flats on the banks of the Goulburn River, preferring the freedom despite the poverty and lack of services or infrastructure. Uncle Lance James, for example, described this complexity during a tour of the Mooroopna Flats with Commissioners.

*'We carry our elder stories. They're embedded into us, I'm sure you know. We're carrying their pain, their suffering. And even our kids that are born now, they carry that pain and that suffering coz they know. And the way they're treated, then they ask us, what was it like back then or what was it, you know? ... we have all this documented. We have films back in the old, what do they call it, the old projector ... Everybody was really happy there, you know. But they tarnished us as drunks and fighting and all that, well I didn't see it. They lived in harmony, they were happy. And then of course we went to Rumbalara, and we got 11 or so cabins.'*

**Uncle Lance James**<sup>72</sup>

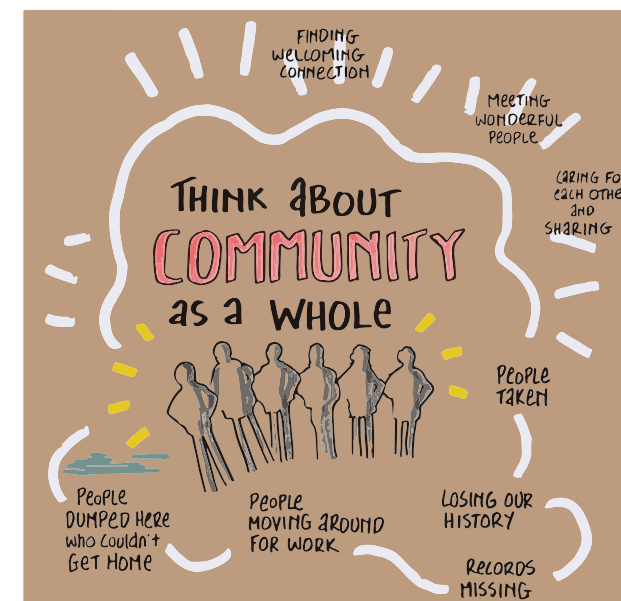
Commissioners heard from Elders how First Peoples have long fought to retain control of Lake Tyers Station Reserve and Framlingham.

In both Victoria's Western District and Gippsland, Commissioners heard from Elders how land rights movements were led and fought by First Peoples to retain control of Lake Tyers Station Reserve and Framlingham. These struggles continue today.

The election of members to the First Peoples' Assembly of Victoria, and the establishment of Yoorrook have also drawn on the decades of First Peoples' demands for self-determination and political representation.

*'What we have done was build on the decades of advocacy and decades and generations of activism to support our people who are still finding their way home or who have found their way home.'*

**Marcus Stewart**<sup>73</sup>



**Figure 9: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022**

### c. Families, kinship and stolen children

Yoorrook's Letters Patent instruct the Commission to investigate historical and ongoing systemic injustices that impacted specifically on family. These include the forced removal of children and policies and practices relating to child protection, family and welfare matters.<sup>74</sup> More broadly, Yoorrook is mandated to inquire into all kinds of systemic injustice that had and continue to have impacts on First Peoples' families, directly or indirectly, including attempts to eradicate language, culture or identity.<sup>75</sup>

[Click here to hear voices from the yarning circles](#)

**Uncle Johnny Lovett**

Elders told the Commissioners that the welfare of their families and communities is their priority. Specifically, Elders strongly asked Yoorrook to stop the government taking children from their families. Many Elders put their experiences in the historical context of fighting against colonial practices and legislation to keep families together from the very first years of invasion, through the mission years, into the present.

In 2020-21 Aboriginal children in Victoria were 21 times more likely to be in out-of-home-care than non-Aboriginal children. This is an increase over 2019-2020 and almost double the national rate (11 times), representing the highest rate of over representation in any Australian jurisdiction.<sup>76</sup>

In 2019-2020 Aboriginal children and young people accounted for 15% of Victorians aged 10-17 who were in youth justice supervision.<sup>77</sup> They were 10 times more likely than non-Aboriginal Victorian children and youth to be subject to community supervision, and 9 times more likely to be in custody.<sup>78</sup> As of 30 June 2021 there were 1,283 Indigenous children who had been in out of home care for over two years in Victoria.<sup>79</sup>

### Box 7: Child removal and youth justice in Victoria

Some yarning circle participants also spoke of being descendants of child survivors of massacres. They described that across the state, settlers used massacres as part of invasion and occupation, and they often kept one or two young boys alive and 'adopted' them into the settler families. One Elder pointed out that this not only was a source of free labour, translation and knowledge of country, but also served to warn other family groups what would be done to them if they didn't comply with settler demands.

Some Elders spoke of the impact of massacres on their families within their lifetimes.

*'Mummy's eldest sister, Aunty Ruby Muir ... did not know the full story about why she was adopted into our family until she was dying in her 90s, when she was living in a nursing home in Mooroopna. For her entire life, Aunty Ruby believed that she was sent to Cummeragunja because her mother had given her away. On her deathbed, she was asking, "why did my mother give me away?" [We] found out that there had been a massacre of Aunty Ruby's family in Barkindji country, near Mildura. Aunty Ruby, Uncle Charlie and Uncle Billy were found in a water tank. The whole family had been massacred. The children were hidden in the empty water tank, to protect them. The welfare or whoever at the time gathered up the children and put them onto a paddle-steamer, and the children were brought down to Cummeragunja.'*

**Aunty Fay Carter**<sup>80</sup>

Elders also described how the 1886 amendment to the 1869 *Aboriginal Protection Act*, known as the 'Half-Caste Act', forced families apart who had lived together for a generation, although under the heavy control of the station and mission managers.

*'If you look up the definition of an act of genocide, then the Stolen Generation and the systems that were in place around that are the closest thing you will ever get to that. Genocide is when people interfere with the lifestyles of a certain race or culture or religion of a peoples, and then it becomes genocide. They took Aboriginal kids from their Aboriginal families, stopped Aboriginal customs, traditions, law, spiritualism and religion. They totally obliterated whatever connections Aboriginal people had to country and family. I don't know how the government has never been brought before the Courts for that act.'*

**Uncle Johnny Lovett**<sup>81</sup>

The 1886 Amendment to the *Aboriginal Protection Act 1869* (Vic) changed the definition of 'Aboriginal' to exclude those who were 'half-caste' (only one parent was First Peoples). The government made this policy to force people that white 'Protectors' names as 'half-caste' off the missions and stations. This was to cut ration costs and to justify closing missions, stations and reserves.

**Box 8: The 'Half-Caste Act' - legislation can change the definition of 'Aboriginal'**

In some yarning circles, Elders asked that the Commission note the many ways that their ancestors fought to protect their children from the punishments they had experienced under colonial authority. For example, sometimes community members refused to teach children culture in an effort to keep them safe.

*'I believe – I firmly believe – and I state this quite often – that they did not pass the language on to us because they did not want us to get into trouble like they did. They did not want us to get into trouble speaking our language like they got into trouble for speaking the language. I believe it was because they felt as though, for the young people to survive, they had to practise the white man's way. They were made to feel that they weren't going to get anywhere by practising culture. I think they were protecting the young people against being penalised, like they were penalised. They were so protective of us.'*

**Aunty Fay Carter**<sup>82</sup>

*'We don't speak language today. When my dad and his brothers were sitting at the wood heap, I didn't hear them speak language. I believe that this is because of the way of the old days, when their mothers and fathers saw the change coming. They had started taking Aboriginal children on Lake Condah Mission and putting them in dormitories and they were not given back to their parents or given any rations until they promised they would not teach their children song, dance and language. I believe that is why I don't speak the language. The grannies stopped teaching the children language to protect them, because they didn't want us to be persecuted and condemned for it. Not everyone would agree with me, but I truly believe they had our best interests at heart.'*

**Uncle Johnny Lovett**<sup>83</sup>

Elders told Yoorrook that families had to go to great lengths to physically hide their children.

*'Uncle Doug Nicholls was like our policeman on the Mission. He had a white horse and he used to warn us and the families about things that were going to happen that weren't good, particularly if the big black maria (police car) was coming. He would ride the horse down through the Mission, singing out "barramandain coming, barramandain coming, barramandain coming". This meant that the police or welfare, which is barramandain in Yorta Yorta language, were coming. When this happened, the kids would be hidden or they would swim across the river. But unfortunately, some of the kids still got taken by the welfare.'*

**Aunty Fay Carter**<sup>84</sup>



**Figure 10: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022**

Alma Thorpe described experiencing this pressure and surveillance herself as a parent in the 1950s.

*'In Yallourn, Aboriginal people had to look good and act good. We had to be good people, good blackfellas. The government was always watching you and if you weren't "good" you'd get in trouble or your kids would be taken.'*

**Alma Thorpe**<sup>85</sup>

Elders said that child removal causes ongoing personal and intergenerational trauma.

*'It's a dark cloud that hangs over our whole community and affects all of us slightly differently. Whether you were taken, were the one who wasn't, were the parent of a stolen child or the close family members, whether you were the kids left behind, the community wondering if we or our nieces, nephews, children are next, it affected us all. It still does. This doesn't even take into account the kids that are in the state welfare system today.'*

**Uncle Larry Walsh**<sup>86</sup>



*'I was taken from my Mum and placed in a series of homes to be raised as a white person. Nobody ever taught me love. I was never raised in a loving situation, never held. I can't remember ever being held as a child, as a baby.'*

**Uncle Jack Charles** <sup>87</sup>

*'Family is so important. People need to know where they come from, to have an identity and cultural connection they can be proud of and have. So many still don't know where they belong – it all goes back to the Stolen Generation. If you ask any Aboriginal family about the Stolen Generation, nearly every family has been affected by the removal of our kids, through this injustice.'*

**Uncle Kevin Coombs** <sup>88</sup>

Elders asked what kind of reparations could possibly ease the pain of having one's language, culture, community and family taken away. Uncle Jack Charles described deep frustration at the many barriers faced, and resources required, for Stolen Children to reconnect with knowledge of their family and their own story.

*'It took a lot of time and many resources to find out my identity as a member of the Stolen Generations. If I had not had such a high profile, I would never have received this information.'*

**Uncle Jack Charles** <sup>89</sup>

Uncle Lance James referred to the 1950s, 1960s and 1970s when communities began to fight to create co-operatives to provide health care and housing for families.

*'Many worked and looked after their families, held their families together, and it's why we have what we've got. But it's through hard work, through discipline, and I don't want to put our men down, but it was the women who led the way for us. Because of police brutality, the men couldn't go out, it was best if the men stayed home. And our women, cousins and nieces and nephews and even myself, marched in '58, cross here (at the Flat) to meet the minister about getting Rumbalara, you know. We wanted our own places. But our men had to stay home because of police brutality. As I said, the women took the head at the table then, and they haven't changed since. Still at the head of the table.'*

**Uncle Lance James** <sup>90</sup>

Elders spoke of First Peoples forming self-determined organisations in this period, such as the Victorian Aboriginal Legal Service (VALS), the Victorian Aboriginal Health Service (VAHS), the Victorian Aboriginal Education Association Incorporated (VAEAI), and Koorie Engagement Support Officers (KESOs).

*'When we first set up our first health service in Gertrude Street, just down the road, there's an old vacant lot. The first people, they were coming out of the homes. They were - I remember the names. They were coming out of the homes at 15 and 16 and 17 and didn't know who their parents were. And what we formed in that day was a home away from home. People could connect up and maybe find out who they did belong to or find out where they could find them.'*

**Alma Thorpe** <sup>91</sup>

Participants in the yarning circles stressed that more help is required for families to have enough resources and support.



Uncle Col Walker and family at Charcoal Lane



Aunty Fay Carter



Aunty Alma Thorpe with Granddaughter Lisa Thorpe at Charcoal Lane



Uncle Kevin Coombs with daughters Janine and Rose at Charcoal Lane



Yarning circles, Robinvale.



#### d. Stolen wages and economic marginalisation

The Letters Patent refer to systemic injustice related to unfair labour practices (including treatment of returned soldiers) and exclusion from economic, social and political life more generally.<sup>92</sup>

In line with the terms of reference, the Commission heard from Elders in numerous yarning circles and wurrek tyerrang about the many ways dispossession from land, resources and wealth has been reinforced and repeated through specific practical and administrative barriers imposed by the government on First Peoples.

Numerous Elders said that grandfathers and great grandfathers who fought in the First and Second World Wars were excluded from being granted land under soldier settlement schemes because they were Aboriginal.

*'One thing I am particularly proud of is that my grandfather and his brother fought in World War I, in Fromelles on the Western Front, for six years. Aboriginal people were not allowed to enlist. My grandfather went to sign up in Horsham and was knocked back, so he travelled down to Bendigo and changed his name to sign up the second time. He enlisted under Alfred Jackson Coombs, and not Albert Wallace, which was his birth name. His brother was able to enlist straightaway though. Even though my grandfather and his brother served in World War I like other Australian men at the time, they were treated pretty poorly when they got back. People that went to the World War were told that they would get a block of land, a soldier settlement. And I'm still waiting for ours. Other soldiers got land when they came back from the war, but not Aboriginal soldiers.'*

**Uncle Kevin Coombs**<sup>93</sup>

*'When my father returned from his service in World War I, he came home to find that the Lake Condah Mission had been closed. The Mission was closed so that the land could be allocated to returned soldiers. Despite the fact that my dad had fought in the war, he was not allocated a parcel of land, because he was Aboriginal. He was denied a life simply because someone thought he didn't matter, and other Aboriginals didn't matter.'*

*'There were 37,000 soldiers that returned from the war and were given settlement blocks, but not my father or uncles. My father was very proud to be a soldier and he had a lot of good mates who he fought in the wars with. They were comrades in arms, and the distinction between white and black didn't matter. It wasn't an issue between them, but it was an issue created by the government. They came home from the war and were back to being black.'*

*'To this day, I don't know whether my father or my uncles ever received any kind of war pension or anything like that. It was a form of racism and a form of prejudice against Aboriginal soldiers, even though they had served their country and made applications for soldier settlements.'*

**Uncle Johnny Lovett**<sup>94</sup>

Community told Yoorrook that the land colonists occupied in invasion is still in the hands of farmers. This lack of land is continuing and has clear economic consequences – the wealth remains in the hands of settlers.

*'All the farmers and that have their 1,000 acres or whatever, to provide and live off. And we've got this little piece of land here. And so it's still kept us in that form of poverty and not being able to get to where we need to be. And I see that impacting on us today. You can look at farmers and they can go back to the start of the generations here in Australia and how they've built up and got where they are. They own so much land and are able to provide for their families. We*

*didn't have that opportunity and I don't think we still have it today. And that's why we were always behind the eight ball here. I think that's a big injustice in the sense of it's our land to start off with. Sovereignty has never been acknowledged and that's the one of the biggest things. I think, you know, if you're looking at royalties and things like that, we should be the richest people in this country. And we're not.'*

**Aunty Leah Keegan**<sup>95</sup>

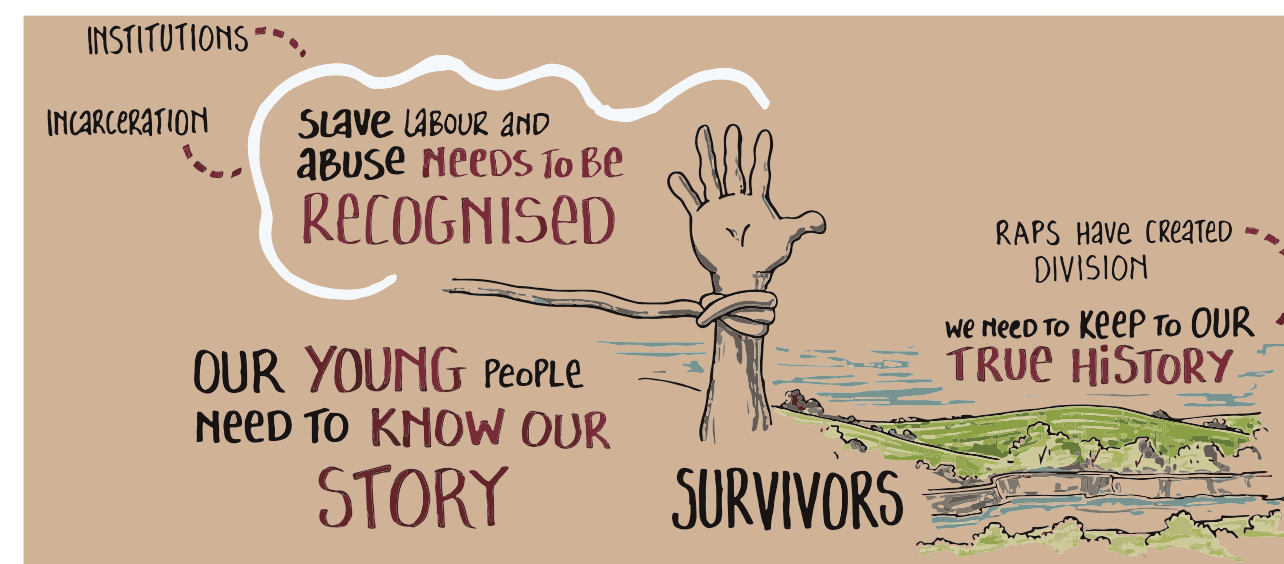


Figure 11: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

Elders pointed out that the ongoing lack of housing prevents people taking up employment and staying on country.

There are even problems for people who live at Lake Tyers, because the government handed Lake Tyers to the community in 1971 under the Aboriginal Lands Act 1970 (Vic), and that Act still controls the people and land.

*'If you read that 1971 Lands Act, it looks like an assimilation policy. It still looks like we are made to live in a concentration camp. Both here [Lake Tyers] and Framlingham come under that. I find it quite disturbing and quite upsetting that every year, we have to do a*

*social and emotional report on how people are living out here. I find that degrading. It's just the work thing that you can impose on an Aboriginal community after everything they've gone through with the Stolen Generation you know, what this place was at one stage. And, no matter how many times we try to make amendments to that act, it always seems to be taking a lot of time to do it. I don't want my mob out here, or any mob for that matter, to feel that they are still living under government control.'*

**Terylene Hood**<sup>96</sup>



Elders pointed out that mainstream society and government need to consider the role of Aboriginal communities in future development plans.

First Peoples and families in Victoria have very high rates of housing distress and homelessness (see Box 16). Historical dispossession, rapid population growth, the younger average age of the Victorian First Peoples community and lower average levels of economic resources contributes to these high rates.<sup>97</sup>

The 2016 census showed that 45% of First Peoples in Victoria owned their home (outright or with a mortgage),<sup>98</sup> whereas 68% of all Victorians own a home. More than half of First Peoples in Victoria rent homes,<sup>99</sup> compared to 29% of all Victorians.<sup>100</sup>

	Median incomes in Victoria <sup>101</sup>	First Peoples	Victoria-wide
Household		\$1,200	\$1,419
Personal		\$479	\$646

Box 9: Economic disparities in Victoria

e. Legal injustice and incarceration

The Letters Patent direct Yoorrook to inquire into past policies and practices relating to policing, youth and criminal justice, incarceration, detention and the broader legal system, as well as ongoing injustices in these areas.<sup>102</sup> Injustices caused by the (in)justice system often perpetuate further injustices in the areas of economic, social and political life and impact on the health of First Peoples and their communities.<sup>103</sup> Yoorrook is also required to inquire into cultural violations such as the breach and denial of First Peoples’ law and lore.<sup>104</sup>



Figure 12: Detail of an Elders’ yarning circle live-sketch, produced by Sketch Group 2022

Across the state, Elders consistently told Yoorrook that communities want deaths in custody and police brutality to stop.

*‘Aboriginal deaths in custody are something that has touched everyone in the Aboriginal community. It is an issue that has been around for a long time and is still a big issue today. The original deaths in custody have been around since 1788. It continued with the establishment of the missions. The Aboriginal people who died on those missions had no choice as to whether to be there and had no freedom of movement.’*

Uncle Johnny Lovett <sup>105</sup>

*‘The reality for our people is that the conflict has never stopped. There has been no peace.’*

Marcus Stewart <sup>106</sup>

*‘No one has ever been held accountable for Aboriginal deaths in custody! How many deaths are there, and not one person has been held accountable!’*

Aunty Cheryl Austin <sup>107</sup>

Elders emphasised that settlers imposed the colonial ‘justice system’ on communities while they refused to consider First Peoples’ own legal systems of law, lore and culture. This continues to cause great harm and rather than providing justice is too often a source of injustice.

