

Statement to the Yoorrook Justice Commission

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Position: Commissioner for Aboriginal Children and Young People in Victoria
Organisation: Commission for Children and Young People
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Introduction

1. This 'balert keetyarra' ('strong talk' in Wathaurong language) or statement is produced to support evidence Meena Singh is scheduled to give to the Yoorrook Truth Commission on 5 December 2022, and in response to *Issues Paper 1: Call for Submissions on Systemic Injustice in the Criminal Justice System*, and *Issues Paper 2: Call for Submissions on Systemic Injustice in the Child Protection System*.
2. The following statement contains a range of observations from undertaking the core functions of the statutory body the Victorian Commission for Children and Young People (the Commission), as well as the role of Commissioner for Aboriginal Children and Young People.
3. References are made to current statistics obtained from the Australian Institute of Health and Welfare (AIHW)¹ and the Steering Committee for the Review of Government Service Provision (SCRGSP)², along with references to past inquiries published by the Commission³ and previously published annual reports⁴.

¹ AIHW Child Protection Data Tables 2020-21 published as at June 2022. Available at: <https://www.aihw.gov.au/reports-data/health-welfare-services/child-protection/overview>

² Steering Committee for the Review of Government Service Provision (2021) (SCRGSP) Chapter 16: Child protection services. Canberra: Productivity Commission. Available at: <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>

³ [CCYP | Systemic inquiries](#)

⁴ [CCYP | Annual Reports](#)

Background, qualifications, and experience

4. I am a Yorta Yorta and Indian woman, born and living on the land of the Kulin Nations.
5. I have a Bachelor of Arts from the University of Melbourne, and a Bachelor of Laws from Monash University.
6. I am an admitted barrister and solicitor of the Supreme Court of Victoria, having undertaken my articles of clerkship with Victoria Legal Aid.
7. I commenced my legal career in criminal and human rights law (including the representation of children and young people) with Victoria Legal Aid, before turning to professional legal education, consulting and training design and development, then returning to legal practice, systemic advocacy, law reform and policy.
8. I have held senior leadership roles at organisations such as the Director, Legal Practice and Strategy with the Victorian Aboriginal Legal Service (overseeing the state-wide legal practice across criminal, family and civil law and providing high level strategic and policy advice and advocacy), the inaugural Associate Director, Aboriginal Services with Victoria Legal Aid (driving improvements in how the organisation supported Aboriginal staff and clients through a range of cultural safety initiatives), and Director, Aboriginal and Torres Strait Islander Rights with the Human Rights Law Centre (leading the organisation's strategic advocacy, policy and law reform work).
9. In all my work, I bring and combine my lived experience and personal identity with my professional expertise. I am passionate about understanding individual and community identity and experiences to promote inclusion, connection and ultimately achieve social justice.

The Role of the Commission for Children and Young People (the Commission)

10. The Commission for Children and Young People is an independent statutory body that promotes improvement in policies and practices affecting the safety, wellbeing and rights of Victorian children and young people. The Commission's work is governed by a number of pieces of legislation including the *Commission for Children and Young People Act 2012* (CCYP Act). Our statutory functions include:
 - Providing independent oversight of Victoria's child protection, out-of-home care and youth justice systems, including monitoring reports of serious incidents such as self-harm and attempted suicide in out-of-home care and youth justice custody. As part of this monitoring function, the Commission coordinates the

Independent Visitor Program, regular on-site inspections of both youth justice and residential care; as well as participating in Youth Justice exit interviews.⁵

- Conducting inquiries into services provided or omitted to be provided to children and young people who have died and were involved with Child Protection in the 12 months before their death.
 - Conducting individual, group and systemic inquiries into services provided to children and young people.
11. The Principal Commissioner has powers to initiate their own inquiry, report on events such as inquiries and monitor out of home care and youth justice services.
 12. The Commission is also responsible for administering both the Reportable Conduct Scheme and the Child Safe Standards. These regulatory functions are set out in the *Child Wellbeing and Safety Act 2005* (CWS Act).
 13. Victoria was one of the first jurisdictions to introduce Child Safe Standards in 2016, after the Victorian Parliament's *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations* revealed devastating accounts of children experiencing abuse and harm in organisational settings. The following year, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended each state and territory move to introduce similar schemes, in line with nationally agreed principles – since titled the National Principles for Child Safe Organisations. The Standards are about ensuring systems, processes, policies, and practices are in place to keep children safe from child abuse. A set of new and more prescriptive Standards came into operation on 1 July 2022 to reflect the National Principles for Child Safe Organisations. The Commission together with a number of other regulators can enforce the Standards, but after 1 January 2023, sectors will be specifically allocated to the Commission and other regulators by legislation.
 14. The Commission's current regulatory functions concerning the Child Safe Standards include providing education and advice and overseeing and enforcing compliance with the Child Safe Standards by organisations in prescribed sectors that provide services specifically for children or facilities specifically for use by children or otherwise engage a child to assist in the provision of goods and services. The sectors required to comply with the Standards include education, early years providers, health services such as hospitals, community health services and mental health services, disability services,

⁵ Please note that records from Youth Justice Exit Interviews are not held by the Commission

organisations that provide drug and alcohol treatment services, services in relation to family violence or sexual assault, support services for families and children, homeless persons, youth services, child protection services, out of home care services, councils, Victorian government departments, religious bodies and many more. From January 2023, the Commission will only regulate some organisations that have to comply with the Standards. Changes to the *Child Safety and Wellbeing Act 2005* will allocate types of organisations to six different regulators, including the Commission. In addition, from 1 January 2023, the Commission will have additional legislative compliance and enforcement powers.