*‘300 black nations who lived in peace and harmony on this land for such a long time as we all know, and that peace is not here with us no more. I want to acknowledge the war on this land under the law of Bunjil and Waa, the eagle and the crow, this is land of the eagle and the crow, this is where we are all sitting here talking about treaties. It should be the treaty under Bunjil, the treaty under Borun, is the way I see it. this is the way of respecting the customary law of the land and I don’t see that reflected in the process, which makes me think well who’s the treaty between and what’s the treaty for? They’re some of my main concerns.’*

Robbie Thorpe <sup>108</sup>

*‘Everything’s a lie in this country. Every piece of law in this country is repressive in the context. You haven’t got a right to make laws for our people! Our people didn’t chop trees down to make paper to write laws on! We were beyond that!’*

Robbie Thorpe <sup>109</sup>

*‘I said to the magistrates, I said ‘I don’t like your law, it’s like a snake’s back, too many crinkles in it.’ Our law was straight.’*

Uncle Colin Walker <sup>110</sup>

Many Elders described how hard it was to grow up Aboriginal because the police targeted Aboriginal families and communities with surveillance and violence.

*‘Aboriginal families get a stigma of being always in the eyes of the police and things like that, then they are targeted all the time – all the time. Their kids get targeted, you know. The grandkids get targeted. And I think it’s a continuation of like I was saying before. It just goes on and on.’*

Uncle Johnny Lovett <sup>111</sup>

*‘It was just constant. You lived under this regime where you walked in certain places but you couldn’t walk in other places.’*

Aunty Margie Tang <sup>112</sup>

Several Elders who were members of the Stolen Generations told Yoorrook that they had been criminalised by the State under the Welfare Act when removed from their families as babies and young children. As an adult Uncle Larry Walsh learned that the Mooroopna Children’s Court had charged him with being a ‘child in need of care and protection’ at the age of two, before being sent into State ‘care’.

Uncle Larry described being targeted and beaten by police from the age of eight, based on this existing conviction. He later learned that he had been taken while his mother was in hospital giving birth. She had over many years refused to sign consent for any of her children to be adopted and repeatedly fought to regain custody of her children.

*'I was committed to Turana when I was 14 for minor offences (doing time for breaking into a house and stealing an electric shaver, a transistor radio and some money from a moneybox). The reason given on the court order was that I was "likely to lapse into a life of crime". My pre-existing criminal record from when I was 2 years old is the reason why I was sent to Turana. I later spent time at Malmsbury Youth Justice Precinct, and in Pentridge.'*

**Uncle Larry Walsh** <sup>113</sup>

Uncle Larry's daughter, Isobel, pointed out that one of Uncle Larry's early convictions was breaking and stealing from his own home.

*'How intense is the State's need to criminalise my father that taking something from his own home is considered an offence?'*

**Isobel Paipadjerook Morphy-Walsh** <sup>114</sup>

Uncle Larry described to Commissioners at length the lifelong impact of being targeted by police and criminalised by the State, and the repeated failures of the system towards him, like many others.

*'To quote my cousin: "Governments, you made me the criminal I am".'*

**Uncle Larry Walsh** <sup>115</sup>

*'I know one thing, is that we weren't criminals, but if you were – if you were born an Aboriginal - and I'm only going to say just one thing, Talgum Edwards is still fighting a case in his court, that he was born a criminal and that's what you were born. You had a number, so you were a criminal. So if you were born in that era type thing, you were born a criminal. And Aboriginal people weren't criminals. If they would have been criminals, they would have been rich, but they weren't.'*

**Alma Thorpe** <sup>116</sup>

In July 2018 after Victorian Elders fought to have their childhood convictions expunged, the *Children Youth and Families Act 2005* (Vic) was amended to acknowledge the harm caused by historical care and protection orders. This amendment clarifies that such orders are not to be treated as criminal convictions.

#### **Box 10: Expunging Elders' childhood convictions**

On the first day of Yoorrook's wurrek tyerrang, Counsel Assisting asked Uncle Jack Charles if there were times when he received 'rough treatment or abusive treatment from police'.<sup>117</sup> Uncle Jack replied:

*'There was occasion when I was living with a well-known gangster up in Camberwell, Camberwell police picked me up, detectives, and drove me up into the bush and said that they were going to kill me and leave me up there if I didn't tell them, you know, about this gangster and what we have been up to down Venus Bay, down the bottom end of Victoria and that. So I said, "Well, you fellas" my words exactly, "Well, you fellas are going to do what you fellas are going to do, you know, but I'm not going to tell you anything."*

*But the best one, I thought, of all that lot was the young red-headed police constable in the Prahran lockup. He I was having a go at him and he pulled out his 38 and he shoved it in his mouth in my mouth. I tried to get him to pull the trigger and that. He fought vainly. You know, we fought and that. He wanted - you know, he wouldn't pull the trigger, the bugger. And he yanked the pistol out of my mouth and it knocked one of my beautiful buck teeth, big chip out and that.'*

**Uncle Jack Charles** <sup>118</sup>

Elders spoke about their experiences establishing and working with the Koori Court and other programs to provide cultural knowledge and support to people that the police and carceral system incarcerated and monitored.

*'I take real pride in sitting here today and being able to share what I can. I also work on the Koori Courts. It's a system that does work and there's, you know, people you know, when we first started with a lot of knock downs and that, but my thing to them is come and listen and learn for yourself. And you see how the system works. And a lot of the kids won't come back the second time or the third time because they too shame to face the Elders. So it does work, it does work for me to be on it for fourteen years.'*

**Aunty Stephanie Charles** <sup>119</sup>

[Click here to hear voices from the yarning circles](#)

**Aunty Liz Heta**

In 2020, the Sentencing Advisory Council<sup>120</sup> found that the greatest over-representation of Aboriginal children "occurred at the intersection between the most severe sentence type (custodial orders) and the most serious end of the child protection system (child protection order, out-of-home care, residential care)." <sup>121</sup> It also found that Aboriginal children and young people were 11.5 times more likely to have experienced out of home care than other Victorian children diverted away from youth justice.<sup>122</sup>

Detention rates for Aboriginal and Torres Strait Islander young people in Victoria decreased significantly from 77.3% in 2019-2020 to 47.5% in 2020-2021.<sup>123</sup> The number of Aboriginal and Torres Strait Islander young people under youth justice supervision in Victoria has decreased 42% since 2017.<sup>124</sup>

#### **Box 11: Over-representation of First Peoples children in Victoria's youth justice system**

Elders shared stories about how deeply they put care for young people above punitive judgement. Uncle Colin Walker worked for many years, and travelled a lot with the Koori Court, and told Yoorrook:

*'As we were talking about, we've had - some young ones committing suicide. So we say, you know, the red light. There's two lights I used to say, when I sat in the Koori Courts. You're free to go at a green light, but you must stop at a red light. And we used to say to the young ones, if they're in trouble, shine the red light more so us Elders could see it, you know, and we could sort of help them. But sometimes the red light fades, they're frightened to come near us. They don't want to, you know. So we say why, in our letters to them when we have our funerals, to the*



younger ones - why? Why did this happen, why? So you must shine the red light more, the danger, it's a danger light. Our young men and women, we want them to show it, show us so we Elders could support 'em more...

In the Koori Courts, the magistrates asked, Uncle Col would you like the young ones to bow to you when they come in, I said no bloody fear. No one bowed to our Elders before us. The most interesting thing sitting on the Koori Courts was connecting up the young ones. I told the judge, the magistrate, straight out, there is no such thing as justice for Aboriginal people, even on missions. There was not. And it was unreal. I've been blessed living here at Cummera, the people, the families that were there. And if a young woman come before me, first thing I'd call her like my daughter, what's your name love? Oh my name's- what's your mother's maiden name? Oh. So I knew, you know. And I'd say oh, so your family, I knew your family, and there were great families. And you'd see them sort of done wrong, and I'd tell them - same with the young men. And the young women would come up and give you a hug and a kiss, and then young men would do the same, because they never had - their mother and father might've passed away and also their grandparents. So I connected them up and I was lucky, very lucky to be here and to connect them up...

Only one thing I was crooked onto with the Koori Courts was it was a good set up in one way but you had to plead guilty. Why did they have to plead guilty?

**Uncle Colin Walker** <sup>125</sup>

[Click here to hear voices from the yarning circles](#)

**Braydon Saunders**

Uncle Kevin Coombs described the Koori Court's emphasis on cultural knowledge and community care during his time as a Court Elder from its establishment in 2003.

*'We meet before we go into court. There are two Elders that sit together. Mainly female and male. We don't have a discussion with the fella that's going to appear before us, but we talk with the Magistrate about what this person has done. If there is anything culturally that comes up, then talking with the Magistrate about that, anything from intergenerational trauma to Stolen Generations to domestic violence. Because the Elders normally know more about them than would ever come to light in a normal court setting. I have the cultural input and provide the cultural education. It's a good program. And it was very rewarding.'*

**Uncle Kevin Coombs** <sup>126</sup>

Elders across communities identified the links between health and injustice, noting the problems of trauma, poverty and the lack of support for people after they survive incarceration.

According to 2016 census data, First Peoples accounted for 0.8% of the Victorian population in 2016.<sup>127</sup> As at 30 June 2021 First Peoples made up 10.6% of the Victorian prison population.<sup>128</sup>

#### **Box 12: Over-representation of First Peoples in Victoria's prison population**

Community members explained to Yoorrook that police racial profiling and targeting of Aboriginal people, especially kids, makes it hard work for Aboriginal people to avoid the police and the 'justice system'.

[Click here to hear voices from the yarning circles](#)

**Tina Wright**

#### **f. Injuries to body and spirit**

The Letters Patent direct Yoorrook to examine unfair policies and practices relating to health and health care, as well as the impact of intergenerational trauma.<sup>129</sup>

Elders spoke to Yoorrook about the many ways that the legacy of ongoing colonisation affects the health of their communities. Elders told Yoorrook what communities need to heal and keep their bodies and spirits strong.

*'And the ongoing trauma, spiritual trauma, is affecting the health of the people today. So there's another healing that needs to happen. To be able to let that go and clean everything that's been growing within us.'*

**Wayne Thorpe** <sup>130</sup>

Aboriginal and/or Torres Strait Islander people in Victoria report significantly high rates of poor health, in 2018-2019: <sup>131</sup>

50.3% had at least one chronic condition

36% had high or very high psychological distress.

#### **Box 13: First Peoples' health in Victoria**

[Click here to hear voices from the yarning circles](#)

**Note:** This video contains images of people who may be deceased

**Marjorie Thorpe**

Many spoke of facing overt and systemic discrimination in health care and services. For example, Aunty Fay Carter described her experiences of segregation in hospitals.

*'I was born on the verandah of the Echuca Hospital, because in those days they didn't take the Aboriginal mothers into the wards with the non-Aboriginal mothers.'*

*When I was 16 ... [my mother] said, "Come on, Fif. I want to take you and show you a special spot." And she took me to the verandah where I was born. You know, she didn't think there was anything wrong with that. She was quite happy to be outside on the verandah but, of course, at my age, I had started to realise what racism was all about. So I wasn't happy with it. I wasn't happy with finding that out.'*

Aboriginal people were also treated for serious problems on the verandah of the hospital. My Mummy's brother, Uncle George, had really bad emphysema, and he was treated on the verandah. I recall that Aboriginal people were treated on the verandah until at least the 1970s.'

**Aunty Fay Carter** <sup>132</sup>

*'I am wary of hospitals and police. I still am to this day. Both these institutions have been places where I have received direct discrimination and racism all throughout my life. In hospitals in my childhood having things occur to me that I had no control of or knowledge about. No one bothered to communicate [they'd] just get angry if I didn't comply. In one incident recently when I was taken to the emergency department in Bendigo Hospital for gall stones and pancreatitis attack at the same time. My GP had even sent ahead my latest test results and notes showing that this was the case. Despite this I and my daughter (whom was with me) were asked repeatedly if I was an alcoholic. We both replied no and that I had not had a drink for 6 months. The last one was during the grand final and I had 2 cans. When I was admitted staff called my other daughter up to ask her if indeed, we were not telling the truth and again ask if I was an alcoholic. A lot more happened in this hospital visit but it got to the point where I discharged myself as opposed to deal with the lack of care and racist assumptions and attitudes towards me.'*

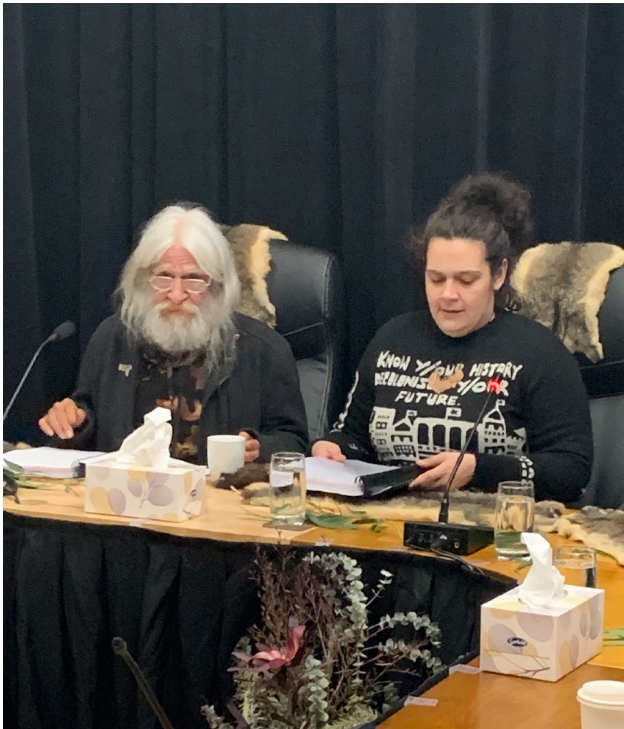
**Uncle Larry Walsh** <sup>133</sup>

Elders described how communities worked together to establish co-operative self-determined health care and housing services in the 1970s, taking the roles that could best keep everybody safe. Some criticised more recent changes in health care delivery:

*'Prevention went out the window a long time ago, back in, you know, the 90s, when the tripartite was established and health went everywhere. And um, you know, prevention, which we were talking about in our health services. And now we're just running with the medical model of health again. And it's not working.'*

Marjorie Thorpe <sup>134</sup>

Elders told Yoorrook that the government's ongoing refusal to provide First People with adequate housing forces First Peoples' communities into conditions of poor physical and mental health. Health care institutions continue to act with racism towards First Peoples.



Uncle Larry Walsh and daughter Isobel Morphy Walsh

Stolen Generations survivors aged fifty and over were more likely than other First Peoples to be living in tough conditions including:<sup>135</sup>

- 1.8 times as likely not to be the owner of a home
- 1.6 times as likely to live in a household that could not raise \$2,000 in an emergency
- 1.5 times as likely to have government payments as their main income
- 1.7 times as likely to have experienced discrimination due to being Indigenous
- 1.5 times as likely to have experienced actual or threatened physical harm
- 1.4 times as likely to have a severe or profound disability
- 1.4 times as likely to have poor mental health
- 1.3 times as likely to have been diagnosed with a mental health condition
- 1.8 times as likely to be a current smoker.

Box 14: Health of Stolen Generations survivors in Australia



Figure 13: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

Once again, Elders emphasised the need for self-determination and control over solutions. Communities told Yoorrook that they need culturally safe health care, including treatment for alcohol and drug addiction, which is a symptom of the ongoing trauma of colonisation.

*'The services we're getting, I'd say are second rate. The health services, all of those services, homelessness, drug and alcohol, rehab. There's less than twelve beds right now for Aboriginal women, less than, and there's a waiting list of three months. So when people want to go get rehabilitation, three months to get into a bed?'*

Marjorie Thorpe <sup>136</sup>

*'A lot of Aboriginal people would not look for medical help because they didn't feel they were listened to or understood or there was too long of a wait. This has been an ongoing problem. In the mid-2000s, the Victorian Minister for Aboriginal Affairs, who had worked with the Koori Health Unit as a researcher in the 1980s, tried to set up a program to make it easier for Aboriginal people coming to hospital to identify as Aboriginal. It was a very hard thing to do, and is still very hard nowadays, because a lot of our people still think if they identify as Aboriginal they will get second class services.'*

Uncle Kevin Coombs <sup>137</sup>



17% of the Victorian First Peoples' population had cause to contact a homeless service in 2019, compared to only 2% for the general population.<sup>138</sup>

There are around 5,000 already homeless Aboriginal people, with a further 6,000 at risk.<sup>139</sup> The number of Aboriginal people in Victoria assessed by homelessness services requiring assistance grew by 33.6% between 2013 and 2018, around twice the median for other Australian jurisdictions.<sup>140</sup>

The final report of the 2020 Parliamentary Inquiry into Homelessness in Victoria found that 50% of prison leavers use a homelessness service within the year following their release.<sup>141</sup>

#### Box 15: Housing stress and homelessness in Victoria

#### g. Disrespect and denial of culture

The Letters Patent direct Yoorrook to examine injustices related to cultural violations and attempts to eradicate culture, cultural knowledge and identity.<sup>142</sup> Elders clearly explained the centrality of culture to their worldview:

*'That's for us as Aboriginal people, I'm talking about. That if we heal country, we heal ourselves.... And, oh, let me tell you, walking country, feeling as though you are walking in the footsteps of your ancestors is the most spiritual, spiritual thing.'*

**Aunty Fay Carter** <sup>143</sup>

Some Elders said that First Peoples cared for and protected their families by withholding cultural knowledge when it was unsafe to share it. Elders told Yoorrook about the ongoing effects of this, and that communities require time and space to regain knowledge.

*'We heard the stories when we were growing up of, you know, don't speak your language because you will not be able to have the things that were handed out by managers - sugar and meat and whatever what they were handing out. So we grew up not knowing what it was, our culture. We knew we were Aboriginal. But that was sort of our level.'*

**Leon Atkinson** <sup>144</sup>

*'I was not told anything about Aboriginal people, our languages or our culture. I knew I looked different, but didn't understand the differences in culture at all. I experienced the policies of child removal as a divide-and-conquer method of destroying my sense of identity and self-esteem. Ignorance, misdirection and miseducation were central to keeping me from knowing who I was.'*

**Uncle Jack Charles** <sup>145</sup>

*'So we never knew nothing about who - who our - our tribal people were, and that's why it's very hard to even talk, even on this Commission, is about being an Aboriginal person, because we are termed in this thing of who we are and how - everybody has got a different story. And I mean, I just know that so many lost people, that never had a - who didn't know anything about their tribal people, and that's what we can't find. And it's... the massacres. I think this truth-telling Commission, I would like it to look at the massacres that went on in that time because at the time of those massacres, it must have killed so many people that left the residue, as you would say, of people who didn't know who they were.... I can't say that I'm culturally - they have taken my culture. So I haven't got that to look at.'*

**Alma Thorpe** <sup>146</sup>

[Click here to hear voices from the yarning circles](#)

**Uncle Possum Clarke-Ugle**

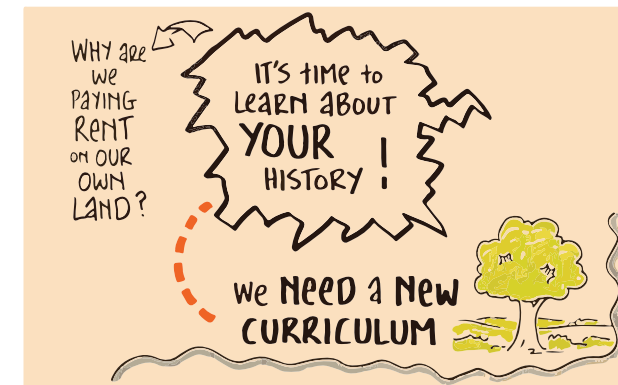


Figure 14: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

A number of Elders also mentioned the negative impact of colonial processes such as native title and other legislation that defines 'traditional owners' and provides a range of rights in relation to land, water and cultural heritage management. Elders noted these processes undermined self-determination and had lasting effects.

*'And that's my point of making sure that it's our voice that's heard and not overridden by someone else's voice. Cause the stories that were told about us since they come here, has stuck like mud in generations later, and they've still got the same attitude as when they first invaded. So, because it's the wrong story. And someone's story about us. We're not them people. So it's yeah, just making sure that that's addressed and well aware of...'*

**Wayne Thorpe** <sup>147</sup>

[Click here to hear voices from the yarning circles](#)

**Site Visit with Tati Tati Traditional Owners**

Yoorrook's Letters Patent state that that it cannot inquire into, nor report on, any executive decisions nor specific outcomes made in legal proceedings which have been settled or determined in relation to

the recognition of Traditional Owners.<sup>148</sup> This means Yoorrook cannot investigate the correctness of individual determinations or decisions made about Traditional Owner groups rights through legal proceedings. This is because other laws provide processes for appeals and reviews. However, Yoorrook does not consider that this exclusion prevents the Commission from inquiring into First Peoples' experience of these processes, the impact of them and whether these recognition regimes cause or contribute to systemic injustice.

Elders across the state told the Commissioners their experiences of cultural heritage legislation and about the importance of self-determined cultural centres and Keeping Places.

*'It was hard when we first started as [Cultural] Site Officers. When we would go onto land to protect our sacred sites, landowners would worry - but we just wanted to protect those sites. Sometimes we would know there was a midden or a burial ground on that land and they would almost pull the gun on us.'*

**Uncle Colin Walker** <sup>149</sup>

*'When we talk about cultural heritage, this state is wholesale destroying the forests. The whole cultural heritage management situation is really serious. Some of those people are just in it for a job. It goes back to that long history of development of that legislation from the Relics Act [Archaeological and Aboriginal Relics Preservation Act 1972]. People were specifically identified, a couple people here to go to the training in the really early days, they were knocked back and other people selected if you like. And those people put in quite comfortable positions, and they're determining heritage place which they don't really have the knowledge for. So there is concern about that.'*

**Wayne Thorpe** <sup>150</sup>





Braydon Saunders, with Commissioner Sue-Anne Hunter, in the children's dormitory of the Lake Condah Mission



## h. Damage to and denial of country

The Letters Patent task Yoorrook to investigate all historic and ongoing systemic injustices against First Peoples as a result of colonisation, including cultural violations, land theft, dispossession, and attempt to eradicate culture and identity.<sup>151</sup>

As at 2018 First Peoples in Victoria owned 3,000 Ha of land, and co-manage 103,000 Ha with the state in the form of state parks, national parks or conservation areas. In total this is 0.466% of all land in Victoria.<sup>152</sup>

### Box 16: First Peoples' ownership and management of land and country in Victoria

Elders across Victoria clearly pointed out that they remain locked out of their own country, which prevents vital cultural education. Meanwhile, settlers are destroying country for economic profit that does not give any returns to First Peoples.

Elders across the north of the state, particularly those whose country spans both sides of the Murray River, pointed out that the state's border itself was an invention of the colony, which the government has used to divide people.

*'Our Elders taught me about the importance of Dhungalla, and how it is our protector and provider. The river was never a boundary for us Yorta Yorta. It is like a human spine with the kidneys around it, which is our land, and the veins travelling through it, which are the creeks. The river is also our supermarket – we get our food at Dhungalla. They used to tell us "what are you doing wasting water". I wouldn't swap the things I learned from the Elders for any university degree.'*

**Uncle Colin Walker**<sup>153</sup>

Elders called for a stop to further destruction of country.

*'They're killing the land that we're trying to heal, and drying it out, this is making it a fire prone country. They're saying it was always a fire prone country. I say No. Clearing the land made it a fire prone country. So when they say they've got a contract until 2030 for mining a particular mineral, or to do something with these trees, they go hard. They try to make all these mines, it's all about money for short term gain. But there's long term damage. That's the concern. There's a lot of minerals underneath this soil. And there's a lot of trees here. The trees represent families. There's a spiritual connection to the trees. There's the cultural connection to the trees, and the whole bush, and then everything that makes up the bush. You see? People forget about the natural land managers – the birds and animals and the insects. People wanna spray them all the time. People wanna kill them all the time, and kill their habitats. As if they're nothing of no value. They say they want us to welcome them to our country and do all these wonderful stuff cultural things, and they ask us about our culture. Well wait on. It's getting dug up. There's not much left to talk about. It's all Too much is being dug up and so our culture resources are gone. The trees are cut down. No good saying well there used to be a deadly site over here, but now it's gone because of the open cut mining or something other so-called progress has happened. You see?'*

**Wayne Thorpe**<sup>154</sup>

Elders spoke to Yoorrook about the existing relationship between First Peoples and the government organisations that control unceded country. This relationship is one in which First Peoples' knowledge is ignored, despite communities across Victoria persistently engaging with the agencies.

*'We consulted on a Regional Forestry Agreement, they came in and consulted with the Elders so they've all contributed. And when we went up to the meeting they were waiting to present what they had contributed, but it was never presented to them because it was never included in the final report. It was left on top of the photocopier. That's what they said. And it was after all consulting and being a part of it and we got nothing. It's a kick in the guts.'*

**Denise Lovett**<sup>155</sup>

## i. Stolen and misused knowledge, culture and data

A landmark aspect of the Letters Patent mandate Yoorrook to inquire into past and present invasions of privacy and the collection, possession and use of information and data about First Peoples<sup>156</sup>. The Letters Patent also require it to establish and implement Indigenous Data Sovereignty protocols.<sup>157</sup>

Examining and progressing the current use and application of Indigenous Data Sovereignty (IDS) principles in state-wide data governance mechanisms is a key theme of Yoorrook's work. IDS principles afford First Peoples the rights to data which remain under their control, empower self-determination, are accountable to First Peoples, and which protect and respect First Peoples' interests. In contrast, data collected, managed, and used by the government reflect its structures, interests, and ongoing control. This continues to produce unjust ways to collect, manage and use data about First Peoples. It also means that data that could guide the priorities and self-determination of First Peoples in the state of Victoria are not readily collected or available.

Several Elders spoke to Yoorrook about how much information they know the government has recorded about them.

*'I'm talking about the 50s ... I feel distressed about that era. You didn't [own yourself]. You were watched and you still feel today that – I got a shock when my granddaughter showed me that little [archival] piece – and you can click on a computer, on that type of thing. So I don't know. I'm not ... up with the modern ways of doing things. But I wouldn't like to find out too much.'*

**Alma Thorpe**<sup>158</sup>

*'After the referendum that happened in 1967, I turned up in Turana a year later in May. When I was going through intake I jokingly said 'hey, I'm a citizen now, does that mean you can let me out of here because I'm no longer a ward of the state?' Whilst it didn't lead to anything in the moment it led my case worker to consider me and my file. And it was decided for the first time in my life that they would give me one of the letters written to me by my family. I found out years later that there were many other letters, but this was the first and one of the only given to me.'*

**Uncle Larry Walsh**<sup>159</sup>

*'[Who Do You Think You Are] was a big moment for me. You know, to have been able to tick the box as far as completing my journey of discovering of family, etcetera. It's been a long journey. You know. Most of it has been hidden, denied from me. Stolen from me. And so it's a blessing that I'm in this unique position that people have information and they are tripping over themselves to give me this information about who I am exactly and archival evidence, etcetera.'*

*I have this, I like to say, profound sense of piss-offed-ness that it's come to me at such a late stage.'*

**Uncle Jack Charles**<sup>160</sup>

One Aboriginal community member told Commissioners that they want to control what data the government and other



non-governmental agencies collect about them, and they want to control access to data that is specifically about community knowledge.

*'We want to get as much of our intellectual property back, so that we have our own space and time to research, and you know, find out who we are and our language and cultural traditions, and family. Yeah, but at the moment there's so much red tape about accessing our stuff from government departments. It shouldn't be that way, it should belong to us.'*

**Alice Pepper** <sup>161</sup>

Elders also told Commissioners that communities need quality services that reflect their cultures, needs, and their lived experiences. The creation and delivery of such services must be supported by information and data that reflect First Peoples' priorities and self-determination. In other words, data that reflects IDS must be embedded in the training and education for those services, and their delivery.

*'I think a lot of things that I've said in there is making people culturally aware of who we are, what we are all about. I would like, you know, to firstly say that. But also I mentioned before that I think it's important that all the professional people around us who deal with us professionally in some way need to be – have cultural awareness included in their basic training.'*

*It needs to be built in there, cultural awareness. Not wait until after they have been educated and trained and they come out into the workforce to deliver their services and then call on Aboriginal groups through the community to come and make them culturally aware; it's back to front. It's not how it should be. And I would like to see something happen out of the Commission or Yoorrook to put that in there to the educating*

*places, for them to include Aboriginal culture within their training from the very beginning before they come out into the community. Yeah, I would like to see that happen.'*

**Aunty Fay Carter** <sup>162</sup>

Yoorrook has begun investigating the extent to which IDS principles guide the collection, management, and use of data within the Victorian Government. This investigation over the life of Yoorrook is intended to outline the areas of State governance and service provision requiring application of and compliance with IDS principles. It is also intended to support future recommendations for how this can be achieved and how it should benefit Victorian First Peoples.

In line with the powers set out by a Royal Commission, Yoorrook issued a Notice to Produce (NTP) to all current Victorian government departments and Victoria Police on 14 April 2022. This NTP required production of 'any current policies applicable to Departments or Victoria Police that expressly refer to how Data about First Peoples is to be collected or managed'. Yoorrook will continue to examine how First Peoples' data is collected, managed, and used by the government, and the extent to which, if any, government policies align with IDS principles. Yoorrook has received some responses from across government departments and review is ongoing. Preliminary investigations highlight more thorough analysis is needed on how consistently government departments apply IDS principles to First Peoples' data, including both treatment and governance of different sources of First Peoples' data.

#### **j. A colonial education system**

The Letters Patent direct Yoorrook to consider how best to raise awareness of First Peoples' experiences and identify educational reform as a key outcome of Yoorrook's work.<sup>163</sup> Elders raised how educational practices have been an ongoing source of injustice as well.

Elders spoke about the strength of Aboriginal community ways of educating.

*'We'll carry them stories on forever and a day, you know? They'll never take that away because it'll be passed down to our children, our grandchildren and their grandchildren. It'll go on.'*

**Uncle Lance James** <sup>164</sup>

*'So, full of surprises, cause I used to think once that you're teaching your children but they teach you too. And my grandchildren now are teaching me and it goes both ways.'*

**Margie Tang** <sup>165</sup>

*'My real education came from our Elders. They would talk to us about our Yorta Yorta law, they were very spiritual people. My grandfather took me fishing and taught me about the importance of Dhungalla. The stories were handed to us to teach us things. Like the Bunyip story. We were told if you go in deep water, the Bunyip will get you. This taught us as children not to go in too deep in the river. In the early 1950s, I got to go with my uncles and grandfathers and camp in the forest. It was unreal. The food they would cook, and stories they would tell. I was blessed to be able to go with them. Women would get reeds from the river in the forest for weaving. I wouldn't swap any of my cultural knowledge for any university degree.'*

**Uncle Colin Walker** <sup>166</sup>

Elders spoke of exclusion and racism, including how teachers in the mainstream schools shamed them as well as failing to provide basic care to Aboriginal students.

*'I had four different primary schools and I stopped 'formal education' (colonial education) around 14. School was not a fun place. At school, I refused to play sport because people around me would tell me*

*that Aboriginal people are only good at sport. Because I was Aboriginal, they thought I was going to be a servant, labourer, or a farm hand. I did not do any homework and I had the best wagging record, and yet I got 80 in five subjects. The only thing that was taught about Aboriginal people was that we were primitive and violent savages.*

*I was bullied and often hit. I had many fights and many more instances where I was hit and not able to defend myself. I don't view these as fights as I wasn't an active participant. For the two years of secondary school I attended I was allowed to defend myself and despite not wanting to fight I found myself in many. Often because I was Aboriginal and or because I was a ward of the state, an 'unwanted bastard'. When these fights would happen if a teacher intervened, they would always punish me not the person who started it. I often felt caught. Dammed if you do fight, dammed if you don't.'*

**Uncle Larry Walsh** <sup>167</sup>

*'When I went to Tranby College it was a two year course, and there were 23 of us men from different areas met. Me and a mate was sitting together and I thought he could read and write and he thought I could. We would -- so the coordinator said, "Uncle Colin, so and so, you know, look at our reports", you know. So I got embarrassed. I said, "I'm heading for home back to Cummera." And my mate said, "No, wait a minute." We called in the young ones and said, "Look, we can't read and - properly, we can't. Could you help us do our reports and help us spell and that. We will learn you all the bush, you know. There might be a tree out in the forest had a little scar in it. We knew there could be a burial there. There was a burial site, over here was a -- We'll learn you all that." So they learnt us.'*

**Uncle Colin Walker** <sup>168</sup>



*'The key to so many problems is employment and education. People need to have a reason to get up in the morning, and for those with alcohol or drug problems they need a reason to stop drinking or taking drugs. If you've got a good education, I tell a lot of kids here in Melbourne because I worked in the Koori Courts, I'd always say to the young blokes, while you're in gaol or in the centre for youth, maybe you can study up and see if you can get a bit of education behind you. One of the big judges down here, he had a saying: "If you open a school, you close a gaol". He's pretty right there.'*

**Uncle Kevin Coombs** <sup>169</sup>

2016 Census data found 13.4% of Aboriginal and/or Torres Strait Islander people aged 15 and over in Victoria reported Year 10 as their highest level of educational attainment, compared to 7.8% of all Victorians. A further 14.5% reported Year 9 or below as their highest level of educational attainment, compared to 8.9% of all Victorians.<sup>170</sup>

#### **Box 17: Educational attainment of First Peoples aged 15 and over in Victoria**

Elders told us that their communities were disadvantaged by not having a strong mainstream education.

*'... there's a whole story ... of Grandfather James, who taught school on the [Cummeragunja] mission, and they weren't allowed to teach longer than grade 3. And if he could see young Aboriginal people with potential, he built what they called little scholars' hut in – way, way, way out in the bush. And he used to take young Aboriginal people who he sees had potential into that scholars' house at night time and teach them further education.'*

**Aunty Fay Carter** <sup>171</sup>

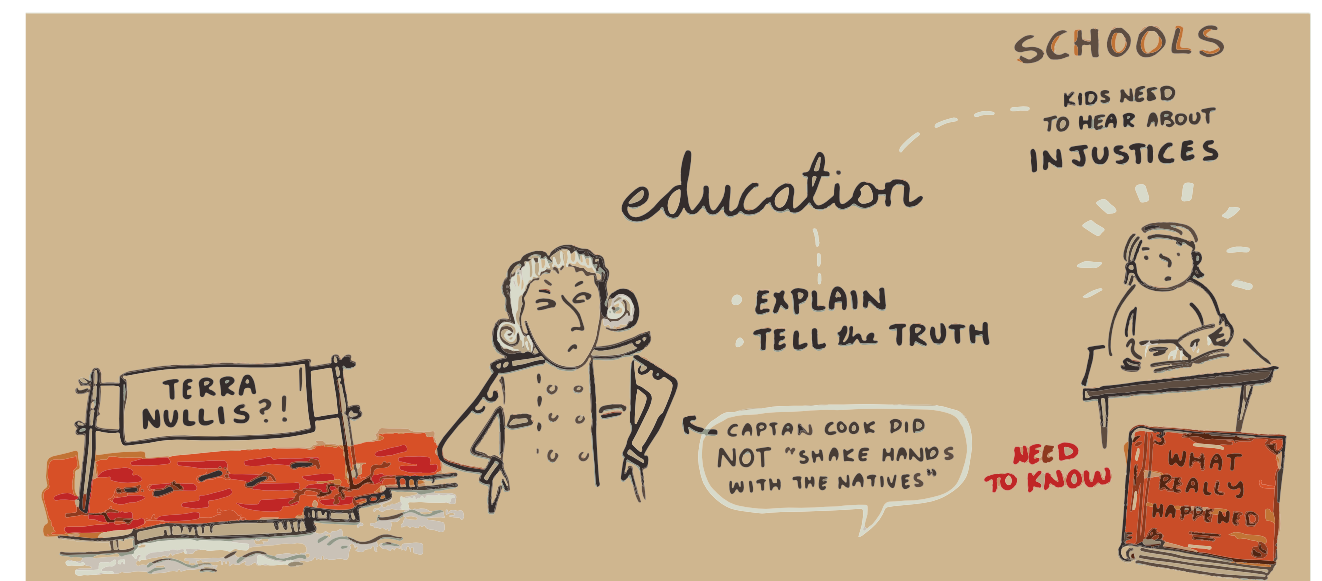
Dr Laura Bell spoke of her experience as a Koorie Educator (now Koorie Education Support Officer or KESO) in schools in the 1980s. KESOs work to identify racist exclusion in the classroom as well as academically supporting students.

A systematic review of Australian academic research on the impact of racism in the schooling of First Peoples children and youth concluded that the well-documented effects of racism at school on First Peoples students include withdrawal, deidentifying as Indigenous, emotional distress and internalisation of negative beliefs and stereotypes about Indigenous intelligence or academic performance.<sup>172</sup>

Discrimination in schooling impacts on First Peoples children's engagement in learning. In one study, reports of teacher discrimination were significantly associated with high levels of First Peoples students' academic disengagement and with First Peoples students' and higher levels of First Peoples students' academic engagements, and with First Peoples students' higher levels of self-sabotage.<sup>173</sup>

According to the 2020 Victorian Government Aboriginal Affairs Report,<sup>174</sup> in 2019 78% of Aboriginal students in years 4 to 6 feel connected to their school, falling to 54% of years 7 to 9 students and 48% of years 10 to 12 students. The proportion of Aboriginal students reporting bullying compared to non-Aboriginal students also appears to increase as they move into the high school system. In 2019, of students in years 4-6, 6.2 % more Aboriginal students than non-Aboriginal students reported bullying and of students in years 7-9 and 10-12, 8% more Aboriginal students than non-Aboriginal students reported bullying.

#### **Box 18: Impacts of racism and discrimination on First Peoples students**



Box 18: Figure 15: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

Elders stressed repeatedly that school curriculum must be based on truth and inclusion.

*'Our history needs to be told from start – from the very beginning through to now. It should be done properly in ... chronological [order]. It should be told right from the very beginning, right through ... and it should be told and taught to these people who are – who are being educated for all these different things we have do with, like teachers, doctors, nurses, lawyers. It should ... be built in and it should be built into schools too. You know, our history is not in the curriculum? It is – to this very day, our history is not in the curriculum. It needs to be compulsory. It needs to be written into the curriculum of the Education Department. I wished I was younger that I could sort of fight more for these sorts of things.'*

**Aunty Fay Carter** <sup>175</sup>

*'[In Tasmania] I was fully involved in learning to understand what terrible times our great-great-great-great-greats had. The suffering that was brought upon them. Especially the women. The men were telling me that it was the women who suffered the most. They were tortured before they were killed. There were bonfires of black bodies. How could you bleed this onto any Tasmanian state school's curriculum? This is something that is within my responsibility as an elder statesperson, as a man of conscience to try and impress the Minster for Education and the Premier of Tasmania and here in Victoria, let's bleed truth in history into our school curriculum. Alan Tudge, some time ago when he was the Federal Minster for Education had loudly scoffed at the idea, that we cannot bleed what really happened here in Australian onto our school's curriculums, "Australian children might not like Australia". Those were his words. I can understand why truth in history has never been done here. We have an attempt with this truth telling commission in allaying that problem. We are setting the bar here.'*

**Uncle Jack Charles** <sup>176</sup>



*'[Sharing my story] it's - you know, generated towards educating the masses and trying to prompt, you know, State Ministers for Education - Federal Ministers for Education to seriously think about each state's unique history to be bled on to our state schools' curriculums.'*

**Uncle Jack Charles** <sup>177</sup>

*'We've got to change the curriculum in the education system and stop changing the history and teaching the kids that this is what happened. As ashamed as the British Empire back in those days was. It's an awful history, but this is the only way to heal and bring our people closer together. you know, and it's the start of it.'*

**Aunty Yvonne Jones** <sup>178</sup>

*'It's about education. The Aboriginal history side will be introduced as a compulsory subject, as is maths and English. And the truth of this country and Victoria. Not what was told from Captain Cook or whatever, who came down and said yes; this, this this. We need truth about who the Aboriginal people were. Not from the later, European perspective.'*

**Uncle Alan Marden** <sup>179</sup>

Elders also spoke about many grassroots people working for change in the schools, providing language and cultural lessons. This is often without pay and without formal recognition that it is a vital way for every student to learn about country. Elders told Yoorrook that the government education department needs to change the curriculum to be inclusive of real colonial history and Aboriginal knowledge. Elders also said that schools need to consistently and seriously listen to grassroots Aboriginal community wisdom, and put paid and permanent programs in place.