15. From July 2022, there has been an obligation on more than 50,000 organisations in Victoria as part of the Child Safe Standards to establish culturally safe environments in which the diverse and unique identities and experiences of Aboriginal children and young people are respected and valued. This includes measures to properly include Aboriginal children, young people, and their families within their organisation and to take action to ensure racism within organisations is identified, confronted and not tolerated.
16. The Reportable Conduct Scheme was also a key recommendation of the Victorian Parliament's *Betrayal of Trust: Inquiry into the handling of child abuse by religious and other non-government organisations* and the Royal Commission into Institutional Responses to Child Sexual Abuse. It has been in place since July 2017. It requires certain organisations that exercise care, supervision, or authority over children to provide the Commission with notifications of alleged child abuse (referred to as reportable allegations) by their workers or volunteers and for the organisation to then investigate those allegations. It is a criminal offence not to notify the Commission of reportable allegations. Reportable allegations mean sexual offence, sexual misconduct or physical violence committed against, with or in the presence of a child, significant neglect of a child or behaviour that causes significant emotional or psychological harm to a child. About 12,500 organisations are captured by the Scheme. They include education, early years, child protection, out of home care, youth justice, health, disability, Victorian government departments and religious organisations.
17. The Commission's regulatory functions concerning the Reportable Conduct Scheme includes providing organisations with education and support to assist them to identify reportable allegations, to report them to us and for them to investigate those allegations properly. The Commission oversees the investigations conducted by organisations.

In limited circumstances the Commission may conduct own motion investigations into reportable allegations or the handling of an investigation by an organisation into a reportable allegation. The Commission must liaise with Victoria Police where a reportable allegation may involve criminal conduct. Police investigations concerning criminal matters take priority.

The Role of the Commissioner for Aboriginal Children and Young People

18. I commenced as the Commissioner for Aboriginal Children and Young People at the Commission on 26 April 2022.
19. The role of the Commissioner for Aboriginal Children and Young People was first created in July 2013 to ensure improved accountability of government to Aboriginal children and young people in Victoria.
20. The role sits alongside the Principal Commissioner for Children and Young People (Principal Commissioner) within the Commission for Children and Young People (the Commission). Whilst the Principal Commissioner's role is enshrined Section 11 of the CCYP Act, the role of Commissioner for Aboriginal Children and Young People is not specifically mentioned in the legislation. Under s. 12(1), the Governor in Council, on the recommendation of the Minister, may appoint a person as an additional Commissioner. There are no specific legislative functions, powers or duties attributed to Commissioner for Aboriginal Children and Young People, however, through a process of delegations and authorisations from the Principal Commissioner, I am able to perform certain functions, exercise certain powers and discharge certain duties relevant to my role. In practice, both the Principal Commissioner and Commissioner for Aboriginal Children and Young People work together to lead the Commission.
21. One distinct difference in the role of the Commissioner for Aboriginal Children and Young People is the access and participation for several key forums and strategic partnerships impacting outcomes for Aboriginal Victorians. These include:
 - Dhelk Dja Partnership Forum
 - Aboriginal Justice Forum (AJF)
 - Aboriginal Children's Forum (ACF)
 - Marrung Central Governance Committee

22. Participation in these forums allows me, within my role, to observe common themes, strategies and experiences impacting Aboriginal children and young people, and advocate in their interests.
23. Given the overlap of a variety of measures and policies that impact the outcomes of Aboriginal children and young people involved in both the child protection and youth justice systems, the Commission would welcome that the Yoorrook Justice Commission consider a range of government departments for submissions and evidence.

Rights of Aboriginal Children and Young People

24. Aboriginal children have unique rights and needs that require additional protections and government accountability. Dedicated Aboriginal and Torres Strait Islander children's Commissioners play a vital role in providing a voice for Aboriginal and Torres Strait Islander children and ensuring a dedicated focus to advancing their rights. Aboriginal children and young people are over-represented in adverse outcomes and continue to experience disproportionately high levels of disadvantage and discrimination. This is a result of historical and ongoing impacts of colonisation, dispossession, institutional racism and punitive policies. A dedicated focus on advancing the rights and wellbeing of this generation of Aboriginal children is essential to break this cycle and improve outcomes for future generations. Aboriginal children's commissioner's make recommendations that address the unique challenges faced by Aboriginal children and help hold government accountable to implementing these solutions.
25. The United Nations Principles Relating to the Status of National Human Rights Institutions (Paris Principles) provide a set of standards that describe what a best practice Commissioner role should look like.⁶ They include:
- Powers and functions should be defined in legislation
 - Mandate to protect and promote human rights
 - Cooperation with other human rights bodies
 - Appointment of an Aboriginal person as the Commissioner for Aboriginal Children and Young People

⁶ [Principles relating to the Status of National Institutions \(The Paris Principles\) | OHCHR](#); [SNAICC-FamilyMatters_National_Commissioner_SummaryPaperNov2020.pdf](#);

- Transparent selection and appointment of decision-making body
- Independence from government
- Adequate funding
- Public reporting

26. While the Commissioner for Aboriginal Children and Young People in Victoria has had opportunities to hold government accountable through various inquiries and advocacy tools, these have been dependent on having a collaborative relationship with the Principal Commissioner who holds the legislative powers and functions under the Act. It is the Commission's position that a clear legislative mandate should be provided in the Commission for Children and Young People Act to enshrine the Commissioner for Aboriginal Children and Young People's role and to ensure that the focus on Aboriginal children's rights and wellbeing is sustained. Providing a clear legislative basis and powers for the Commissioner for Aboriginal Children and Young People would also more closely align with self-determination principles than the current Act.

Resilience

27. The challenges facing Aboriginal children, and our community, can seem overwhelming. There are so many targets, indicators and recommendations that we must work towards and respond to. Our children and community are often spoken about in numbers and statistics, and often in deficit. When we go behind these numbers and statistics, we see the strength and resilience of our people. The prevailing notion that to be an Aboriginal person is to be disadvantaged is untrue. We are rich in culture, connection, and knowledge. It is when these things are taken away from us that we suffer.

28. In this role, I have had many privileges. I have seen the strength of Aboriginal Community Controlled Organisations (ACCOs) who, when given appropriate resources and autonomy to determine their own futures, create spaces and opportunities to nurture Aboriginal children and young people to have remarkable lives. I have met and spoken with kinship and foster carers who go to extraordinary lengths to ensure the children and young people in their care are given stability, safety, care, and respect, but who struggle with the systems they engage with. I have been privileged to hear the passion in the voices of people in organisations who work to support Aboriginal children and young people.