*'I've seen my kids grow in their cultural identity and their strength, I go to their schools and preschools and stuff like that. I can see there's a lot of educators out there that wanna do something but don't know where to start. And they're scared. They wanna do something but they don't know where to start so they don't do anything. So it was for me about getting on and using my passion in that area to establish great respectful relationships, but also have community, you know, follow.'*

**Ruth Davy** <sup>180</sup>

*'[My niece] works in a little preschool in Barmah, and they go out for a bush walk with all these little kids. Couple of Indigenous kids, majority non-Indigenous, and they can point out a tree, a kangaroo, an emu, all in language. And you know they don't - they very rarely use English when they're going for a walk some days, all in Yorta Yorta language.'*

**Uncle Leon Atkinson** <sup>181</sup>

*'I know I was born to be an Aboriginal, so I don't want to - I want to die that way too. I don't want to die assimilated. And that's a very dirty word to me. The assimilation is very, very upsetting and mentally sickening, because it means you have got to wash it out. I think we've got to teach children in the schools today what assimilation means, what - we've got to teach our young kids from three years of age at the beginning, they've got to know who they are.'*

**Alma Thorpe** <sup>182</sup>



Christopher Saunders at the Convincing Ground Massacre Site



*'I was the only Aboriginal too in secondary school....*

*Not only was the racism there by kids, it was also by the teachers, the pupils – the teachers, you know. I remember one of my cousins, an uncle to Joseph [Saunders] wanted to be an electrician and he was told 'Oh, no, you can't be an electrician because you are Aboriginal. You know. So I don't know what that had to do with anything..*

*So I think there was always part of the schooling, you know, and I think the worst thing that we see today, as adults surviving, the curriculums of the education system are just so terribly wrong in not including Aboriginal history in their curriculums for everybody to learn. In was in injustice to whitefellas and it was an injustice to us....*

*I learnt Captain Cook discovered Australia in 1788. But that, you know – that was about it. There was no talk about what is World Heritage today mentioned at all you know. There was no discussion on some of the great Aboriginal men who walked around the country and got things going like William Cooper and Sir Doug Nicholls and things like that. And we had some really great men and women who were – who could have stood up anywhere and be counted. But there was no – there was no teaching of them in the education system that I grew up and probably very little of us still today.'*

**Uncle Johnny Lovett** <sup>183</sup>

## k. Public silencing and denial

The Letters Patent focuses on public awareness, cultural restoration and healing as key outcomes of Yoorrook's work, including in relation to memorialisation and commemoration.<sup>184</sup> The silencing of Aboriginal voices and lack of acknowledgement is in itself a form of injustice. However, Aboriginal

community members told the Commissioners that local governments and local settlers continue to silence the truth about colonisation.

*'I feel like this is a place that doesn't just include mob. You know, this is one of the few like few places that we look to the local community and the local authorities, like being the Glenelg Shire Council, or just any like anybody in authority that has power making decisions to take the burden off us as having to have these conversations all the time. It's like I said, it's triggering like, you know, having to recount this all the time because it's a lived experience where for others, it's a learned experience where you know, we want to be able to share that burden, but also the responsibility of telling both histories. Yeah, there's so many options that you can go through. You know, it's destroy it, or it's replace it, and I'm saying that conversation is bigger than just the black fellas in this community, but it's everybody.'*

**Chris Saunders** <sup>185</sup>

*'When my parents went to school, there was an Aboriginal school and a school for white kids. When I went to school, all the kids were there together. But Balranald was a pretty racist town in those days, and I did experience racism as a kid. I remember there was a café in town on the main street and we were only allowed to go in the side door. We were yelled at if we went in through the front door. And we wouldn't get served if we went through the front door. And when we went to the movies, the Saturday afternoon movies, we had to sit on one side of the theatre – the Aboriginal side. We couldn't mix.'*

**Uncle Kevin Coombs** <sup>186</sup>

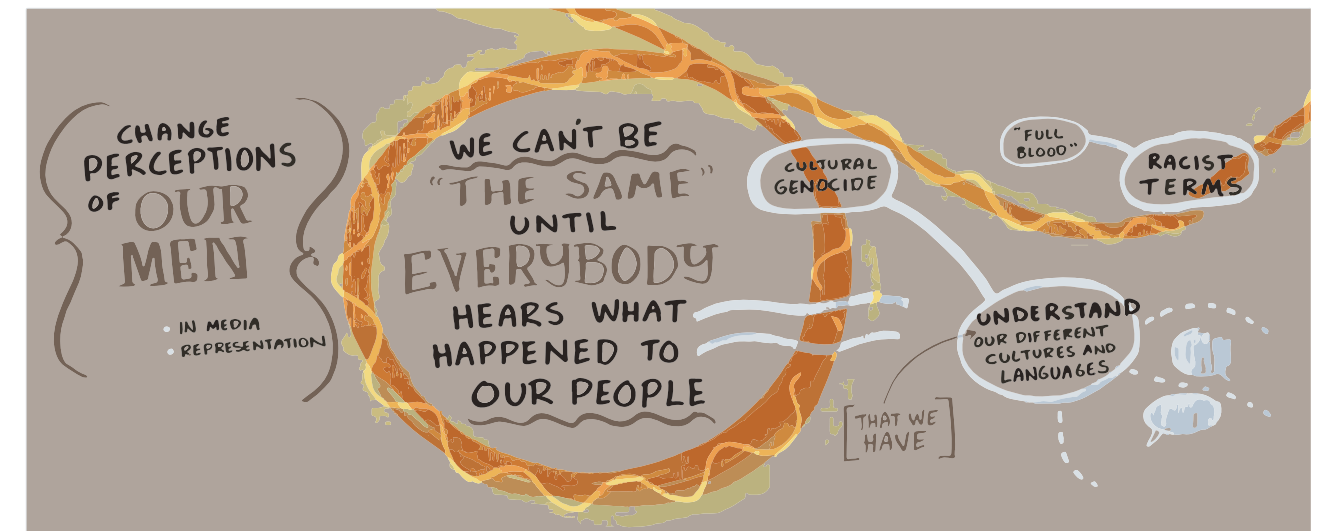


Figure 16: Detail of an Elders' yarning circle live-sketch, produced by Sketch Group 2022

*'Before the golf club and houses were put up there, and the pokies, this was a great big hill out there and that was a big burial ground. But back in the '90s, they had big machinery going through and ploughing up all the sand and had Aboriginal people walking behind, picking up the remains. So, it's a very sad part of our beautiful history. They donated to the Wemba Wemba people, I think about half an acre to re-bury the remains from the Murray Golf Club over here ... We approached the golf club one year. Can we put a monument there? You know, for our memories of our ancestors that was taken and replaced over here, but they wouldn't allow that because it was bad for tourism.'*

**Aunty Hazel** <sup>187</sup>

*'I wanna put a beacon here that'll never go out. Beautiful solar, up on our big sand hill, where every time it's seen, it's to do with respecting our past and building our pride. I want to acknowledge all those descendants. I will do this in the avenue, where that is going to build pride on today's generation. They're gonna come in and see their name on the street, that they are acknowledged. They are a part ownership of what Cummera is today and what Cummera can be tomorrow.'*

**Uncle Leon Atkinson** <sup>188</sup>

A 2020 survey on Australians' perceptions on Indigenous issues<sup>189</sup> found that only 27% of non-Indigenous people report they interact 'a fair bit' or 'a lot' with Indigenous people, while 73% report 'not very much' contact or 'not at all'.

A 2020 survey on Australians' perceptions on Indigenous issues found that only 27% of non-Indigenous people report they interact 'a fair bit' or 'a lot' with Indigenous people, while 73% report 'not very much' contact or 'not at all'.

The Australian Reconciliation Barometer 2020 <sup>190</sup> found that Aboriginal and Torres Strait Islander people are nearly 3 times as likely than the general Australian community to have experienced verbal abuse in the past six months (36% compared with 13%). In Victoria, it found 62% of general community respondents have 'no/very low' or 'fairly low' knowledge of the histories of Aboriginal and Torres Strait Islander people in Australia.

**Box 19: Interactions between First Peoples and non-Indigenous Australians**



# PART C: THE PATH FORWARD

The work of the Yoorrook Justice Commission to date establishes that its objectives and terms of reference are critical to the history of the State of Victoria and its relationship with First Peoples. It highlights the important work of treaty-making in progressing fundamental change to systems and institutions.

The urgency and complexity of its task and its comprehensive mandate have been clearly and consistently borne out by the stories and truths of Elders too. The balert keetyarra and pil'kneango mirnk of the Co-Chair of the Assembly and the Minister for Aboriginal Affairs likewise acknowledge this.

A historic opportunity exists for Yoorrook to promote truth, understanding and transformation in the State of Victoria. The Commission is led by First Peoples and has adopted a methodology that reflects respect for the principle of Indigenous control and allows it to have a strong connection with First Peoples on their terms and in their culturally safe places. The Commission's work to date identifies urgency surrounding a range of subjects and also the necessity for its culturally-framed methodology.

The Commissioners heard how structural and personalised experiences of ignorance and racism compound unaddressed wrongs, causing ongoing pain and harm to First Peoples in Victoria at the individual, family, community and Nation level. In the face of these experiences, Commissioners heard how living culture keeps Elders and their communities strong and grounded, driving their determination to speak their truth, despite the extremely challenging reality of continued struggle.

The Commissioners also heard a deep heaviness of heart at the continuation of injustices as well as weariness and scepticism towards official responses which have for the most part promised much but changed little. The Yoorrook Justice Commission offers

a very different forum for truth telling and includes new ways to bring about change in a contemporary environment, primarily through treaty.

The balert keetyarra and testimony of the Minister for Aboriginal Affairs, the Hon Gabrielle Williams MP, contained unprecedented official acknowledgement of the grave past and ongoing injustices against First Peoples.

*The colonisation and dispossession of First Peoples of their lands and waters involved massacres, wars and extrajudicial violence, theft, rape and environmental degradation and desecration of cultural sites and the deliberate exclusion of First Peoples from all areas of Victorian economic, social and political life. I acknowledge the wrongs experienced by First Peoples have resulted in intergenerational trauma and ongoing inequality and disadvantage...*

*The systemic injustices that First Peoples have experienced are not confined to history. Injustices are ongoing, including the overrepresentation of First Peoples in the Justice and Child Protection systems, lack of cultural safety within health and education settings, and continued economic, social and political exclusion. The patterns of power, paternalism and racism that created and entrenched systemic injustices against First People sadly endure.*

*The Hon Gabrielle Williams MP* <sup>191</sup>

The pil'kneango mirnk of the Co-Chair of the Assembly, Marcus Stewart, also spoke to the truth of the injustices experienced by First Peoples in Victoria since colonisation. Marcus Stewart emphasised that, as a necessary precursor to treaty, it was important for the State both to acknowledge and accept responsibility for its role in the colonising process.

*The State acknowledging responsibility for both our past and our future is a necessary first step on the road to Treaty. Without Treaty, what is now called Victoria will remain — in our peoples' hearts, minds and reality — the colony of Victoria.*

*Marcus Stewart* <sup>192</sup>

The Minister acknowledged the State's role in past injustices broadly and specifically in relation to policies and practices underpinning the foundations of colonisation in Victoria, as well as ongoing injustices:

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.

*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.*

*The Hon Gabrielle Williams MP* <sup>193</sup>

## 1. The next phase of Yoorrook's work

As Yoorrook's truth-telling processes are at an early stage, it is premature to make substantive findings or detailed recommendations for reform. However, Commissioners have identified a number of issues warranting urgent attention after considering the truths shared at Elders' yarning circles and the pil'kneango mirnk received so far.

This section sets out the Commission's priority areas for the next phase of Yoorrook's work, other areas of concern and the broad considerations that will inform Yoorrook's way of working. It includes two operationally focused recommendations to further Yoorrook's ability to achieve its mandated goals of truth, understanding and transformation for Victoria.

These initial comments and operational recommendations are made without prejudice to the Commission's right to make further interim recommendations at appropriate times prior to issuing its final report.

### a. Priority areas for the next phase of Yoorrook's work (2022-2023)

Yoorrook will continue to seek evidence regarding all forms of systemic injustice, and further explore the cross-cutting issues of racism, identity and self-determination throughout the remainder of Yoorrook's life. Alongside this and any other issues which may be appropriate to inform the evolving treaty-making process, the next phase of Yoorrook's work will focus on two priority areas — state-sanctioned removal of First Peoples' children from their families, and the continuing injustices experienced by First People in the criminal justice system. Ongoing child removal and prejudicial treatment in the criminal justice system were raised consistently, and with passion, during the on country yarning circles



with Elders and in the pil'kneango mirnk from Yoorrook's first rounds of wurrek tyerrang.

Yoorrook is conscious that these are high profile issues which have been the subject of previous inquiries and recommendations for urgent action. The continuing systemic failure to stop these forms of harm demands that the Commission prioritise these issues with urgency. State entities continue to remove First Peoples' children from their families in record numbers and First Peoples are still dying in state custody.

Existing research noted earlier in this report points to significant correlations between child removal, justice system inequities and other ongoing areas of injustice such as health and wellbeing for First Peoples. This is reflected in the pil'kneango mirnk received by the Commission so far. Yoorrook will bring the benefit of its holistic mandate and First Peoples-centred methodology to its examination of the priority areas.

### **Child removals – First Peoples' children belong with family**

As the Minister acknowledged, historically removing children from their families was a deliberate attempt by the State to eradicate First Peoples and their culture:

*'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.'*

*'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.'*

**The Hon Gabrielle Williams MP** <sup>194</sup>

As Marcus Stewart noted:

*'Despite numerous initiatives intended to redress the effect of harmful historical child protection practices on First Peoples (including the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families and the National Apology), progress has been slow and inadequate.'*

**Marcus Stewart** <sup>195</sup>

Elders spoke of the ongoing and wide-reaching impacts of child removals over generations. This was acknowledged by the Minister.

*'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.'*

**The Hon Gabrielle Williams MP** <sup>196</sup>

Yoorrook considers it to be reprehensible that First Peoples' children in Victoria continue to be removed from their families at record rates.<sup>197</sup>

### **The criminal justice system – First Peoples continue to die at the hands of the State**

Elders repeatedly told Yoorrook of loved ones who have died in custody, whether in police lock-ups, prisons or elsewhere. Elders spoke of the reverberating impact of each death through community. There is immense and understandable frustration at the lack of action and accountability for deaths in custody in over thirty years since the 1991 report and recommendations of the Royal Commission into Aboriginal Deaths in Custody. Yoorrook also recognises that its first round of yarning circles and wurrek tyerrang were held at the same time as the coronial inquest into the tragic death in custody of Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, Veronica Marie Nelson who passed away on 2 January 2020. Certain Elders who appeared at wurrek tyerrang also attended the inquest into Ms Nelson's death. Yoorrook thanks these Elders for their strength and commitment in sharing their life experiences with Yoorrook during such a traumatic time.

In his pil'kneango mirnk, Marcus Stewart emphasised the interconnectedness of criminal justice issues. He linked deaths in custody to First Peoples' over-representation in the criminal justice system. Commissioners heard that this over-representation is related to problems with over-policing and police accountability. They heard that it is linked to laws and processes that disproportionately affect First Peoples, such as the low age of criminal responsibility and the operation of bail laws.<sup>198</sup>

The Minister acknowledged the widespread personal, family and community impact of the over-representation of First Peoples in the criminal justice system and the State's responsibility to address it.

*'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 Hon Gabrielle Williams MP** <sup>199</sup>

Yoorrook will focus on deaths in custody as an entry point to a broader examination of the criminal justice system in which these occur. Commissioners also wish to draw attention to two related criminal justice reform processes that are currently underway: the implementation of a health-based model to support the repeal of public drunkenness laws and raising the age of criminal responsibility.

### **A health-based model to support the repeal of public drunkenness laws**

Yoorrook acknowledges that incarcerations of First Peoples under Victoria's public drunkenness laws have led directly to them dying in custody and that abolition of such laws was a recommendation of the 1991 Royal Commission.<sup>200</sup> The Victorian Parliament finally repealed public drunkenness laws in 2021 following decades of advocacy by First Peoples, most recently by the family of Yorta Yorta woman Aunty Tanya Day who died in custody on 22 December 2017. The repeal was due to commence in November 2022 following development of a health-based response as an alternative. The Commission notes that the commencement of the reforms is delayed by 12 months because of COVID-related pressures on the Victorian public health system.<sup>201</sup> Yoorrook is concerned about the delay of this reform.



Yoorrook accepts the importance of developing an effective health-based alternative and notes the comment in Marcus Stewart's balert keetyarra that the alternative should be community led, culturally safe and properly resourced.<sup>202</sup> The Commission adds its voice to organisations such as VALS which have been advocating for decades for an effective response, led by First Peoples and appropriately resourced.<sup>203</sup>

### Raising the age of criminal responsibility

Elders and the Assembly spoke of the devastating impact of the State's criminalisation of young people, setting many on a path from early institutional contact and eventually adult incarceration. Elders in yarning circles described the existing law as inhumane.

Yoorrook notes that several reviews have recommended raising the age of criminal responsibility including the recent Parliamentary Inquiry into Victoria's Criminal Justice System.<sup>204</sup> The United Nations Committee on the Rights of the Child has called for the age of criminal responsibility to be raised from 10 to 14 years.<sup>205</sup> Yoorrook is aware that this issue has been on the agenda of the Meeting of Attorneys-General (formerly the Council of Attorneys-General) since 2018.

When questioned about the government's position on this issue, the Minister stated that as well as considering the age of criminal responsibility, the government is progressing parallel work on crime prevention and diversion that aims to keep young people from coming into contact with the justice system in the first place.<sup>206</sup>

Yoorrook acknowledges the ongoing campaign spearheaded by First Peoples' advocates to raise the age. Yoorrook lends its voice and authority to these calls for the Victorian Government to raise the age of criminal responsibility without delay.

### b. Other areas of concern

This section notes other areas of concern to Yoorrook based on the truths it has heard so far.

#### Revitalisation of First Peoples' languages

An area of urgent concern to Yoorrook is how to redress the loss of language. Yoorrook heard that very few Traditional Owners in Victoria now speak traditional languages, as their ancestors were punished for speaking in language. Yoorrook recognises that the revival and restoration of First Peoples' languages is essential to grounding identity and keeping First Peoples connected to culture. Further, as noted earlier in this report, First Peoples have a legally well-recognised right to language and culture.

Yoorrook is keenly aware that language revitalisation is time critical as it relies on Elders' knowledge, and it welcomes the language revitalisation work being done through First Peoples' individual efforts and organisations, including the Victorian Aboriginal Corporation for Languages. The Commission also notes with optimism the Victorian Government's report that 21 early childhood services in Victoria are funded through the Early Childhood language program to teach First Peoples' languages.<sup>207</sup> However, as the Minister acknowledged, more needs to be done to include First Peoples' language and perspectives in school curriculums.

*'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.'*

*The Hon Gabrielle Williams MP* <sup>208</sup>

Yoorrook also notes the Minister's acknowledgement about other effects of language loss.

*'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.'*

*The Hon Gabrielle Williams MP* <sup>209</sup>

In the next phase of its work, Yoorrook intends to call additional evidence around language loss and revitalisation, including the adequacy of government funding and support.

### Treatment of returned soldiers

Several Elders spoke of discrimination faced by family members who had fought in the First and Second World Wars through the denial of benefits such as the soldier settlement scheme. This lack of official recognition and compensation for war service also links to broader historical themes including the failure to acknowledge frontier wars in formal state war memorialisation efforts or in school curriculum about conflict periods in Victoria's history. In yarning circles, as well as in balert keetyarra and pil'kneango mirnk, Elders spoke of land reserved for the purposes of First Peoples being redesignated for soldier settlement from which First Peoples were excluded.

Yoorrook considers the inequitable treatment of returned First Peoples' soldiers to be a grave injustice. This compounds the effects of dispossession, remains a further barrier to economic and land justice and contributes to a partial account of history. The Commission will seek further evidence on this matter and carefully consider whether a reparation scheme should be established, and the principles upon which it should be based.

### Insensitivity and racism of frontline workers dealing with First Peoples

Elders recounted numerous experiences of insensitivity and racism by frontline workers in various settings. These settings include government policy and program areas, schools, child protection, health care services, local government, police and the justice system. The Commissioners also heard that the level of knowledge about colonisation and First Peoples is frequently very low among policy and frontline workers in Indigenous-related areas. In many sectors there is currently no or very little prerequisite training in cultural awareness, safety or First Peoples' history.<sup>210</sup>



Addressing the injustice of racism requires consideration of how the perspectives and experiences of First Peoples are excluded, ignored and devalued, including by the education system that produces the workers that embody these institutions.

Yoorrook will further consider this issue as part of its examination of the education system.

### Effective representation for Victoria's First Peoples

Elders consistently spoke about the importance of self-determination – of First Peoples having control over their own affairs. Yoorrook welcomes the progress made by the Assembly and the Victorian Government towards agreeing on the foundations for treaty, including the Bill introduced into Parliament on 7 June 2022 to establish an independent Treaty Authority. The Commission also commends the commitment by the recently elected Federal Government to full and swift implementation of the Uluru Statement from the Heart and its key elements of Voice, Treaty and Truth. The Commission hopes this report and Yoorrook's ongoing work will inform and contribute to federal initiatives as well as to developing initiatives in other states.

Yoorrook recognises the need for First Peoples in Victoria to determine the appropriate form of political representation and that this is a core topic still under discussion and future negotiation with government through treaty. Marcus Stewart mentioned that community are discussing options for a First Peoples' voice to the Victorian Parliament on First Peoples' issues.<sup>211</sup>

In the ongoing treaty processes, Yoorrook urges the Victorian Government to embrace a form of representation for Victoria's First Peoples that delivers true self-determination to First Peoples in the sense of actual control over their own affairs.

## 2. Considerations that will inform Yoorrook's way of working

Yoorrook is faced with a complex task. The Commission must work in a culturally safe and inclusive way and bring the broader Victorian community along the journey. The interconnected nature of the systemic injustices experienced by First Peoples requires careful and coherent responses. Yet there is urgency for reform so that no further knowledge is lost, and change can take place in Elders' lifetimes. The evolving political landscape in which Yoorrook's work is taking place includes the significant work already underway in some reform areas and progress toward treaty.

Yoorrook will take these factors into account in the way it approaches its work as follows.

### a. Yoorrook will ensure it is safe and inclusive

Yoorrook's Letters Patent highlight the need for inclusive processes that recognise and respect the diversity of First Peoples in Victoria. Yoorrook will proactively seek to engage with all First Peoples in Victoria to ensure diverse views have been heard and considered in Yoorrook's inquiries. Yoorrook acknowledges that this will take time to do well, particularly ensuring it works in a culturally appropriate and trauma-informed way.

While Yoorrook's initial work has prioritised hearing from Elders, Yoorrook will open its truth-telling processes, including nuther-mooyoop, yarning circles and other truth-telling forums, to all First Peoples in the second half of 2022. It will also seek input from First Peoples' organisations in the second half of 2022 to benefit from their expertise. Having centred First Peoples first, Yoorrook will open its truth-telling processes to the broader Victorian community at the start of 2023.

### b. Yoorrook will focus on developing understanding

As Yoorrook continues to prioritise hearing and engaging with First Peoples across Victoria, its next phase will also focus more directly on its goal of understanding. This goal aims to develop a shared understanding among all Victorians of the individual, collective and inter-generational impacts of systemic injustice since the start of colonisation, and of the diversity and strength of First Peoples' cultures, knowledge, and traditional practices.<sup>212</sup> Yoorrook's strategy will include the development of multimedia education and engagement resources, public information and presentation sessions, and the broadening of its media platforms.

### c. Yoorrook will assess evolving opportunities for impact

As noted in this report, there are several reform processes that are currently underway, and others that are being urgently sought. Yoorrook recognises the existing work and expertise by First Peoples and other experts on many of the areas the Commission will investigate. Yoorrook will draw on this expertise in a variety of ways as appropriate, such as conducting targeted consultations and roundtables on particular themes.

Yoorrook is also running alongside the treaty process and acknowledges that treaty is the self-determined way for holistic systemic and structural reform to take place. As Marcus Stewart emphasised in his balert keetyarra, treaty should progress urgently to deliver this meaningful and lasting change.<sup>213</sup>

However, as Marcus Stewart also emphasised that urgent reforms should not be deferred 'behind the cloak of Treaty'.<sup>214</sup> The Minister also stated that the government recognises it cannot defer all matters until treaty.

*'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.'*

*The Hon Gabrielle Williams MP*<sup>215</sup>

Yoorrook is also required to consider and coordinate with 'current inquiries and processes in Australia'.<sup>216</sup> In phasing the Commission's work, and in making and formulating recommendations, Yoorrook will take into account the urgency of a matter, opportunities provided by current reform processes and systemic reforms that may be best delivered through treaty, as well as those opportunities which can progress independently to advance the rights of First Peoples.

In gathering pil'kneango mirnk and in formulating its recommendations, Yoorrook will take into account the treaty process to ensure its recommendations enhance and do not foreclose on opportunities for further structural reform through future treaties.





Uncle Larry Walsh with Commissioner Sue-Anne Hunter

### 3. Interim operational recommendations and conclusion

As noted earlier, the Letters Patent direct Yoorrook in its interim report to identify ‘if available, any initial findings or thematic areas that should be considered as immediate priorities through the Treaty making process’.

Part B identified thematic areas arising from Yoorrook’s initial discussion with Elders. These may include areas that should be considered for immediate priority through the Treaty-making process. However, due to the factors outlined in this report, Yoorrook has had limited opportunity to engage more broadly with community about these issues and therefore is not in a position to make such substantive recommendations .

However, Yoorrook reserves the right to make interim findings or recommendations before the delivery of the final report where it is timely and appropriate to do so. This may include supplementary reports beyond the present report, to inform the next phase of treaty negotiations or other relevant developments, where Yoorrook’s information gathering and analysis warrants such input.

While the Commission is not yet ready to make findings and recommendations on substantive matters, there are two issues which the Commission needs to be resolved for it to effectively conduct its operations.

#### a. Extension of its timeframe

Yoorrook has detailed in this report the breadth, depth and complexity of issues First Peoples wish Yoorrook to inquire into. This report notes the extent of the foundational work that has been required to set the Commission up in order to operate in a culturally safe and trauma-informed way. It also notes other factors such as COVID-19 lockdowns throughout 2021 that significantly delayed Yoorrook’s community engagement. Further, the Commission’s legal obligation to consult and its methodological commitment to centring its work around First Peoples’ voices requires an enabling environment and timeframe.

During their testimony at wurrek tyerrang, both Minister Williams and Marcus Stewart acknowledged the enormity of Yoorrook’s mandate and encouraged it to indicate an appropriate way that truth-telling processes could continue as needed<sup>217</sup>. Having regard to the nature of its historic mandate, the need for it to operate in a culturally safe and trauma-informed way and the time lost during its first year, Yoorrook requests a two-year extension to complete its final report.<sup>218</sup>

## Recommendation 1

*That the Governor amend the Letters Patent to extend the date for Yoorrook’s final report to 30 June 2026 and authorise commensurate additional resourcing for this purpose.*

#### b. Legislate to protect Indigenous Data Sovereignty

Yoorrook notes with concern that current laws on the management of Royal Commission records may not allow First Peoples to choose how information they provide is to be protected in the future.<sup>219</sup> Uncertainty of future knowledge protection mechanisms reduces the strength of Yoorrook’s assurances to First Peoples that their knowledge and stories will be safe in perpetuity.

The Commission wrote to the Minister for Aboriginal Affairs in February 2022 to raise this issue. Yoorrook is pleased that the government has indicated it is willing to consider legislative changes to address this issue as indicated in Minister William’s evidence.<sup>220</sup> Yoorrook recommends any required legislative reform be made and commence before the end of 2023. This timing will ensure that adequate protections are in place by the end of the Commission’s life when its records will be transferred to an archive.

## Recommendation 2

*a. That the government urgently progress the necessary legislative changes to enable the implementation of First Peoples’ choices about how the information they provide to Yoorrook is to be stored, accessed and used in the future.*

*b. That any legislative changes commence before the end of 2023.*

In conclusion, the Yoorrook Justice Commission looks forward to sharing the results of this report widely and encourages all Victorians to contribute their truths in the months ahead, as the Commission continues to fulfil its historic mandate.



Annex 1: Letters Patent

ELIZABETH THE SECOND, BY THE GRACE OF GOD

QUEEN OF AUSTRALIA AND HER OTHER REALMS AND TERRITORIES,

HEAD OF THE COMMONWEALTH:

I, the Honourable Linda Dessau AC, the Governor of Victoria, with the advice of the Premier, under section 5 of the Inquiries Act 2014 and all other enabling powers, appoint you

Professor Eleanor Bourke, as Commissioner and Chairperson, and Dr Wayne Atkinson, Professor the Honourable Kevin Bell AM QC, Sue-Anne Hunter and Distinguished Professor Maggie Walter as Commissioners to constitute a Royal Commission to be known as the Yoo-rrook Justice Commission to inquire into and report on the matters specified in the Terms of Reference.

1. Background

- The First Peoples include the traditional owners of the lands currently known as the State of Victoria, over which they maintain that their sovereignty was never ceded.
- First Peoples' experiences of Colonisation have included grave historic wrongs and past and ongoing injustices and intergenerational trauma.
- The State of Victoria acknowledges both the continuing impacts arising from historical injustices and the ongoing strength and resilience of First Peoples and survival of their living cultures, knowledge and traditions.
- The State of Victoria also acknowledges its responsibility to advance and uphold the human rights of Victorian citizens, including First Peoples, under the Charter of Human Rights and Responsibilities Act 2006, the Advancing the Treaty Process with Aboriginal Victorians Act 2018, the Traditional Owner Settlement Act 2010, native title rights and other rights protected by law.
- The State of Victoria acknowledges the importance of non-discrimination, uncovering truth, providing justice and reparation, supporting wellbeing and preventing further harm to First Peoples.
- Relevant human rights are also recognised in international human rights instruments, including the:
  - United Nations Declaration on the Rights of Indigenous Peoples;
  - International Convention on the Elimination of All Forms of Racial Discrimination;
  - International Covenant on Civil and Political Rights;
  - International Covenant on Economic, Social and Cultural Rights;
  - Convention on the Prevention and Punishment of the Crime of Genocide;
  - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

- Convention on the Rights of the Child;
- Convention on the Elimination of All Forms of Discrimination against Women;
- Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and
- Updated Set of principles for the protection and promotion of human rights through action to combat impunity.

- Hearing First Peoples' stories and acknowledging the truth about their experiences is essential for healing and justice for First Peoples. It will also contribute significantly to a public dialogue, providing a foundation for new and positive relationships between First Peoples, non-Aboriginal Victorians and the State of Victoria.
- The First Peoples' Assembly of Victoria and the State of Victoria have resolved to establish an independent Truth and Justice Commission to examine the extent and impact of Systemic Injustice against First Peoples in Victoria, and to recommend appropriate forms of redress and other steps to address Systemic Injustice.
- The Royal Commission will promote the advancement of treaty or treaties between the State of Victoria and First Peoples by providing a shared narrative of the impact of Colonisation, founded on First Peoples' voices. Its recommendations for how the State can build new and stronger relations with First Peoples will inform the treaty-making process and enrich the heritage of all Victorians.

2. Objectives

The objectives of this Royal Commission are to:

- a. establish an official public record based on First Peoples' experiences of Systemic Injustice since the start of Colonisation;
- b. develop a shared understanding among all Victorians of the individual and collective impact of Systemic Injustice and the intergenerational trauma that has flowed from them since the start of Colonisation;
- c. determine the causes and consequences of Systemic Injustice including the role of State policies and laws and which State Entities or Non-State Entities bear responsibility for the harm suffered by First Peoples since the start of Colonisation;
- d. develop a shared understanding among all Victorians of the diversity, strength and resilience of First Peoples' cultures, knowledge, and traditional practices;
- e. help build the foundations for a new relationship between First Peoples and the State of Victoria and all Victorians, based on truth and justice to prevent the recurrence of injustice;
- f. support the treaty-making process between the State of Victoria and First Peoples, including through the identification of subject matters for potential inclusion in a treaty or treaties; and
- g. identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice.



### 3. Terms of reference

Having regard to the objectives set out above, and subject to the Inquiries Act 2014, you are appointed to inquire into and report on:

- a. Historical Systemic Injustice perpetrated by State and Non-State Entities against First Peoples since the start of Colonisation, including but not limited to:
  - i. cultural violations such as breach and denial of First Peoples' law and lore;
  - ii. theft, misappropriation and destruction of cultural knowledge and property;
  - iii. eviction, displacement and dispossession;
  - iv. massacres, wars, killing and genocide or other acts of a similar gravity;
  - v. protectionist and assimilationist policies, including forced removal of children and attempts to eradicate language, culture or identity;
  - vi. unfair labour practices, including treatment of returned soldiers;
  - vii. unfair policies and practices relating to policing, youth and criminal justice, incarceration, detention, and the broader legal system;
  - viii. unfair policies and practices relating to child protection, family or welfare matters;
  - ix. unfair policies and practices relating to health and healthcare;
  - x. invasion of privacy and the collection, possession and use of information and data about First Peoples; and
  - xi. practices of structural and systemic exclusion of First Peoples from Victorian economic, social and political life;
- b. Ongoing Systemic Injustice perpetrated by State Entities and Non-State Entities against First Peoples, including but not limited to the areas of:
  - i. policing, youth and criminal justice, incarceration, detention, and the broader legal system;
  - ii. child protection, family or welfare matters;
  - iii. health and healthcare;
  - iv. invasion of privacy and the collection, possession and use of information and data about First Peoples;
  - v. economic, social and political life; and
  - vi. any other ongoing Systemic Injustice considered appropriate by the Royal Commission;
- c. The causes and consequences of Systemic Injustice, including a historical analysis of the impact of Colonisation and an evaluation of the contemporary relationship between First Peoples and the State of Victoria and the impact of contemporary policies, practices, conduct and /or laws on First Peoples;
- d. How historical Systemic Injustice can be effectively and fairly acknowledged and redressed in a culturally appropriate way;
- e. How ongoing Systemic Injustice can be addressed, and/or redressed including recommended reform to existing institutions, law, policy and practice and considering how the State of Victoria can be held accountable for addressing these injustices and preventing future injustice;
- f. How best to raise awareness and increase public understanding of the history and experiences of First Peoples before and since the start of Colonisation; and
- g. Any other matters related to these Terms of Reference necessary to satisfactorily inquire into or address the Terms of Reference.

### 4. Conduct of the inquiry

Without limiting the scope of your inquiry or the scope of any recommendations arising out of your inquiry that you may consider appropriate, you are directed in the conduct of your inquiry to:

- a. Direct your attention to both historical Systemic Injustice and ongoing Systemic Injustice, applying appropriate methodologies and processes, noting this may require different approaches for the historical and contemporary purposes;
- b. Engage widely with First Peoples, including to determine priority areas of focus for the Royal Commission and by conducting your inquiries in rural and regional communities and carrying out events, media engagements, or public education activities, including at the request of affected communities;
- c. Have due regard to the views and insights provided by the First Peoples' Assembly of Victoria, in a report or reports from community consultation undertaken by it, to be provided to you by 30 June 2021;
- d. Regularly communicate with the Victorian community about your objectives and progress and encourage broad and inclusive participation in your work;
- e. Establish an Expert Advisory Committee within three months of the gazettal of the letters patent, to act as consultants to the Royal Commission that includes:
  - i. persons with expertise in First Peoples' history, cultural knowledge, information and data sovereignty and trauma, redress and healing;
  - ii. at least one person who is an impartial expert with at least 10 years' experience in a jurisdiction outside of Victoria in driving practical reform or transformation of entrenched norms, practices, legislation, and/or policy in large institutions, particularly experience in providing independent oversight of such institutions to drive government system reform through assessment of strategy, governance, accountability and outcomes of large organisations or institutions; and
- iii. other experts, such as experts in comparative international processes and transitional justice and experts with any other particular expertise that you consider could assist you in achieving the objectives;
- f. Provide a safe, supportive and culturally appropriate forum for First Peoples to exercise their rights to truth and justice with dignity and demonstrate their cultural resilience and survival, including by:
  - i. receiving testimony from First Peoples who are victims, witnesses or survivors on their experiences and/or personal stories of historic injustice;
  - ii. recognising First Peoples' cultural and legal practices of story-telling and witnessing as legitimate and valid sources of evidence;
  - iii. accommodating to the extent possible First Peoples' choices in how they wish to participate, including their rights to free, prior and informed consent at all stages of participation;
  - iv. upholding the sovereignty of First Peoples over their knowledge and stories by consulting with them on how the information they provide should be treated and ensuring adequate information and data protection;
  - v. acknowledging and respecting differences between First Peoples, for example, through respecting different languages and practices;
  - vi. being responsive to the needs of participants in consultations, interviews and other activities; and



- vii. providing culturally appropriate support to participants and affected communities as required;
- g. Adopt practices and approaches to minimise harm and re-traumatisation for First Peoples;
- h. Have due regard to, and coordinate as appropriate with, current and previous research, inquiries and processes in Australia and elsewhere, relevant to the subject matters and issues raised in this Royal Commission;
- i. Hold healing or commemorative ceremonies as considered appropriate having regard to the views of affected communities;
- j. Prioritise the employment of First Peoples by the Royal Commission;
- k. Provide, through the Royal Commission, culturally appropriate community outreach, mental health and counselling, research, administrative and operations staff;
- l. While noting that you are not asked to inquire specifically into, or report on, the actions of governments other than the State of Victoria, you should establish appropriate arrangements to assist the voluntary participation with the inquiry by persons or institutions (including the governments of the Commonwealth, the States and the Territories) located outside Victoria, which hold, or may hold, information relevant to the Terms of Reference;
- m. Not inquire into, or report on, any executive decisions or specific outcomes made in legal proceedings which have been settled or determined in relation to the recognition of Traditional Owners, including but not limited to those under the *Native Title Act 1993* (Cth), the *Traditional Owner Settlement Act 2010*, or the *Aboriginal Heritage Act 2006*; and

- n. Only inquire into, or report on, the specific outcomes of any other individual legal proceedings to the extent relevant to a pattern indicating Systemic Injustice.

## 5. Recommendations

- a. You may make such recommendations arising out of your inquiry that you consider appropriate to achieve its objectives. This may include recommendations about practical actions and reforms needed in Victoria to provide effective redress for Systemic Injustice, address Systemic Injustice, and promote healing for First Peoples and the broader community, including but not limited to:
  - b. appropriate forms of cultural restoration and healing for affected communities and individuals, including further truth-telling, memorialisation, commemorations or other activities;
  - c. appropriate forms of public awareness and education strategies, including whether and if so, how, truth-telling and the outcomes of your inquiry can be embedded in the Victorian school curriculum;
  - d. appropriate redress for Systemic Injustice that should be specifically designed and effectively implemented through the treaty process, particularly where such redress is not already available to First Peoples;
  - e. policy, legislative, administrative or institutional reforms to address inequalities, remove systemic and structural injustices and prevent further harm;
  - f. particular subject matters that should be included in a treaty or treaties with the State; and
  - g. ongoing access and use of submissions, materials and records received and obtained in the course of the Royal Commission.

- h. In formulating your recommendations, you may have regard to any matters you consider relevant including:
  - i. the evidence of First Peoples, including information from community consultation provided by the First Peoples' Assembly of Victoria in accordance with paragraph 4(c);
  - j. the advice of experts, including the Expert Advisory Committee;
  - k. evidence from relevant organisations or workforces, including Aboriginal Community Controlled Organisations and the justice, health and social services sectors who work with First Peoples;
  - l. international best practice in transitional justice and the rights of First Peoples; and
  - m. the need to recognise and respect the needs and diversity of different First Peoples groups and communities.

Your recommendations should focus on actions that may be taken by the State of Victoria, State Entities, Non-State Entities and First Peoples, recognising the actions of other governments may be outside your jurisdiction.

## 6. Definitions

In these Letters Patent:

**Colonisation** means colonisation of the lands which are currently known as the State of Victoria since 1788.

**First Peoples** includes:

- a. all traditional owners of a place in the State of Victoria (including family and clan groups) and their ancestors; and
- b. Aboriginal and/or Torres Strait Islander persons who are living, or who in the time before or since the start of Colonisation lived, in Victoria.

**Non-State Entity** means any body, association, club, institution, organisation or group of persons or bodies of any kind (whether incorporated or unincorporated), and however described, including those that no longer exist, but does not include individual natural persons or a State Entity.

**State Entity** includes:

- c. any government, or entity exercising governmental power, over the lands currently known as the State of Victoria;
- d. any government, or entity exercising governmental power, over the lands previously known as the Colony of Victoria;
- e. any government, or entity exercising governmental power, over the lands currently known as the State of Victoria, including prior to the formal establishment of Victoria as a Colony or State; and
- f. public authorities (including a local council) of these governments (whether or not they still exist).



**Systemic Injustice** means harm and/or impacts on human dignity (including, but not limited to, those as understood by reference to the application of current human rights instruments, including to events prior to the making of such instruments) experienced by First Peoples, that are part of a systemic or structural pattern, and which involve any policies, practices, conduct or laws which existed since the start of Colonisation. Unless otherwise stated, Systemic Injustice includes both ongoing and historical systemic injustices. This definition is not intended to limit the Royal Commission’s ability to inquire into and report on individual experiences.

7. Report

You are required to report your findings and recommendations to the Governor and to the First Peoples’ Assembly of Victoria as soon as possible, and in any event no later than:

- a. an interim report by 30 June 2022, detailing progress to date, emerging themes and issues, and, if available, any initial findings or thematic areas that should be considered as immediate priorities through the Treaty making process; and
- b. a final report by 30 June 2024, including methodology, key findings and recommendations, as well as the publication of First Peoples’ testimonies in accordance with information and data sovereignty protocols, to be established.

8. Exercise of powers

You may exercise the powers of a Royal Commission in accordance with the *Inquiries Act 2014*. These powers may be exercised, at the discretion of the Chairperson, from time to time and by one or more Commissioners.

9. Expenses and financial obligations

You are authorised to incur expenses and financial obligations to be met from the Consolidated Fund up to \$44.445 million in conducting this inquiry.

These letters patent are issued under the Public Seal of the State.