29. But the greatest privilege, and possibly saddest of all, has been to sit and hear the stories of Aboriginal children and young people who share their stories, demonstrating a resilience in response to trauma that most of us will never experience in a whole lifetime. Yet they still retain hope and humour, and a capacity to care about those around them.

Voice of children

30. Article 12 of the *Convention of the Rights of the Child* states all children and young people have the right to participate in decisions affecting their lives. At the Commission, this is done in many ways.

- Our staff regularly visit residential care facilities to meet with children and young people.
- Our Independent Visitor Program, now in its tenth year, goes into youth justice centres to hear the experiences of children, who could be as young as 10 years old.
- The Commission's Youth Advisory Council includes young people with direct experiences of those two systems, who speak knowledgably and passionately about the change that needs to come about.

31. Our systemic inquiries have developed models of consultation, positing children and young people as experts in the systems they experience directly. In my role as Commissioner for Aboriginal Children and Young People, it is my responsibility to ensure that the voices of Aboriginal children and young people and their communities are amplified. The consultations I've done with Aboriginal children and young people, parents, carers and services have strengthened my commitment to prioritising working on the ground, as much as we prioritise boardrooms and government forums

32. The Commission has a unique birds-eye view of the systems that children and young people find themselves in, particularly the child protection and youth justice systems.

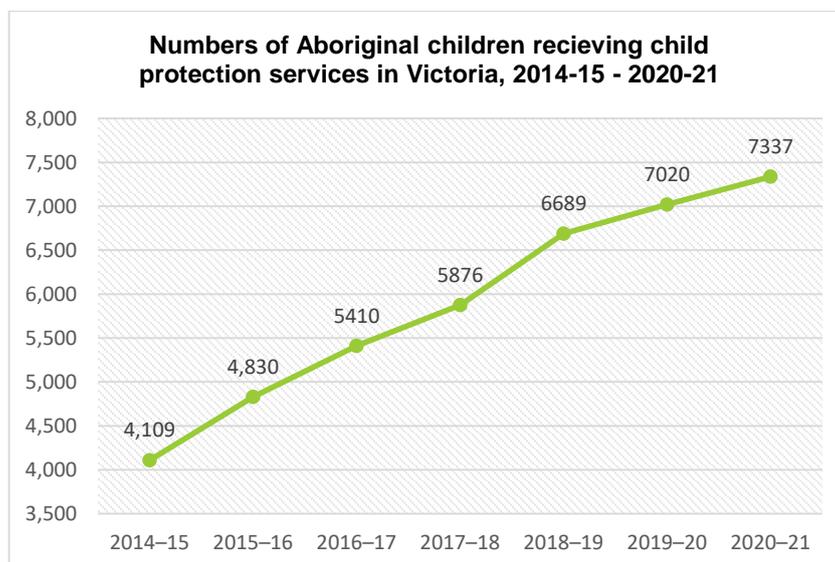
Key Statistics and Trends

Child Protection

33. In 2020-2021, there were 7,337 Aboriginal children receiving child protection services in Victoria, a substantial and alarming increase since 2014-2015 (see **Figure 1**). 'Children receiving child protection services' is defined as one or more of the following:

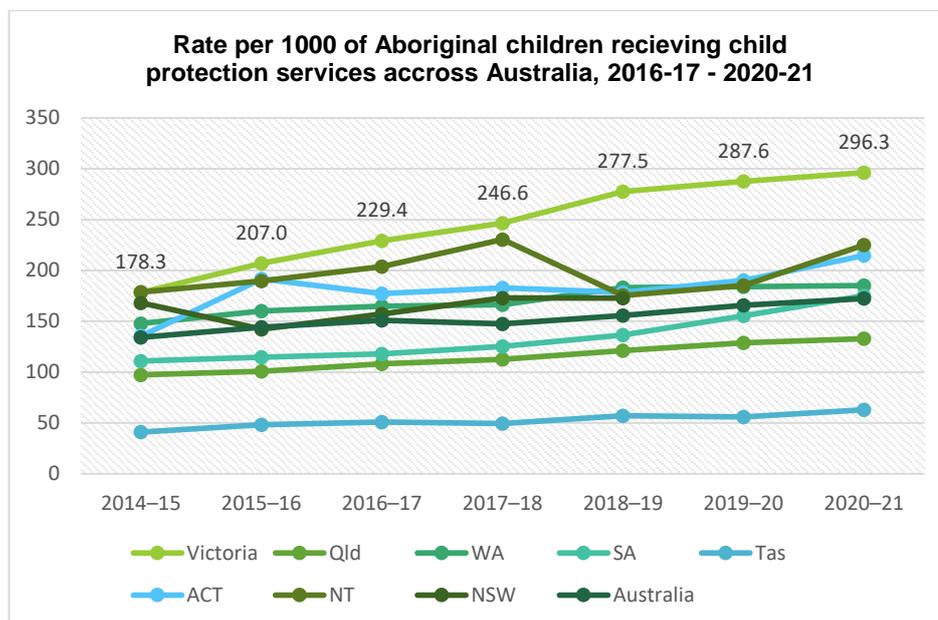
- an investigation of a notification,
- being on a care and protection order, or
- being in out of home care.

Figure 1⁷



34. Victorian Aboriginal children come into contact with the child protection system at the highest rate in Australia. In 2020-2021, for every 1,000 Aboriginal children in Victoria, 296.3 were receiving child protection services (defined above in paragraph 33). That is almost a third of the population. **Figure 2** shows that the number of Aboriginal children receiving child protection services in Victoria has continued to grow steadily. Whilst the remaining states and territories have been relatively constant, with some periods of slight decline. The rate in Victoria remains the highest and continues to grow year-on-year.