WITNESS

Her Excellency the Honourable Linda Dessau, Companion of the Order of Australia, Governor of the State of Victoria in the Commonwealth of Australia at Melbourne this 12 day of May 2021.

By Her Excellency’s Command

The Honourable James Merlino MP  
Acting Premier of Victoria

Entered on the record by me in the Register of Patents Book No 47 Page No 173 on the 12 day of May 2021

Secretary, Department of Premier and Cabinet



Annex 2: Expert Advisory Committee

Commissioners appointed the following members to the Expert Advisory Committee:

- **Karen Jackson**, a Yorta Yorta woman, has extensive experience in First Peoples cultural knowledge and has worked in advisory roles across Aboriginal Community Controlled Organisations, government and education institutions.
- Associate Professor **Nikki Moodie**, a Gamilaroi woman, is a specialist in the sociology of education and holds extensive experience in First Peoples research and information and data sovereignty. She is the Program Director of the Atlantic Fellows for Social Equity at the University of Melbourne - an Indigenous-led fellowship program and platform for systemic change.
- Dr **Michael Maguire** has senior experience in criminal justice system oversight and reform in Northern Ireland. His experience as a management consultant, Police Ombudsman and the Chief Inspector of Criminal Justice, as well as membership on various professional tribunals will provide an international perspective on systems reform.
- **Mark Kulkens** is a clinical psychologist with extensive experience working with men who have perpetrated violence, including First Peoples. He has worked in various Victorian correctional settings over a number of years and currently works with Dardi Munwurro, a family violence service for First Peoples men.
- **Jidah Clark**, a Djab Wurrung lawyer, with expertise in First Peoples' cultural history, youth justice and child protection served on the Committee until 5 April 2022.

Aunty Lois Peeler welcoming the Yoorrook Justice Commission at Worawa College



Annex 3: Yoorrook’s Organisational Structure

Yoorrook currently employs 26 staff who, along with Counsel and Solicitors Assisting, provide support to Commissioners to ensure a culturally safe, trauma-informed, legally sound and appropriate process. External support and legal services are in place to ensure that Yoorrook can refer participants to appropriate legal and wellbeing supports as and when required as part of an overall strategy to minimise harm and re-traumatisation for participants, families and their communities. 38% of Yoorrook’s staff are First Peoples, and it procures services from First Peoples’ led services wherever possible. Yoorrook’s total budget is \$44 million over three years.

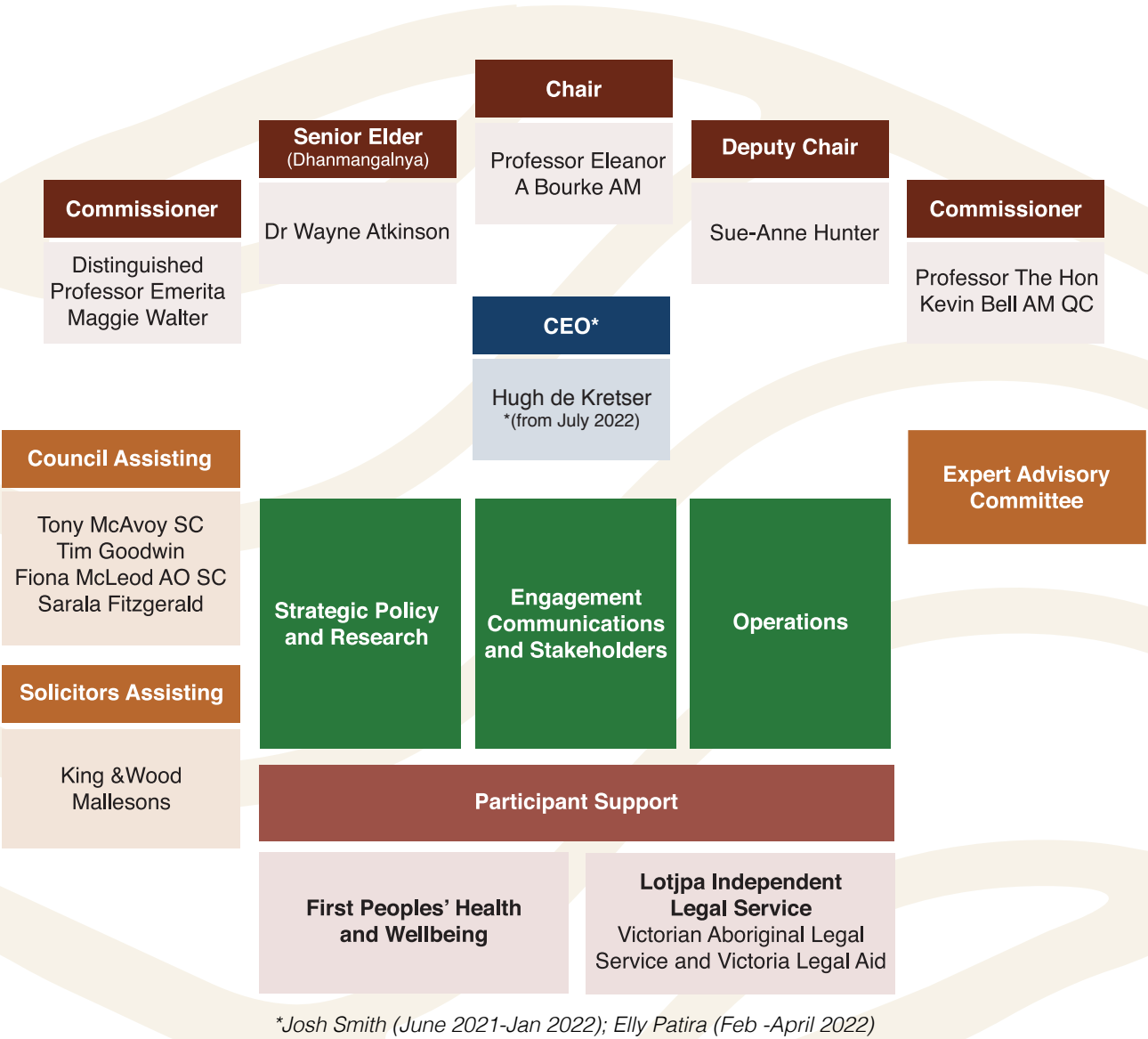


Figure 17: Yoorrook Justice Commission organisational chart



Annex 4: Overview of Yoorrook’s community engagement

Commissioners have participated in a wide range of public engagements, including presenting to Aboriginal Community Controlled Organisations, conferences, schools, cultural and heritage institutions, civil and legal societies, universities, historical societies, children and family services, press clubs, and religious organisations. Below are details of particular engagements including those conducted as part of the Elders’ yarning circles and regional visits.

Victorian Traditional Owner groups online meetings

Group	Date
Barengi Gadjin Land Council Aboriginal Corporation	18 August 2021
Dja Dja Wurrung Clans Aboriginal Corporation	19 August 2021
Taungurung Land and Waters Council Aboriginal Corporation	20 August 2021
Gunditj Mirring Traditional Owners Aboriginal Corporation	21 August 2021
Yorta Yorta Nations Aboriginal Corporation	27 August 2021
Bunurong Land Council Aboriginal Corporation	27 August 2021
Eastern Maar Aboriginal Corporation	13 September 2021
Gunaikurnai Land and Waters Aboriginal Corporation	28 September 2021
Wadawurrung Traditional Owners Aboriginal Corporation	1 October 2021
First Peoples of the Millewa Mallee Aboriginal Corporation	3 November 2021
Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation	7 February 2022

Other Community organisations and stakeholders

Organisation	Date
Dhelk Dja Partnership Forum	12 August 2021
Victorian Aboriginal Community Controlled Health Organisation (VACCHO)	21 September 2021
First Peoples’ Assembly Victoria – Co-Chairs	22 September 2021, 1 October 2021, 8 March 2022
Aboriginal Justice Forum/Caucus	29 September 2021
Victorian Aboriginal Legal Service (VALS)	28 October 2021
Koori Heritage Trust	10 November 2021
Victorian Aboriginal Heritage Council	12 November 2021
Aboriginal Executive Council	15 November 2021
Koori Youth Council	16 November 2021
Reconciliation Australia	16 November 2021
Victorian Aboriginal Housing and Homelessness Framework Working Group	22 November 2021
Federation of Victorian Traditional Owner Corporations (FVTOC)	26 November 2021
First Peoples’ Assembly Victoria - Chamber	2 December 2021
Victorian Aboriginal Corporation for Languages (VACL)	6 December 2021, 25 February 2022
Commissioner for LGBTIQ+ Communities Todd Fernando	8 December 2021
Reconciliation Victoria	8 December 2021, 23 May 2022
Marrung Central Governance Committee	4 March 2022
Victorian Aboriginal Education Association Inc. (VAEAI)	16 March 2022



Elders’ yarning circles and on country visits

Yoorrook held Elders’ yarning circles and visited significant sites in 29 different places throughout Victoria from March to June 2022, meeting with at least 199 people. These regional visits are represented in the below table.

Visit location	Date	Number of attendees
Healesville (Worawa Aboriginal College and Coranderrk cemetery)	25 March 2022	2
Melbourne – Charcoal Lane	28 March 2022	2
Bendigo	29 March 2022	5
Framlingham	29 March 2022	3
Warrnambool	30 March 2022	2
Halls Gap	31 March 2022	4
Portland (including visit to Convincing Ground)	4 April 2022	1
Mildura (2 locations)	5 April 2022	18
Heywood (including visit to Lake Condah)	5 April 2022	6
Swan Hill (including visit to Lake Boga)	6 April 2022	6
Robinvale (2 locations)	7 April 2022	16
Hamilton	7 April 2022	3
Ballarat (3 locations)	8 April 2022	21
Shepparton (3 locations, including visit to Mooroopna Flats and Daish’s Paddock)	11 April 2022	10
Cummeragunja and Maloga Mission	13 April 2022	7

Visit location	Date	Number of attendees
Echuca (2 locations)	13 April 2022	7
Wodonga	14 April 2022	2
Barmah	14 April 2022	3
Albury	14 April 2022	8
Lakes Entrance	20 April 2022	3
Orbost	20 April 2022	7
Lake Tyres	21 April 2022	9
Bairnsdale	22 April 2022	11
Melbourne – Preston	24 May 2022	9
Melbourne – Ringwood East	25 May 2022	8
Geelong*	7 June 2022	8
Traralgon*	8 June 2022	4
Warragul*	8 June 2022	9
Melbourne - Thornbury*	22 June 2022	5

\* The truths shared at the yarning circles held after 25 May 2022 have not been included in the report as they were held after the finalisation of this report.

## Annex 5: Media engagement

Yoorrook's journey has been widely covered in the Victorian and national print and digital media, including through national syndication. Commissioners appeared on national television in news segments and dedicated stories, across commercial and public networks.

From when the Commissioners were appointed on 14 May 2021 to 14 May 2022, Yoorrook appeared in a total of 2,918 news stories, including:

- 38 metropolitan print stories
- 101 regional print stories
- 115 First Peoples' community media stories
- 263 metropolitan digital stories
- 1,301 regional digital stories
- 66 TV stories
- 1,034 radio stories

Print and digital media outlets have reported on Yoorrook's progress and activities. Highlights include coverage from the Guardian, The Age, and the ABC.

- [Commissioners chosen for Australia's first Aboriginal truth-telling inquiry](#) | ABC News
- [Victoria to set up Australia's first truth and justice commission to recognise wrongs against Aboriginal people](#) | The Guardian
- ['Don't muck it up': First Nations communities are closely watching Victoria's truth-telling commission](#) | The Guardian
- [Bendigo elders share stories of injustices for Yoorrook Justice Commission](#) | ABC News

- ['I was whitewashed': Uncle Jack Charles first elder to share his story at Yoorrook](#) | The Age
- [Truth-telling should take up to a decade, says Indigenous leader](#) | The Age

Yoorrook's truth-telling mission has further been taken up by regional and metropolitan Victorian newspapers. Since October 2021, The Age newspaper has run a feature series on truth-telling, platforming stories, editorials and articles by prominent First Peoples voices and Victorian community leaders (including articles by Commissioners). Highlights of The Age's series include:

- [Yoo-rrook Justice Commission: The Age's truth is that Indigenous stories were told by white writers](#)
- [A rising force: how Blak media rewrote the script from its own ground](#)
- [Preserving the language of Indigenous Victorians](#)
- [Yoorrook Justice Commission: Kalloongoo's story lays bare the horrors of slavery and subjugation](#)
- [A people torn apart by bloody dispossession and disease](#)
- [We must walk with Victoria's First Peoples on the land they made beautiful](#)

From December 2021 to 30 May 2022, Commissioners have made 19 Victorian and national television appearances and been quoted or appeared in 670 radio items, 53 print articles, and 599 online articles. Commissioners have also written pieces for local and national media outlets to spread engagement with Yoorrook's mission and journey, including NITV, The Conversation, and The Age. Highlights include:

- All Commissioners for The Conversation - [First Peoples in Victoria have a right to the truth about the impact of colonisation](#)
- All Commissioners for The Conversation and reproduced by NITV - [From dispossession to massacres, the Yoorrook Justice Commission sets a new standard for truth-telling](#)
- Chair Bourke for The Age - [I was born into a web we must now untangle](#)
- Commissioner Dhamangalnya Atkinson for The Age- [Yoorrook Justice Commission: Learning history from Indigenous viewpoint crucial to truth-telling in Victoria](#)

Yoorrook is regularly covered by local and national First Peoples' community media and radio, through outlets such as NITV (television and digital news stories), Koori Mail, National Indigenous Times, IndigenousX, 3KND radio, and the National Indigenous Radio Service. Highlights include:

- NITV News - [Meet the Yoorrook commissioners looking for truth and treaty in Victoria](#)
- Tony Birch for IndigenousX - [The Yoorrook Justice Commission: seeking truth and justice](#)
- National Indigenous Times - [Systemic injustices 'not confined to history', Minister tells Yoorrook Justice Commission](#)
- 3KND Radio news - [Yoorrook Justice Commission Invites Nuther-Mooyoop \(Submissions\) from Elders](#)
- National Indigenous Radio Service - [Yoorrook Justice Commission Begins Historic Work](#)

Yoorrook further utilised digital media to increase engagement through social media and has reached thousands of people through videos, with at least 275,000 views across all platforms as at 31 May 2022. At that date, Yoorrook's Facebook page had 1,969 likes and 2,215 follows. Yoorrook's Twitter had 1,600 followers, with an average of 1,600 impressions a day and 151,000 total impressions. Yoorrook had 851 followers on Instagram and 2,237 followers on LinkedIn.

Wurrek tyerrang (hearings) are live streamed through Yoorrook's website - <https://yoorrookjusticecommission.org.au/hearings/>. As at 31 May 2022, Yoorrook's first ceremonial wurrek tyerrang held on 24 March 2022 had been viewed 1,194 times, and streams for blocks one and two had been viewed a total of 6,174 times.



## Annex 6: References

- Aboriginal Housing Victoria. *Mana-Na Woorn-Tyeen Maar-Takoort Every Aboriginal Person Has a Home: The Victorian Aboriginal Housing and Homelessness Framework*. North Fitzroy: Aboriginal Housing Victoria, 2020. [https://www.vahhf.org.au/cms\\_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework\\_complete\\_26\\_02\\_20.pdf](https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf).
- Australian Bureau of Statistics (ABS). *National Aboriginal and Torres Strait Islander Health Survey: Statistics about long-term health conditions, disability, lifestyle factors, physical harm and use of health services* (2019). <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/2018-19#key-findings-for-states-and-territories>.
- “Collation of Housing and Household Characteristics Statistics from ABS Collections: 2018-19 Financial Year.” *Housing Statistics for Aboriginal and Torres Strait Islander Peoples* (2022). <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/housing-statistics-aboriginal-and-torres-strait-islander-peoples/2018-19>.
- Australian Government Productivity Commission. “Part F, Section 16: Child Protection Services.” In *Report on Government Services 2022*. Canberra: Australian Government Productivity Commission, 25 January 2022.
- “Target 12.” *Closing the Gap Information Repository* (2022). <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>.
- Australian Institute of Health and Welfare. *Aboriginal and Torres Strait Islander Stolen Generations Aged 50 and Over: Updated Analyses for 2018–19*. Cat. No. IHW 257. Canberra: AIHW, 2021. <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-stolen-generations-50-and-over/contents/summary>.
- Behrendt, Larissa. “Unfinished Journey: Indigenous Self-Determination.” *Arena Magazine* 58, April (2002). <https://arena.org.au/unfinished-journey-indigenous-self-determination/>.
- The Board Appointed to Enquire into, and Report Upon, the Present Condition and Management of the Coranderrk Station*. Coranderrk Aboriginal Station: Report of the Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Aboriginal Station, together with the minutes of evidence (Victoria: 1882). <https://vpls.sdp.sirsidynix.net.au/client/search/asset/1292474>.
- Bodkin-Andrews, Gawaian, Nida Denson, and Peter Bansel. “Teacher Racism, Academic Self-Concept, and Multiculturalism: Investigating Adaptive and Maladaptive Relations with Academic Disengagement and Self-Sabotage for Indigenous and Non-Indigenous Australian Students.” *Australian Psychologist* 3, no. 48 23/06/2022 (2012): 226-37.
- Chesterman, John, and Brian Galligan. *Citizens without Rights: Aborigines and Australian Citizenship*. Cambridge: Cambridge University Press, 1997.
- Commission for Children and Young People. *Always Was, Always Will Be Koori Children: Investigation into the Circumstances of Aboriginal Children and Young People in out-of-Home Care in Victoria*. (2016). <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>.

*In the Child's Best Interests: Systemic Review of the Victorian Child Protection System's Compliance with the Aboriginal Child Placement Principle*. Melbourne: Commission for Children and Young People, 2016. <https://ccyp.vic.gov.au/assets/Publications-inquiries/In-the-childs-best-interests-inquiry-report.pdf>.

*Our Youth, Our Way: Summary and Recommendations*. Melbourne: Commission for Children and Young People, 2021. <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Summary-Final-090621.pdf>.

*Our Youth, Our Way: Systemic Inquiry into the over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System*. Melbourne: Commission for Children and Young People, 2021. <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>.

Commonwealth of Australia. *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023*. Canberra: Department of the Prime Minister and Cabinet, February 2017. <https://www.niaa.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23>.

Consulting, Polity Research and. *2020 Australian Reconciliation Barometer: Full Report*. Sydney: Reconciliation Australia, November 2020.

Department of Justice and Community Safety. “Table 1: Monthly Prisoner and Offender Statistics.” In *Corrections Victoria Monthly Prisoner and Offender Statistics 2014-15 to 2020-21*. Corrections, Prisons and Parole: corrections.vic.gov.au, 2021.

—*Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022-2032*. Melbourne: Victorian Government, 2022. [https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara\\_Kulpa\\_AYJS.pdf](https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara_Kulpa_AYJS.pdf).

First Peoples' Assembly of Victoria. “Tyerri Yoo-Rrook” (*Seed of Truth*): Report to the Yoo-Rrook Justice Commission from the First Peoples' Assembly of Victoria. Collingwood: First Peoples' Assembly of Victoria, June 2021. [https://www.firstpeoplesvic.org/wp-content/uploads/2021/09/Tyerri-Yoo-rrook-Seed-of-truth-Report-2021\\_Final.pdf](https://www.firstpeoplesvic.org/wp-content/uploads/2021/09/Tyerri-Yoo-rrook-Seed-of-truth-Report-2021_Final.pdf).

Gee, Graham, Pat Dudgeon, Clinton Schultz, Amanda Hart, and Kerrie Kelly. “Aboriginal and Torres Strait Islander Social and Emotional Wellbeing “. In *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, edited by Pat Dudgeon, Helen Milroy and Roz Walker, 55-58. Canberra: Commonwealth Government of Australia, 2014.

Hayner, Priscilla B. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. 2nd ed. New York: NY: Routledge, 2011.

Hudson, Robert, and Shannon Woodcock. *Self-Determined First Nations Museums and Colonial Contestation: The Keeping Place*. Abingdon, Oxon and New York, NY: Routledge, 2022.

*Indigenous Data Sovereignty: Toward an Agenda*. Edited by Tahu Kukutai and John Taylor. Vol. 38, Canberra: ANU Press, 2016. <http://www.jstor.org/stable/j.ctt1q1crgf>.

Ipsos Omnibus data. *Australians' Perceptions of Indigenous Issues Report*. Ipsos Aboriginal and Torres Strait Islander Research Unit (ATSIRU) December 2020. [https://www.ipsos.com/sites/default/files/ct/news/documents/2020-12/indigenous\\_issues\\_report\\_1.pdf](https://www.ipsos.com/sites/default/files/ct/news/documents/2020-12/indigenous_issues_report_1.pdf).