⁷ AIHW Child Protection Data Tables 2020-21 dating back to 2014-15 – published June 2022, T4

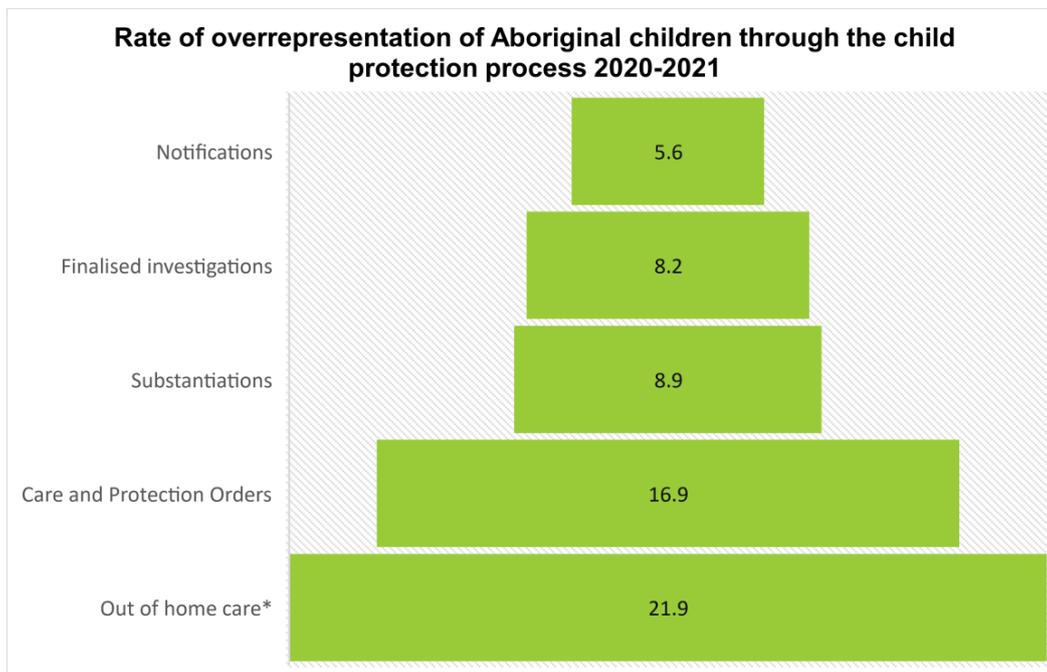
Figure 2⁸

35. Based on the data, we can conclude, the further into the child protection system, towards intervention matters progress. This is attributed to the fact that over-representation of Aboriginal children increases at every stage. **Figure 3** shows that when comparing Aboriginal and non-Indigenous children in Victoria in 2020-2021, Aboriginal children were:

- 5.6 times more likely to be the subject of a notification
- 8.2 times more likely to have a finalised investigation
- 8.9 times more likely to be the subject of a substantiation
- 16.9 times more likely to be subject to a care and protection order
- 21.9 times more likely to be in care as at 30 June 2021.⁹

⁸ AIHW Child Protection Data Tables 2020-21 dating back to 2014-15 – published June 2022, T4

⁹ SCRGSP. Report on Government Services 2022. Table 16A.1; Table 16A.2.

Figure 3¹⁰

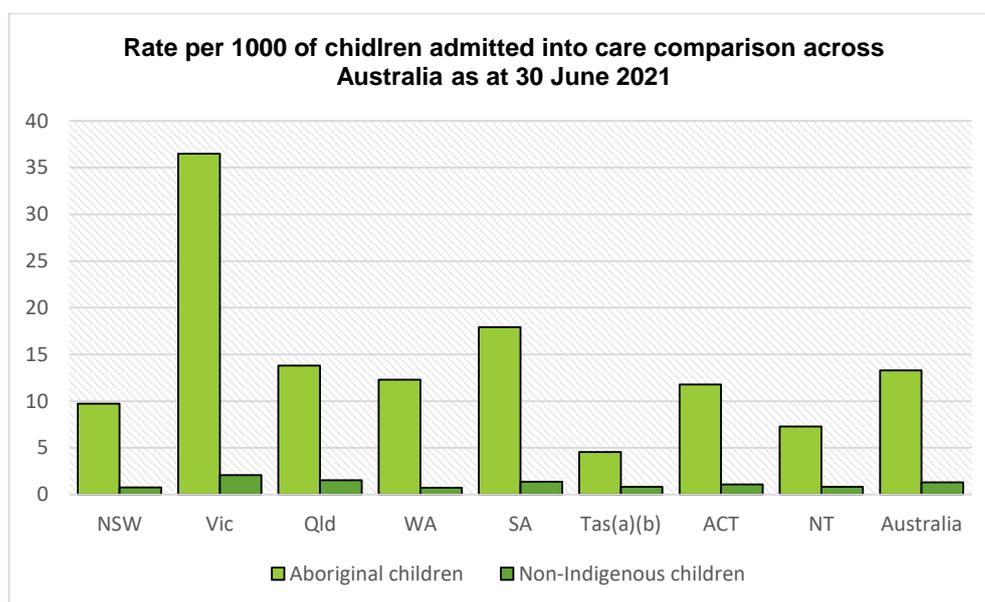
36. This suggests that DFFH's efforts to support families earlier prior to removal are not working for Aboriginal children. There continues to be a lack of trust between Aboriginal families and the department.

¹⁰ SCRGSP. Report on Government Services Child Protection Services Data Tables 16A. Table 16A.1; AIHW Child Protection Data Tables 2022 Table S5.5.

*Rate of Aboriginal children in out of home care as at 30 June 2021

37. Victoria continues to admit Aboriginal children into care at a higher rate than any other State or Territory by far. According to **Figure 4**, the 2020-21 rate remains more than double that of the second highest rate (South Australia). Further, while the rate has reduced slightly since 2019-20 (see **Figure 5**), the ratio of representation of Aboriginal children being admitted into out of home care when compared to non-Aboriginal children increased (see **Figure 6**).¹¹ In other words, in 2019-20, Aboriginal children were 16.4 times more likely to be admitted into out of home care than non-Indigenous children, whereas in 2020-21, this number went up to 17.6.¹²

Figure 4¹³



¹¹ AIHW Child protection data tables 2020-21 – published June 2022, S5.17

¹² AIHW Child Protection Data Tables 2020-21 dating back to 2014-15 – published June 2022. Table S5.17

¹³ AIHW Child protection data tables 2020-21 dating back to 2014-15 – published June 2022, S5.1

Figure 5¹⁴

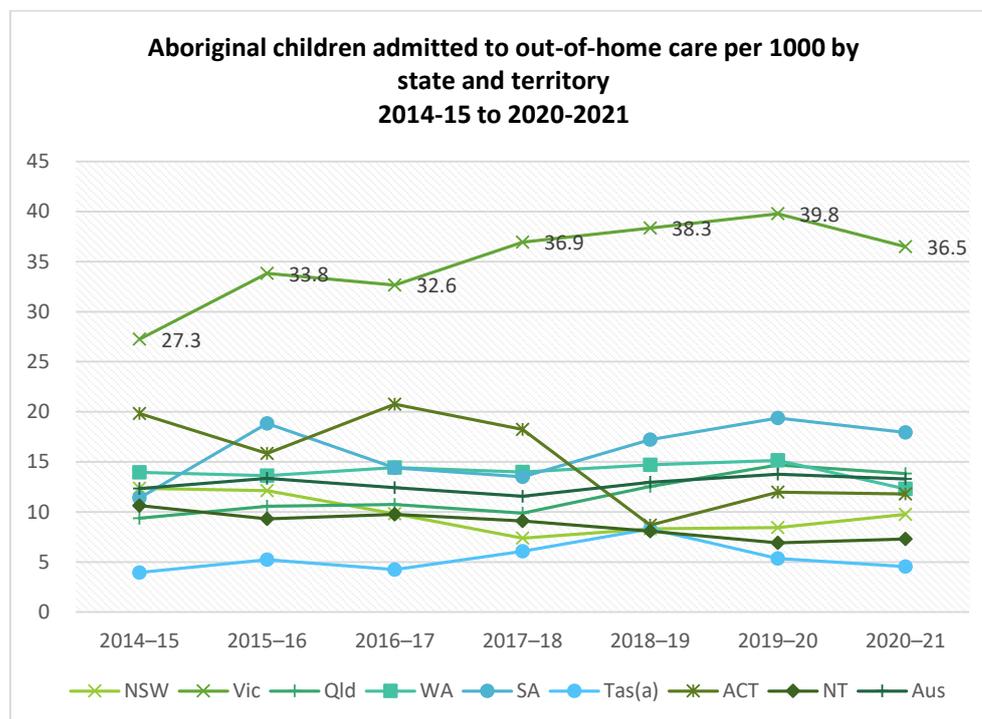
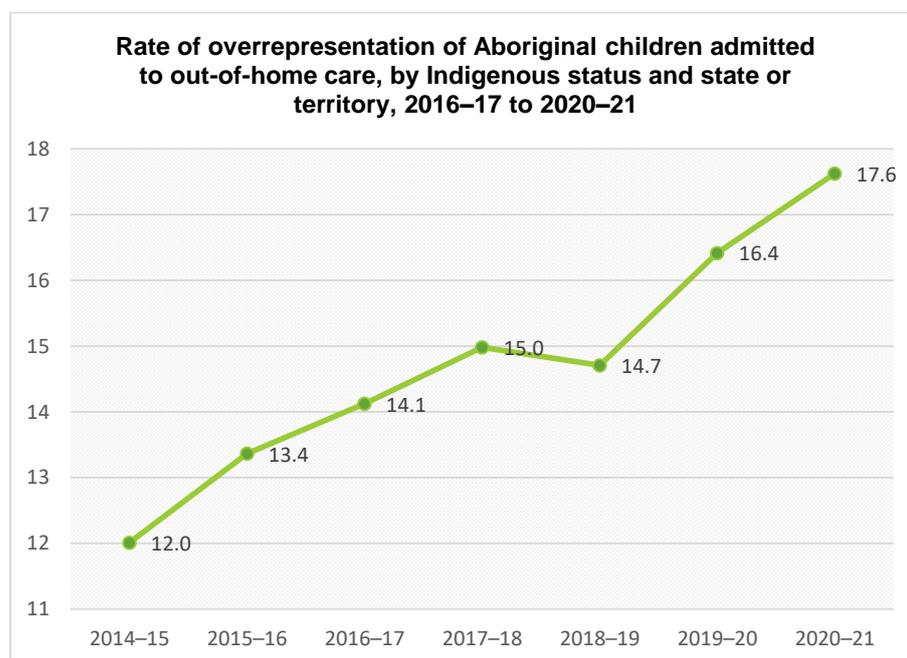


Figure 6¹⁵

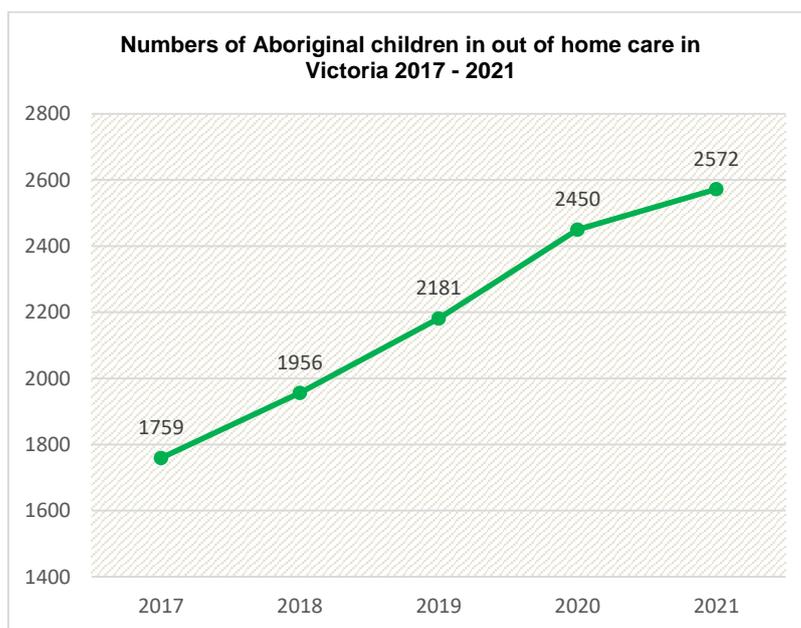


¹⁴ AIHW Child protection data tables 2020-21 dating back to 2014-15 – published June 2022