Jacobsen, Rohan, Claire Howell, and Steve Read. *Australia's Indigenous Land and Forest Estate: Separate Reporting of Indigenous Ownership, Management and Other Special Rights*. Abares Technical Report. Canberra: Commonwealth Government Department of Agriculture, Water and the Environment, December 2020. <https://www.awe.gov.au/abares/forestsaustralia/publications/indigenous-estate-report>.

Klapdor, Michael, Moira Coombs, and Catherine Bohm. "Australian Citizenship: A Chronology of Major Developments in Policy and Law." *Parliament of Australia: Parliamentary Library, Social Policy and Law and Bills Digest* (2009). [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0910/AustCitizenship](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/AustCitizenship).

Kukutai, Tahu, and John Taylor. "Data Sovereignty for Indigenous Peoples: Current Practice and Future Needs." In *Indigenous Data Sovereignty*, edited by Tahu Kukutai and John Taylor. Toward an Agenda, 1-22: ANU Press, 2016.

Land, Clare. *Decolonising Solidarity: Dilemmas and Directions for Supporters of Indigenous Struggles*. London: Zed Books Ltd., 2015.

Legislative Council Legal and Social Issues Committee, Parliament of Victoria. *Inquiry into Homelessness in Victoria: Final Report*. Parliamentary Paper No. 208, March 2021. [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf).

—*Inquiry into Victoria's Criminal Justice System: Volume 1*. Parliamentary Paper No. 326, March 2022. [https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Victorias\\_Justice\\_System\\_/Report/LCLSIC\\_59-10\\_Vic\\_criminal\\_justice\\_system.pdf](https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf).

Maia Wingara Aboriginal and Torres Strait Islander Data Sovereignty Collective, and The Australian Institute for Indigenous Governance. "Indigenous Data Sovereignty Communique." *Indigenous Data Sovereignty Summit* (20 June 2018). <https://www.aigi.com.au/resource/indigenous-data-sovereignty-communique/>.

Martin, Karen, and Booran Mirraboopu. "Ways of Knowing, Being and Doing: A Theoretical Framework and Methods for Indigenous and Indigenist Re-Search." *Journal of Australian Studies* 27, no. 76 (2003): 203-14. <https://doi.org/10.1080/14443050309387838>.

Moodie, Nikki, Jacinta Maxwell, and Sophie Rudolph. "The Impact of Racism on Schooling Experiences of Aboriginal and Torres Strait Islander Students: A Systematic Review." *The Australian Educational Researcher* 2, no. 46 (2019): 273-95.

Nanni, Giordano, and Andrea James. *Coranderrk: We Will Show the Country*. Canberra: Aboriginal Studies Press, 2013.

Ore, Adeshola. "Decriminalisation of Public Drunkenness Delayed by Victorian Government." *The Guardian*, 23 April 2022. <https://www.theguardian.com/australia-news/2022/apr/23/decriminalisation-of-public-drunkenness-delayed-by-victorian-government>.

Parliamentary Select Committee (Great Britain) Aborigines Protection Society. *Report of the Parliamentary Select Committee on Aboriginal Tribes (British Settlements)*. (20 February 1837).

Rainie, Stephanie Carroll, Tahu Kukutai, Maggie Walter, Oscar Figueroa-Rodríguez, Jennifer Walker, and Per Axelsson. "Indigenous Data Sovereignty." In *The State of Open Data: Histories and Horizons*, edited by Tim Davies, Stephen B. Walker, Mor Rubinstein and Fernando Perini, 300-19. Cape Town and Ottawa: African Minds and the International Development Research Centre (IDRC), 2019.

Robert, Hannah. *Paved with Good Intentions: Terra Nullius, Aboriginal Land Rights and Settler-Colonial Law*. Sydney: Halstead Press, 2016.

Royal Commission into Aboriginal Deaths in Custody. Final Report, Vol. 5 (April 1991). <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading14>.

Royal Commission on the Aborigines: *Report of the Commission Together with Minutes of Evidence and Appendices*. Report of the Commissioners appointed to inquire into the present condition of the Aborigines of this colony and to advise as to the best means of caring for and dealing with them in the future: together with minutes of evidence and appendices (Victoria: 1877). [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92914.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf).

Ryder, Courtney, Tamara Mackean, Julieann Coombs, Hayley Williams, Kate Hunter, Andrew J. A. Holland, and Rebecca Q. Ivers. "Indigenous Research Methodology – Weaving a Research Interface." *International Journal of Social Research Methodology* 23, no. 3 (2020): 255-67. <https://doi.org/10.1080/13645579.2019.1669923>.

Salvioli, Fabian. *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*. UN Doc A/76/180 (19 July 2021). <https://www.ohchr.org/en/calls-for-input/calls-input/2021/call-inputs-transitional-justice-measures-and-legacy-human-rights>.

Sentencing Advisory Council. *Crossover Kids: Vulnerable Children in the Youth Justice System Report 1*. Melbourne: Sentencing Advisory Council, June 2019. <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system-report-1>.

—"Indigenous Young People in Detention." *Sentencing Statistics* (2020-21). <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/indigenous-young-people-in-detention>.

SNAICC - National Voice for our Children. *The Family Matters Report 2021: Measuring Trends to Turn the Tide on the over-Representation of Aboriginal and Torres Strait Islander Children in out-of-Home Care in Australia*. Melbourne 2021. <https://www.familymatters.org.au/the-family-matters-report-2021/>.

Snipp, C. Matthew. "What Does Data Sovereignty Imply: What Does It Look Like?". In *Indigenous Data Sovereignty*, edited by Tahu Kukutai and John Taylor. Toward an Agenda, 39-56: ANU Press, 2016.

State of Victoria. *Victorian Government Aboriginal Affairs Report 2020*. Melbourne: Victorian State Government Department of Premier and Cabinet, June 2021. <https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>.

Thorpe, Wayne. *A Story of Bung Yarnda Aka Lake Tyers: "Why the Sand Bar Needs to Open Naturally"*. Lakes Entrance, VIC: Walbalimba Productions, 2017.



Victorian Aboriginal Legal Service (VALS). *Decriminalisation of Public Intoxication Must Be Done Right*. Preston: VALS, 25 April 2022. <https://www.vals.org.au/decriminalisation-of-public-intoxication-must-be-done-right/>.

Walter, Maggie. "Data Politics and Indigenous Representation in Australian Statistics." In *Indigenous Data Sovereignty: Toward an Agenda*, edited by Tahu Kukutai and John Taylor, 79-97. Canberra: ANU Press, 2016.

Zubrzycki, Joanna, Rick Shipp, and Victoria Jones. "Knowing, Being, and Doing: Aboriginal and Non-Aboriginal Collaboration in Cancer Services." *Qualitative Health Research* 27, no. 9 (2017): 1316-29. <https://doi.org/10.1177/1049732316686750>.



Uncle Jack Charles, Charcoal Lane.

## ENDNOTES

- 1 Letters Patent, paragraph 2.
- 2 Priscilla B. Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*, 2nd ed. (New York: NY: Routledge, 2011).
- 3 The Truth and Reconciliation Commission of Canada operated between 2009 and 2015. The Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission worked with First Nations people of Maine between February 2013 to June 2015 to uncover and document truth about how child welfare practices in the USA affected those communities. For the Commission's findings and resultant archival collection see [https://www.mainewabanakireach.org/maine\\_wabanaki\\_state\\_child\\_welfare\\_truth\\_and\\_reconciliation\\_commission](https://www.mainewabanakireach.org/maine_wabanaki_state_child_welfare_truth_and_reconciliation_commission)
- 4 Parliamentary Select Committee (Great Britain) Aborigines Protection Society, *Report of the Parliamentary Select Committee on Aboriginal Tribes (British Settlements)* (20 February 1837). *Royal Commission on the Aborigines: Report of the Commission together with Minutes of Evidence and Appendices*, Report of the Commissioners appointed to inquire into the present condition of the Aborigines of this colony and to advise as to the best means of caring for and dealing with them in the future: together with minutes of evidence and appendices (Victoria, 1877), [https://aiatsis.gov.au/sites/default/files/docs/digitised\\_collections/remove/92914.pdf](https://aiatsis.gov.au/sites/default/files/docs/digitised_collections/remove/92914.pdf).
- 5 *The Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Station*, Coranderrk Aboriginal Station: Report of the Board Appointed to Enquire into, and Report upon, the Present Condition and Management of the Coranderrk Aboriginal Station, together with the minutes of evidence (Victoria, 1882), <https://vgls.sdp.sirsidynix.net.au/client/search/asset/1292474>.
- 6 Commission for Children and Young People, *Always was, always will be Koori children: Investigation into the circumstances of Aboriginal children and young people in out-of-home care in Victoria*, (2016), <https://ccyp.vic.gov.au/assets/Publications-inquiries/always-was-always-will-be-koori-children-inquiry-report-oct16.pdf>. Commission for Children and Young People, *In the Child's Best Interests: Systemic review of the Victorian child protection system's compliance with the Aboriginal Child Placement Principle* (Melbourne: Commission for Children and Young People, 2016). <https://ccyp.vic.gov.au/assets/Publications-inquiries/In-the-childs-best-interests-inquiry-report.pdf>. Commission for Children and Young People, *Our Youth, Our Way: Summary and Recommendations* (Melbourne: Commission for Children and Young People, 2021). <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Summary-Final-090621.pdf>.
- 7 Colonisation is defined in the Letters Patent as 'from 1788'. Para 6.
- 8 Fabian Salvioli, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*, UN Doc A/76/180 (19 July 2021), para 51, <https://www.ohchr.org/en/calls-for-input/calls-input/2021/call-inputs-transitional-justice-measures-and-legacy-human-rights>.
- 9 First Peoples' Assembly of Victoria, "Tyerri Yoorrook" (*Seed of Truth*): Report to the Yoorrook Justice Commission from the First Peoples' Assembly of Victoria (Collingwood: First Peoples' Assembly of Victoria, June 2021). [https://www.firstpeoplesvic.org/wp-content/uploads/2021/09/Tyerri-Yoorrook-Seed-of-truth-Report-2021\\_Final.pdf](https://www.firstpeoplesvic.org/wp-content/uploads/2021/09/Tyerri-Yoorrook-Seed-of-truth-Report-2021_Final.pdf). The Letters Patent require Yoorrook in its conduct to 'Have due regard to the views and insights provided by the First Peoples' Assembly of Victoria, in a report or reports from community consultation undertaken by it, to be provided to you by 30 June 2021'. Para 4 (c).
- 10 Yoorrook acknowledges the work of Deputy Chair Commissioner Hunter in the development of this methodology.
- 11 Yoorrook has adopted a rights-based approach to its inquiry that encapsulates the 'PLANET' principles of: Participation, Legality, Accountability, Non-discrimination/equality, Empowerment and Transparency. Further details about Yoorrook's methodology, including the PLANET principles, will be released in due course.



- 12 Courtney Ryder et al., "Indigenous research methodology – weaving a research interface," *International Journal of Social Research Methodology* 23, no. 3 (2020), <https://doi.org/10.1080/13645579.2019.1669923>. For further reading on this approach see Karen Martin and Booran Mirraboopu, "Ways of knowing, being and doing: A theoretical framework and methods for indigenous and indigenist re-search," *Journal of Australian Studies* 27, no. 76 (2003), <https://doi.org/10.1080/14443050309387838>; Joanna Zubrzycki, Rick Shipp, and Victoria Jones, "Knowing, Being, and Doing: Aboriginal and Non-Aboriginal Collaboration in Cancer Services," *Qualitative Health Research* 27, no. 9 (2017), <https://doi.org/10.1177/1049732316686750>.
- 13 United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (2 October 2007, adopted 13 September 2007).
- 14 Tahu Kukutai and John Taylor, "Data sovereignty for Indigenous peoples: current practice and future needs," in *Indigenous Data Sovereignty*, ed. Tahu Kukutai and John Taylor, Toward an agenda (ANU Press, 2016). C. Matthew Snipp, "What does data sovereignty imply: what does it look like?," in *Indigenous Data Sovereignty*, ed. Tahu Kukutai and John Taylor, Toward an agenda (ANU Press, 2016).
- 15 Stephanie Carroll Rainie et al., "Indigenous data sovereignty," in *The State of Open Data: Histories and Horizons*, ed. Tim Davies et al. (Cape Town and Ottawa: African Minds and the International Development Research Centre (IDRC), 2019).
- 16 Commonwealth of Australia, *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023* (Canberra: Department of the Prime Minister and Cabinet, February 2017), p. 3. <https://www.niaa.gov.au/resource-centre/indigenous-affairs/national-strategic-framework-mental-health-social-emotional-wellbeing-2017-23>. Graham Gee et al., "Aboriginal and Torres Strait Islander Social and Emotional Wellbeing " in *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, ed. Pat Dudgeon, Helen Milroy, and Roz Walker (Canberra: Commonwealth Government of Australia, 2014).
- 17 Commonwealth of Australia, *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023*, p. 3.
- 18 Letters Patent, para 4(f)(iv).
- 19 *Indigenous Data Sovereignty: Toward an agenda*, ed. Tahu Kukutai and John Taylor, vol. 38 (Canberra: ANU Press, 2016). <http://www.jstor.org/stable/j.ctt1q1crgf>.
- 20 Maïam nayri Wingara Aboriginal and Torres Strait Islander Data Sovereignty Collective and The Australian Institute for Indigenous Governance, "Indigenous Data Sovereignty Communique," *Indigenous Data Sovereignty Summit* (20 June 2018), <https://www.aigi.com.au/resource/indigenous-data-sovereignty-communique/>.
- 21 Traditional Knowledge (TK) Labels were developed by the organisation Local Contexts in partnership with Indigenous communities across multiple countries. TK Labels are digital markers which define attribution, access, and use rights for Indigenous cultural heritage and knowledge and data sharing. They are a practical mechanism for advancing Indigenous data sovereignty principles and procedures. For more information see <https://localcontexts.org/>.
- 22 *Inquiries Act 2014* (Vic) s 124(1).
- 23 First Peoples' Assembly of Victoria, "Tyerri Yoorrook" (*Seed of Truth*): Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria, p. 30.
- 24 Letters Patent, para 4(f).
- 25 The Hon Gabrielle Williams MP, wurrek tyerrang testimony, 6 May 2022. p. 353 line 40 – p. 354 line 20.
- 26 The Stolen Generations marker is an artwork by Kamilaroi/Gamilaroi artist Reko Rennie titled 'Remember Me'. It comprises a set of bronze spears and an empty coolamon (a bark vessel traditionally used to carry babies). It pays tribute to the Stolen Generations and their families and stands as a reminder of the ongoing impacts of government policies on First Peoples today.
- 27 See <https://yoorrookjusticecommission.org.au/about-our-logo/>.
- 28 Salvioli, *Report of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence: Transitional Justice Measures and Addressing the Legacy of Gross Violations of Human Rights and International Humanitarian Law Committed in Colonial Contexts*, para 51.
- 29 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p 11, para 32.
- 30 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p 9-10, para 28-29.
- 31 First Peoples' Assembly of Victoria, "Tyerri Yoorrook" (*Seed of Truth*): Report to the Yoo-rrook Justice Commission from the First Peoples' Assembly of Victoria, p. 7.
- 32 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, wurrek tyerrang testimony 5 May 2022. p. 273 line 8.
- 33 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 43 para 120.
- 34 Maggie Walter, "Data politics and Indigenous representation in Australian statistics," in *Indigenous Data Sovereignty: Toward an Agenda*, ed. Tahu Kukutai and John Taylor (Canberra: ANU Press, 2016).
- 35 Letters Patent, para 6 (definition of 'Systemic Injustice').
- 36 Letters Patent, para 2(a).
- 37 Letters Patent, para 3(c), para 5.
- 38 Letters Patent, para 6 (definition of 'State Entity' and 'Non-State Entity').
- 39 Letters Patent, para 3(c)–(e).
- 40 Letters Patent, para 5(j).
- 41 Letters Patent, para 3(a)(i).
- 42 Letters Patent, para 3(a)–(b).
- 43 Letters Patent, paras 3(c)(e), 5(d).
- 44 Letters Patent, para 3(a)–(b).
- 45 For an explanation of the vision for self-determination within the Australian State, see Larissa Behrendt, "Unfinished Journey: Indigenous Self-Determination," *Arena Magazine* 58, April (2002), <https://arena.org.au/unfinished-journey-indigenous-self-determination/>.
- 46 There are also relevant international instruments, which Australia has not signed or ratified, which Yoorrook may use to guide its inquiry, including: International Labour Organization's Indigenous and Tribal Peoples Convention (No. 169) (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (2010).
- 47 The Minister for Aboriginal Affairs, the Hon Gabrielle Williams MP, acknowledged the importance of First Peoples' rights under UNDRIP and stated a commitment to its principles. See the Hon Gabrielle Williams MP, balert keetyarra, p. 18, para 131.
- 48 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, HR/PUB/11/04 (2011).
- 49 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (2005); Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, E/CN.4/2005/102/Add.1 (2005).
- 50 Balert keetyarra and transcripts of wurrek tyerrang testimony cited in the following section are published on Yoorrook's website. They can be found under 'documents' at <https://yoorrookjusticecommission.org.au/public-hearing/>.
- 51 Letters Patent, para 3(a)(ii), (iii) and (iv).
- 52 Letters Patent, para 3(b)(vi).
- 53 Uncle Johnny Lovett, balert keetyarra, p.17 para 104.
- 54 Wayne Thorpe, Gunnai Custodian. Lakes Entrance yarning circle, 20 April 2022.
- 55 Uncle Talgium Chocko Howard Edwards, Boonwurrung, Palawa, Mutti Mutti, Yorta Yorta and Taungurung. Preston yarning circle, 24 May 2022.
- 56 Robbie Thorpe, Krauatatulung (Under Booran) and Tjapwhurrung (Under Bunjil). Preston yarning circle, 24 May 2022.
- 57 Uncle Johnny Lovett, balert keetyarra, p.28 para 178.
- 58 Robert Hudson and Shannon Woodcock, *Self-Determined First Nations Museums and Colonial Contestation: The Keeping Place* (Abingdon, Oxon and New York, NY: Routledge, 2022). Wayne Thorpe, *A Story of Bung Yarnda aka Lake Tyers: "Why the Sand Bar Needs to Open Naturally"* (Lakes Entrance, VIC: Walbalimba Productions, 2017).
- 59 Letters Patent, para 3(a)(v) and (xi).
- 60 Letters Patent, para 3(b)(v) and (vi).
- 61 Uncle Johnny Lovett, balert keetyarra, p.28 para 177.
- 62 Key dates taken from Michael Klapdor, Moira Coombs, and Catherine Bohm, "Australian Citizenship: A Chronology of Major Developments in Policy and Law," *Parliament of Australia: Parliamentary Library*, Social Policy and Law and Bills Digest (2009), [https://www.apl.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0910/AustCitizenship.](https://www.apl.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/AustCitizenship.); and Hannah Robert, *Paved with Good Intentions: Terra Nullius, Aboriginal Land Rights and Settler-Colonial Law* (Sydney: Halstead Press, 2016).
- 63 Australian Institute of Aboriginal and Torres Strait Islander Studies <https://aiatsis.gov.au/explore/right-vote> and <https://aiatsis.gov.au/explore/my-voice-my-country>.