¹⁵ AIHW Child protection data tables 2020-21 dating back to 2014-15 – published June 2022, S5.17

38. In 2016, the Commission published *Always was, always will be Koori children: systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*, a landmark report incorporating findings from Taskforce 1000, an 18-month project which critically reviewed the case plans and circumstances of 980 Aboriginal children in out-of-home care. This inquiry found that the child protection system was inherently culturally unsafe for Aboriginal children and their families and that many children in out of home care had experienced continuing harm while in care. While there have been some significant reforms since this inquiry, including the transition of Aboriginal Children to Aboriginal Care Program (ACAC), since the reports were published, the number of Aboriginal children in out of home care in Victoria has risen from 1,759 as at 30 June 2017 to 2,572 at 30 June 2021 (see **Figure 7**)¹⁶¹⁷. The Commission continues to hear stories and see examples of racism within the child protection system and that Aboriginal families are not provided with the support they need, at the time they need it, to care for their child(ren) at home.¹⁸

Figure 7¹⁹



¹⁶ AIHW Child Protection Data Tables 2020-21 dating back to 2014-15 – published June 2022, T3

¹⁷ Unfortunately in 2018-19, all states and territories adopted a national definition of out of home care, this was dated back to 2017 and provided in the most recent AIHW reports. AIHW has stipulated that this data should not be compared with previously published reports.

¹⁸ CCYP. OYOW 2020. Pgs 39, 263. Available at [CCYP-OYOW-Summary-Final-090621.pdf](https://www.cyp.vic.gov.au/CCYP-OYOW-Summary-Final-090621.pdf)

¹⁹ AIHW Child Protection Data Tables 2020-21 dating back to 2017 – published June 2022, T3

39. The rate per 1,000 Aboriginal children in out of home care continues to increase and remains higher than any other state or territory (see **Figure 8** and **Figure 9**).

Figure 8²⁰

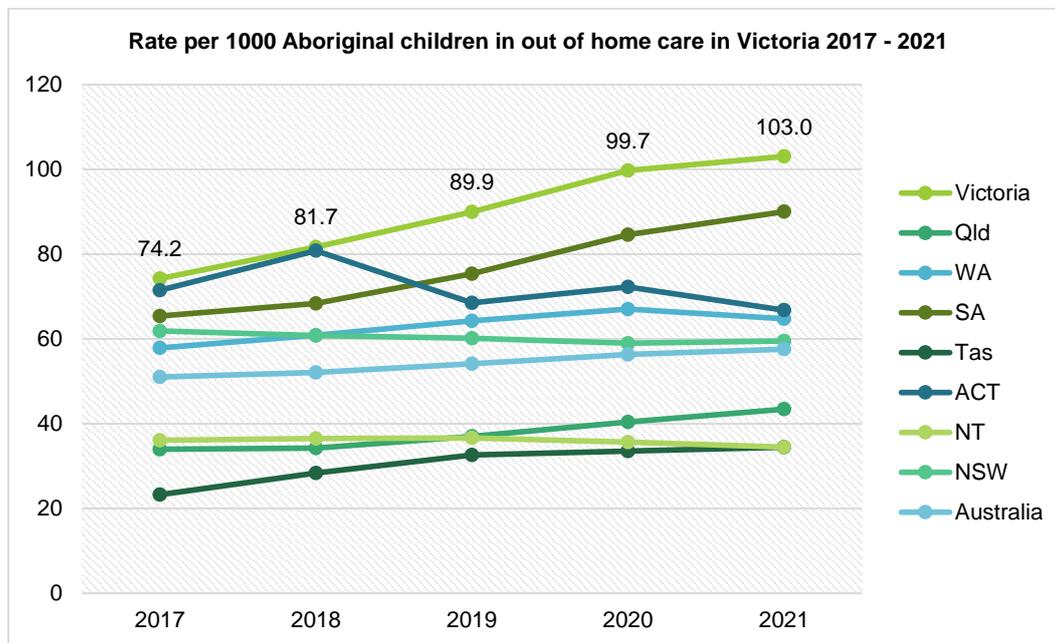
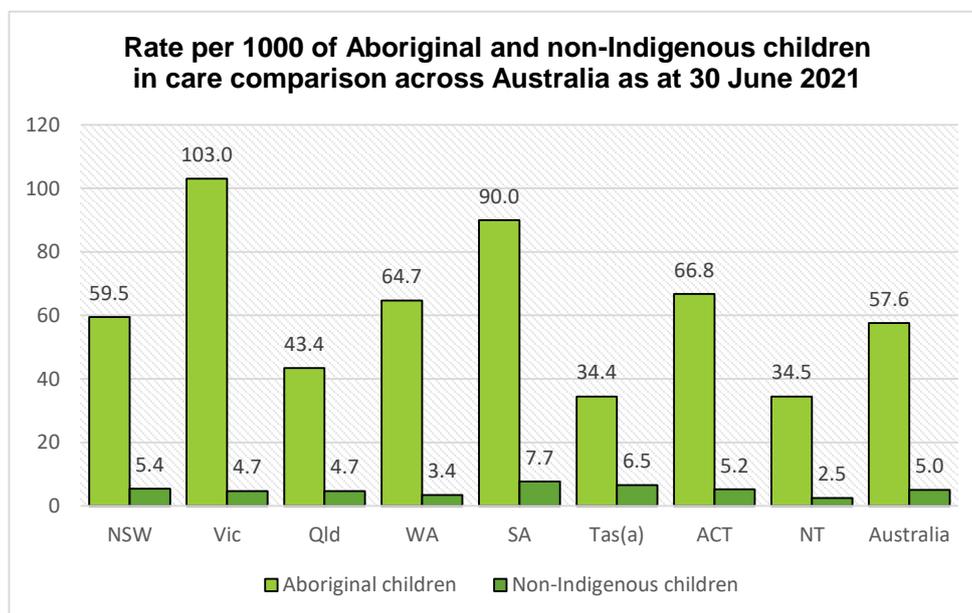


Figure 9²¹

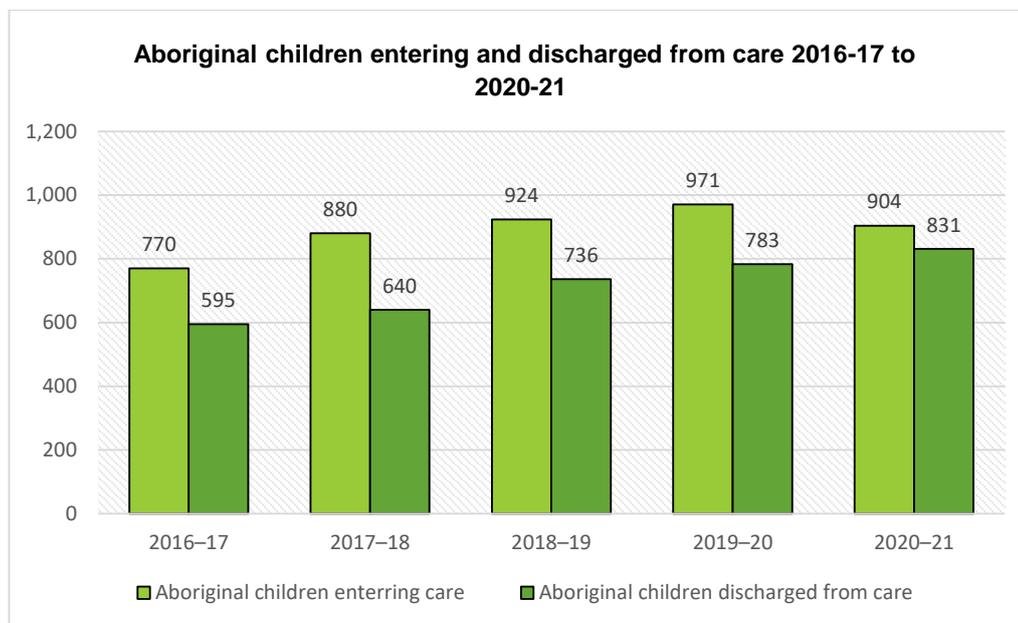


²⁰ AIHW Child Protection Data Tables 2020-21 dating back to 2017 – published June 2022, T3

²¹ AIHW Child Protection Data Tables 2020-21– published June 2022, S5.5

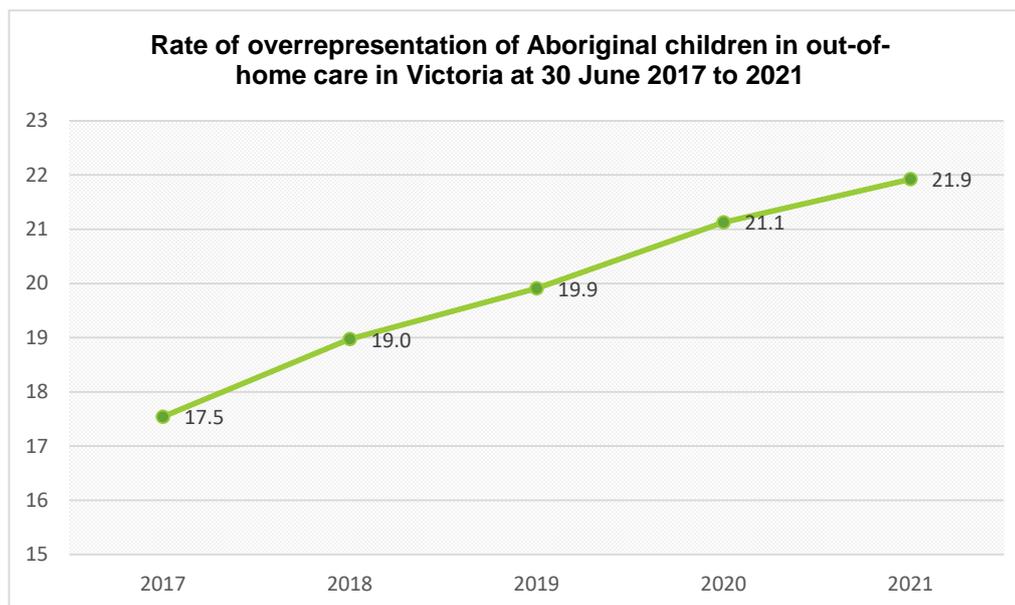
40. **Figure 10** shows the numbers of Aboriginal children entering and discharged from care from 2016-17 to 2020-21. Every year, Victoria continues to admit more children into care than discharges from care.

Figure 10²²



41. When compared with non-Indigenous children, the rate at which Aboriginal children are overrepresented in out of home care also continues to rise. At 30 June 2017, Aboriginal children were 17.5 times more likely to be in out of home care in Victoria than non-Indigenous children. At 30 June 2021, this number increased to 21.9 (see **Figure 11**).

²² AIHW Child Protection Data Tables 2020-21– published June 2022, S5.1

Figure 11²³

Youth Justice

42. In Victoria, like all other states and territories in Australia, the age of criminal responsibility is 10 years of age.