- 64 Timelines of significant events in Victorian First Peoples' activism and political resistance are provided in <http://www.kooriweb.org/foley/timeline/histimeline.html> and Clare Land, *Decolonising Solidarity: Dilemmas and Directions for Supporters of Indigenous Struggles* (London: Zed Books Ltd., 2015).
- 65 For further background see Giordano Nanni and Andrea James, Coranderrk: *We Will Show the Country* (Canberra: Aboriginal Studies Press, 2013).
- 66 John Chesterman and Brian Galligan, *Citizens Without Rights: Aborigines and Australian Citizenship* (Cambridge: Cambridge University Press, 1997). See also <https://aiatsis.gov.au/explore/day-of-mourning>.
- 67 Warriors of the Aboriginal Resistance are 'a collective of young First Nations people committed to the cause of decolonisation and Aboriginal Nationalism'.
- 68 Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p. 16 line 5.
- 69 Nanni and James, Coranderrk: *We Will Show the Country*. See also <http://www.minutesofevidence.com.au/>.
- 70 Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p. 15 lines 20-35.
- 71 Alma Thorpe, witness statement, p. 28 para 180.
- 72 Uncle Lance James, Yorta Yorta Elder and Cultural Officer for Rumbalara Aboriginal Co-operative, Shepparton cultural site visit Mooroopna Flats and Daish's Paddock, 11 April 2022.
- 73 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, wurrek tyerrang testimony, 5 May 2022, p. 228 lines 36-38.
- 74 Letters Patent, para 3(a)(v) and (viii), para 3(b)(ii).
- 75 Letters Patent, para 3(a)(v), para 3(b)(vi).
- 76 Australian Government Productivity Commission, "Part F, Section 16: Child Protection Services," in *Report on Government Services 2022* (Canberra: Australian Government Productivity Commission, 25 January 2022), table 16A.2. The Productivity Commission report notes the impact of COVID-19 on both service delivery and data collection, but notes that for Child Protection services, there are no significant changes to the data as a result of COVID-19. The Productivity Commission's datasets are also used to track Indigenous children in out of home care statistics in SNAICC - National Voice for our Children, *The Family Matters Report 2021: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia* (Melbourne 2021). <https://www.familymatters.org.au/the-family-matters-report-2021/>.
- 77 Commission for Children and Young People, *Our Youth, Our Way: Systemic Inquiry into the over-representation of Aboriginal children and young people in the Victorian Youth Justice system* (Melbourne: Commission for Children and Young People, 2021), p. 21. <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>.
- 78 Ibid.
- 79 Australian Government Productivity Commission, "Part F, Section 16: Child Protection Services," Table 16A.17.
- 80 Auntie Fay Carter, balert wurrekilang ('strong talk' in Dja Dja Wurrung language), p.8 paras 33-35.
- 81 Uncle Johnny Lovett, balert keetyarra, p. 17, para 105.
- 82 Auntie Fay Carter, wurrek tyerrang testimony, 2 May 2022, p. 152 lines 42-45, and balert wurrekilang, p.10 para 44.
- 83 Uncle Johnny Lovett, balert keetyarra, p.9 para 54 – p. 10 para 55.
- 84 Auntie Fay Carter, balert wurrekilang, p.12 para 54.
- 85 Alma Thorpe, witness statement, p. 9 para 43.
- 86 Uncle Larry Walsh, balert keetyarra, p. 9 para 44.
- 87 Uncle Jack Charles, balert keetyarra, p.3 para 13.
- 88 Uncle Kevin Coombs, balert keetyarra, p.17 para 100.
- 89 Uncle Jack Charles, balert keetyarra, p. 13 para 87.
- 90 Uncle Lance James, Shepparton cultural site visit Mooroopna Flats and Daish's Paddock, 11 April 2022.
- 91 Alma Thorpe, founding member of VAHS, wurrek tyerrang testimony 4 May 2022, p. 190 lines 15-20.
- 92 Letters Patent, para 3(a)(vi) and (xi), 3(b)(v).
- 93 Uncle Kevin Coombs, balert keetyarra, p. 5 paras 11 and 13.
- 94 Uncle Johnny Lovett, balert keetyarra, p. 6 lines 32-35.
- 95 Auntie Leah Keegan, Gunditjmara, Ballarat yarning circle, 8 April 2022.
- 96 Terylene Hood of the Krowathunkooloong clan, descendant of Kitty Johnson. Lake Tyers yarning circle, 21 April 2022.
- 97 Aboriginal Housing Victoria, *Mana-na woom-tyeen maar-takoort Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework* (North Fitzroy: Aboriginal Housing Victoria, 2020), p. 22. [https://www.vahhf.org.au/cms\\_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework\\_complete\\_26\\_02\\_20.pdf](https://www.vahhf.org.au/cms_uploads/docs/victorian-aboriginal-housing-and-homelessness-framework_complete_26_02_20.pdf).
- 98 Based on 2016 census data. Yoorrook has used the 2016 Census for analysis because it represents a nationally consistent baseline. Yoorrook acknowledges that there have been criticisms of using census data when examining First Peoples' issues. The ABS estimates that the Victorian Indigenous population was undercounted by 15.8% in the 2016 census. Data on Indigenous peoples from the 2021 census is expected to be publicly released in late 2022. Australian Bureau of Statistics (ABS), "Collation of housing and household characteristics statistics from ABS collections: 2018-19 financial year," *Housing Statistics for Aboriginal and Torres Strait Islander Peoples* (2022), <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/housing-statistics-aboriginal-and-torres-strait-islander-peoples/2018-19>.
- 99 Australian Bureau of Statistics (ABS), "Collation of housing and household characteristics statistics from ABS collections: 2018-19 financial year," graph 11.
- 100 See <https://www.abs.gov.au/census/find-census-data/quickstats/2016/2>.
- 101 See <https://www.abs.gov.au/census/find-census-data/quickstats/2016/IQS2>
- 102 Letters Patent, para 3(a)(vii), para 3(b)(i)
- 103 Letters Patent, para 3(a)(xi) and (a)(ix), para 3(b)(v) and (b)(iii).
- 104 Letters Patent, para 3(a)(i).
- 105 Uncle Johnny Lovett, balert keetyarra, p. 13 paras 78-79.
- 106 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 19 para 56.
- 107 Auntie Cheryl Austin, Preston yarning circle, 24 May 2022.
- 108 Robbie Thorpe, Preston yarning circle, 24 May 2022.
- 109 Robbie Thorpe, Preston yarning circle, 24 May 2022.
- 110 Uncle Colin Walker, Cummeragunja yarning circle, 13 April 2022.
- 111 Uncle Johnny Lovett, wurrek tyerrang testimony, 28-29 April 2022. p. 114 lines 35-38.
- 112 Auntie Margie Tang, Wemba Wemba and Gunditjmara. Echuca yarning circle, 13 April 2022.
- 113 Uncle Larry Walsh, balert keetyarra, p. 7 para 32.
- 114 Isobel Paipadjerook Morphy-Walsh, Nirim Baluk bagrook (woman) of the Dhaung Wurrung Nation. Wurrek tyerrang testimony, 20 May 2022. p. 155 lines 45-46.
- 115 Uncle Larry Walsh, wurrek tyerrang testimony, 20 May 2022. p. 129 lines 20-21.
- 116 Alma Thorpe, wurrek tyerrang testimony, 4 May 2022. p.190 lines 1-6.
- 117 Tony McAvoy SC in Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p. 61 line 45.
- 118 Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p. 62 lines 5-25.
- 119 Auntie Stephanie Charles, Wemba Wemba, Koori Court Elder. Swan Hill yarning circle, 6 April 2022.
- 120 In 2019 and 2020, the Sentencing Advisory Council produced three 'Crossover Kids' reports on sentenced and diverted children known to the Child Protection Service. See <https://www.sentencingcouncil.vic.gov.au/current-projects-projects-progress/crossover-kids-youth-justice-system>
- 121 Commission for Children and Young People, *Our Youth, Our Way: Systemic Inquiry into the over-representation of Aboriginal children and young people in the Victorian Youth Justice system*, p. 81.
- 122 Sentencing Advisory Council, *Crossover Kids: Vulnerable Children in the Youth Justice System Report 1* (Melbourne: Sentencing Advisory Council, June 2019), p. 48. <https://www.sentencingcouncil.vic.gov.au/publications/crossover-kids-vulnerable-children-youth-justice-system-report-1>.
- 123 Sentencing Advisory Council, "Indigenous Young People in Detention," *Sentencing Statistics* (2020-21), <https://www.sentencingcouncil.vic.gov.au/sentencing-statistics/indigenous-young-people-in-detention>.
- 124 Department of Justice and Community Safety, *Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022-2032* (Melbourne: Victorian Government, 2022), p. 18. [https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara\\_Kulpa\\_AYJS.pdf](https://files.aboriginaljustice.vic.gov.au/2022-02/Wirkara_Kulpa_AYJS.pdf). This data has been sourced from the Victorian Youth Justice Client Relationship Information System (CRIS), which is not public and may be subject to change.
- 125 Uncle Colin Walker, Cummeragunja yarning circle, 13 April 2022.
- 126 Uncle Kevin Coombs, balert keetyarra, p. 16 paras 92-93.

- 127 Australian Bureau of Statistics, 2016 Census data <https://www.abs.gov.au/census/find-census-data/quickstats/2016/2>.
- 128 Department of Justice and Community Safety, "Table 1: Monthly Prisoner and Offender Statistics," in *Corrections Victoria Monthly Prisoner and Offender Statistics 2014-15 to 2020-21* (Corrections, Prisons and Parole: [corrections.vic.gov.au](https://corrections.vic.gov.au), 2021).
- 129 Letters Patent, para 3(a)(ix), para 3(b)(iii).
- 130 Wayne Thorpe, Lakes Entrance yarning circle, 20 April 2022.
- 131 Australian Bureau of Statistics (ABS), *National Aboriginal and Torres Strait Islander Health Survey: Statistics about long-term health conditions, disability, lifestyle factors, physical harm and use of health services* (2019), <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/national-aboriginal-and-torres-strait-islander-health-survey/2018-19#key-findings-for-states-and-territories>.
- 132 Aunty Fay Carter, balert wurrekilang, p.7 para 30.
- 133 Uncle Larry Walsh, balert keetyarra, p.18 para 82.
- 134 Marjorie Thorpe, Tjapwhurrung, Gunnaikurnai and Gunditjmara, Lake Tyers yarning circle, 21 April 2022.
- 135 These figures are for the nation-wide population of Stolen Generations survivors, approximately 10% of whom lived in Victoria in 2018. Disaggregated data by state is not available. Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Stolen Generations aged 50 and over: updated analyses for 2018–19*, Cat. no. IHW 257, (Canberra: AIHW, 2021). <https://www.aihw.gov.au/reports/indigenous-australians/indigenous-stolen-generations-50-and-over/contents/summary>.
- 136 Marjorie Thorpe, Lake Tyers yarning circle, 21 April 2022.
- 137 Uncle Kevin Coombs, balert keetyarra, p.14 paras 75-76.
- 138 Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, p. 28.
- 139 Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry Into Homelessness in Victoria: Final Report* (Parliamentary Paper No. 208, March 2021), p. 58. [https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Homelessness\\_in\\_Victoria/Report/LCLSIC\\_59-06\\_Homelessness\\_in\\_Vic\\_Final\\_report.pdf](https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Homelessness_in_Victoria/Report/LCLSIC_59-06_Homelessness_in_Vic_Final_report.pdf).
- 140 Aboriginal Housing Victoria, *Mana-na woorn-tyeen maar-takoort Every Aboriginal Person Has A Home: The Victorian Aboriginal Housing and Homelessness Framework*, p. 28.
- 141 Legislative Council Legal and Social Issues Committee, *Inquiry Into Homelessness in Victoria: Final Report*, p. 177.
- 142 Letters Patent, para 3(a)(i) and (ii), para 3(b)(vi).
- 143 Aunty Fay Carter, wurrek tyerrang testimony, 2 May 2022, p. 175 lines 25-26.
- 144 Leon Atkinson, CEO Cummeragunja Land Council, Cummeragunja yarning circle, 13 April 2022.
- 145 Uncle Jack Charles, balert keetyarra, p. 3 para 14-15.
- 146 Alma Thorpe, wurrek tyerrang testimony, 4 May 2022, p.186 lines 6-17.
- 147 Wayne Thorpe, Lake Tyers yarning circle, 21 April 2022.
- 148 Letter Patent, paras 4(m)-(n).
- 149 Uncle Colin Walker, balert keetyarra, p.8 para 60.
- 150 Wayne Thorpe, Lake Tyers yarning circle, 21 April 2022.
- 151 Letters Patent, para 3(a)(i), (ii), (iii) and (v), para 3(b)(vi).
- 152 These statistics were drawn from the Victorian specific datasets 'Indigenous owned land' and 'Indigenous owned co-managed conservation reserves'. Rohan Jacobsen, Claire Howell, and Steve Read, *Australia's Indigenous land and forest estate: separate reporting of Indigenous ownership, management and other special rights*, ABARES technical report, (Canberra: Commonwealth Government Department of Agriculture, Water and the Environment, December 2020), p. 9. <https://www.awe.gov.au/abares/forestsaustralia/publications/indigenous-estate-report>.
- 153 Uncle Colin Walker, balert keetyarra, p.6 para 42.
- 154 Wayne Thorpe, Lakes Entrance yarning circle, 20 April 2022.
- 155 Denise Lovett, Gunditjmara, Heywood yarning circle (Lake Condah), 5 April 2022.
- 156 Letters Patent, para 3(a)(x), para 3(b)(iv).
- 157 Letters Patent, para 7(b).
- 158 Alma Thorpe, wurrek tyerrang testimony, 4 May 2022. p. 189 line 42 – 48; p. 190 line 1.
- 159 Uncle Larry Walsh, balert keetyarra, p. 7 para 37.
- 160 Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p. 6 lines 6-15; page 70 lines 16-17.
- 161 Alice Pepper, Gunnai, Gunditjmara, Yorta Yorta, Mutti Mutti and Arrernte. Lakes Entrance yarning circle, 20 April 2022.
- 162 Aunty Fay Carter, wurrek tyerrang testimony, 2 May 2022. p. 174 lines 30-40.
- 163 Letters Patent, paras 3(f), 4(b), 5(b).
- 164 Uncle Lance James, Shepparton cultural site visit Mooroopna Flats and Daish's Paddock, 11 April. 2022
- 165 Aunty Margie Tang, Echuca yarning circle, 13 April 2022.
- 166 Uncle Colin Walker, balert keetyarra, p.3 paras 18-19.
- 167 Uncle Larry Walsh, balert keetyarra, p. 6 paras 29-30.
- 168 Uncle Colin Walker, wurrek tyerrang testimony, 27 May 2022. p. 9 lines 19.
- 169 Uncle Kevin Coombs, balert keetyarra, p. 19 para 117-118.
- 170 Comparisons from Australian Bureau of Statistics, 2016 Census QuickStats pages. See <https://www.abs.gov.au/census/find-census-data/quickstats/2016/IQS2> and <https://www.abs.gov.au/census/find-census-data/quickstats/2016/2>.
- 171 Aunty Fay Carter, wurrek tyerrang testimony, 2 May 2022. p. 167 lines 48-53.
- 172 Nikki Moodie, Jacinta Maxwell, and Sophie Rudolph, "The Impact of Racism on Schooling Experiences of Aboriginal and Torres Strait Islander Students: A Systematic Review," *The Australian Educational Researcher* 2, no. 46 (2019): p. 274.
- 173 Reports of teacher discrimination explained 12.1% of the variance in academic disengagement scores and explained 16.4% of the variance in self-sabotage scores  $p < 0.001$ . Gawaian Bodkin-Andrews, Nida Denson, and Peter Bansel, "Teacher Racism, Academic Self-Concept, and Multiculturalism: Investigating Adaptive and Maladaptive Relations With Academic Disengagement and Self-Sabotage for Indigenous and Non-Indigenous Australian Students," *Australian Psychologist* 3, no. 48 (2012).
- 174 State of Victoria, *Victorian Government Aboriginal Affairs Report 2020* (Melbourne: Victorian State Government Department of Premier and Cabinet, June 2021), p. 46-47. <https://www.firstpeoplesrelations.vic.gov.au/aboriginal-affairs-report>.
- 175 Aunty Fay Carter, wurrek tyerrang testimony, 2 May 2022. p. 170 lines 15-30.
- 176 Uncle Jack Charles, balert keetyarra, p. 15 paras 97-99.
- 177 Uncle Jack Charles, wurrek tyerrang testimony, 26 April 2022. p.11 lines 30-35.
- 178 Aunty Yvonne Jones, Ngintait, Mildura yarning circle, 5 April 2022.
- 179 Uncle Alan Marsden, Mildura yarning circle, 5 April 2022.
- 180 Ruth Davy, Wiradjuri woman, Albury yarning circle, 14 April 2022.
- 181 Uncle Leon Atkinson, Cummeragunja yarning circle, 13 April 2022.
- 182 Alma Thorpe, wurrek tyerrang testimony, 4 May 2022. p. 210 lines 27-31.
- 183 Uncle Johnny Lovett, wurrek tyerrang testimony, 28-29 April 2022. p. 85 line 45-48; p. 86 line 1-4, 8-14.
- 184 Letters Patent, para 5(a)–(b).
- 185 Chris Saunders, Gunditjmara, Portland yarning circle, 4 April 2022.
- 186 Uncle Kevin Coombs, balert keetyarra, p. 6 para 17.
- 187 Aunty Hazel, Wemba Wemba Elder, Swan Hill yarning circle, 6 April 2022.
- 188 Uncle Leon Atkinson, Cummeragunja yarning circle, 13 April 2022.
- 189 Ipsos Omnibus data, *Australians' Perceptions of Indigenous Issues Report* (Ipsos Aboriginal and Torres Strait Islander Research Unit (ATSIRU) December 2020), p. 4-5. [https://www.ipsos.com/sites/default/files/ct/news/documents/2020-12/indigenous\\_issues\\_report\\_1.pdf](https://www.ipsos.com/sites/default/files/ct/news/documents/2020-12/indigenous_issues_report_1.pdf).
- 190 Polity Research and Consulting, *2020 Australian Reconciliation Barometer: Full Report* (Sydney: Reconciliation Australia, November 2020), p. 54 & 79.
- 191 The Hon Gabrielle Williams MP, wurrek tyerrang testimony, 6 May 2022. p. 288 lines 23-27.
- 192 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 15 para 45.
- 193 The Hon Gabrielle Williams MP, balert keetyarra, p. 6 para 47 and p.10 para 80.
- 194 The Hon Gabrielle Williams MP, balert keetyarra, p. 10 paras 75-76.
- 195 First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 38 para 1.
- 196 The Hon Gabrielle Williams MP, balert keetyarra, p. 10 paras 76-77.



197

Nationally in 2021, the rate of Aboriginal and Torres Strait Islander children in out-of-home care was 57.6 per 1,000 children. In Victoria in 2021, the rate was 103 per 1,000 children. Australian Government Productivity Commission, "Target 12," *Closing the Gap Information Repository* (2022), <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>.

198

First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 48 paras 136-154.

199

The Hon Gabrielle Williams MP, balert keetyarra, p.11 para 83.

200

Recommendation 79 in the Royal Commission into Aboriginal Deaths in Custody Final Report states 'That, in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence of public drunkenness.' *Royal Commission into Aboriginal Deaths in Custody, Final Report*, Vol. 5 (April 1991), <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html#Heading14>.

201

Adeshola Ore, "Decriminalisation of public drunkenness delayed by Victorian government," *The Guardian* 23 April 2022, <https://www.theguardian.com/australia-news/2022/apr/23/decriminalisation-of-public-drunkenness-delayed-by-victorian-government>.

202

First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 49-50 para 140.

203

Victorian Aboriginal Legal Service (VALS), *Decriminalisation of public intoxication must be done right* (Preston: VALS, 25 April 2022). <https://www.vals.org.au/decriminalisation-of-public-intoxication-must-be-done-right/>.

204

Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria's Criminal Justice System: Volume 1* (Parliamentary Paper No. 326, March 2022). [https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry\\_into\\_Victorias\\_Justice\\_System\\_/Report/LCLSIC\\_59-10\\_Vic\\_criminal\\_justice\\_system.pdf](https://parliament.vic.gov.au/images/stories/committees/SCLSI/Inquiry_into_Victorias_Justice_System_/Report/LCLSIC_59-10_Vic_criminal_justice_system.pdf).

205

Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system, UN Doc CRC/C/GC/24 (18 September 2019) p. 6.

206

The Hon Gabrielle Williams MP, wurrek tyerrang testimony, 6 May 2022. p.341 line 4.

207

From <https://www.vic.gov.au/early-childhood-language-program>.

208

The Hon Gabrielle Williams MP, balert keetyarra, p.11 para 87.

209

The Hon Gabrielle Williams MP, wurrek tyerrang testimony, 6 May 2022. p. 17 lines 26-28.

210

Following Commissioners' request at wurrek tyerrang, the Minister provided additional information to the Commission on 7 June 2022 regarding a range of recruitment, training and education initiatives for the Victorian public service.

211

First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p. 47 para 134.

212

Letters Patent, para 2(b) and (d).

213

First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p 3, para 7.

214

First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, balert keetyarra, p.48 para 137.

215

The Hon Gabrielle Williams MP, balert keetyarra, p.13 para 98.

216

Letters Patent, para 4(h).

217

The Hon Gabrielle Williams MP, wurrek tyerrang testimony 6 May 2022. p. 305 line 43; First Peoples' Assembly of Victoria Co-Chair, Marcus Stewart, wurrek tyerrang testimony 5 May 2022. p. 237 line 27.

218

In seeking an amendment to the Letters Patent, Yoorrook also notes the request to correct the spelling of the Commission's name, in accordance with the request from the First Peoples' Assembly in response to advice from a senior Wemba Wemba/ Wamba Wamba Elder.

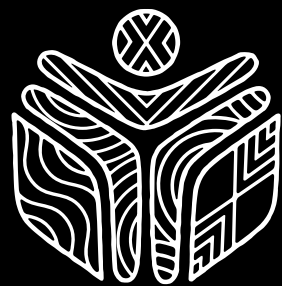
219

Letters Patent, para 4(f).

220

The Hon Gabrielle Williams MP, wurrek tyerrang testimony 6 May 2022. p. 353 line 34.





YOORROOK  
Justice Commission