43. Aboriginal children and young people in Victoria continue to be over-represented in the youth justice system. Data indicates that on an average day (within the full year of published data, 2019–20), Aboriginal children and young people:

- accounted for 15% of children and young people aged 10 to 17 years under Youth Justice supervision in Victoria (in both the community and in custody), despite making up only 1.5% of Victorian children and young people aged 10 to 23 years
- were 10 times more likely than non-Aboriginal children and young people to be subject to community-based supervision
- were 9 times more likely than non-Aboriginal children and young people to be in youth justice custody.²⁴

²³ AIHW Child protection data tables 2020-21 dating back to 2017 – published June 2022, S5.19

²⁴ CCYP. OYOW 2020. *Executive Summary* pg 8. Available at [CCYP-OYOW-Summary-Final-090621.pdf](https://www.cyp.vic.gov.au/CCYP-OYOW-Summary-Final-090621.pdf)

44. Whilst undertaking *Our Youth, Our Way: Systemic inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*, data confirmed that:

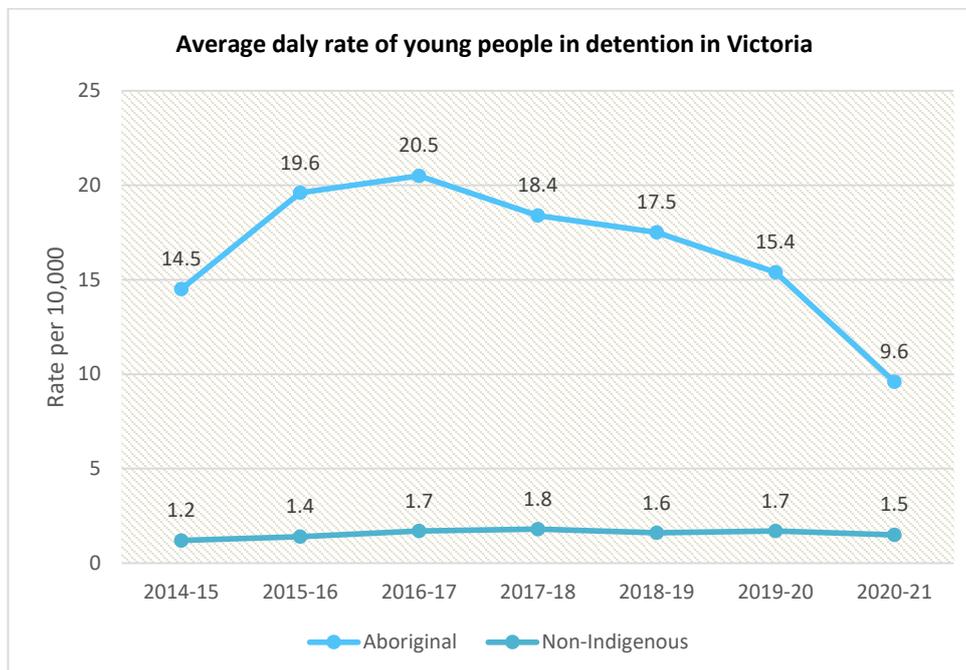
- Victoria Police is more likely to arrest and detain, and less likely to caution, Aboriginal children and young people than their non-Aboriginal peers
- Aboriginal children and young people are over-represented in every category of Youth Justice court order, including supervised bail, remand, community-based sentences and custodial sentences
- Aboriginal children and young people who are granted bail are more likely to be recorded for breaching bail conditions than non-Aboriginal children and young people
- courts are more likely to sentence Aboriginal children and young people to longer periods of community-based supervision than non-Aboriginal children and young people
- year-on-year, Aboriginal children and young people are detained (on sentence and remand) for more days on average than non-Aboriginal children and young people
- Aboriginal children and young people enter Youth Justice supervision at a younger age than non-Aboriginal children and young people.²⁵

45. A very high proportion of Aboriginal children and young people involved in the youth justice system also have Child Protection involvement. Children involved in both the youth justice and child protection systems are sometimes referred to as ‘crossover children’. Many crossover children have experienced out-of-home care.²⁶

46. In 2020-2021, the average daily rate of Aboriginal children and young people in detention was 9.6 per 10,000. While this was a substantial decrease from the rate in 2019-2020 (15.4), Aboriginal children and young people continued to be 6.4 times more likely to be in detention than non-indigenous young people (see **Figure 12**)

²⁵ OYOW 2020. *Executive Summary* pg 8. Available at [CCYP-OYOW-Summary-Final-090621.pdf](#)

²⁶ CCYP. *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*. 2021. Available at [CCYP | Our youth, our way](#).

Figure 12²⁷

47. The Commission's recent inquiry *Our Youth Our Way* made 41 findings and 75 recommendations that, if implemented, provide a path to end the over-representation of Aboriginal children in the youth justice system. The formal response to *Our youth, our way* we received earlier this year showed that the Victorian Government is committed to many of the reforms that will see Aboriginal children and young people diverted completely from the youth justice system. Yet, some of those recommendations central to this vision – including the need to raise the age of criminal responsibility to at least 14 and a review of police powers and the exercise of discretion – are yet to see any movement or commitment by the Victorian Government.

48. While there has been a delay in the unveiling of new youth justice legislation, I am hopeful that the work of the Commission will be a foundation for reform. The concerns in youth justice systems in Victoria and around the country have never demonstrated more urgent need for this change.

49. As contained within the CCYP Act, one of our statutory functions includes: providing independent oversight of Victoria's youth justice systems, including monitoring reports of serious incidents such as self-harm and attempted suicide in youth justice custody.

²⁷ SCRGSP 2022. Youth Justice Services. Table 17A.5.

50. The Commission publishes common themes in our annual reports²⁸ which disproportionately impact Aboriginal youth in custody due to the rates of over-representation. These issues include:

- Poor conditions and infrastructure.
- Excessive lockdowns due to staff shortages.
- Use of excessive force by staff.
- Poor responses to children self-harming.

Whole of Government Accountability

51. Aboriginal children and their families have a right to have control over their lives. Poor social determinants of health (that is, the conditions under which Aboriginal children are born and grow) are major driving factors of overrepresentation of Aboriginal children in the child protection and out of home care systems. The Commission has heard time and time again that government systems continue to be siloed and do not reflect the needs and lived experiences of Aboriginal children and their families. Evidence of racism across institutions and agencies impacting Aboriginal children and their families is ubiquitous and well documented in many inquiries over the last number of decades.²⁹ Despite this, racism is a live issue that continues to drive adverse outcomes for Aboriginal children and their families.³⁰ Despite numerous inquiries and Royal Commissions into systems that disproportionately adversely impact Aboriginal and Torres Strait Islander people and subsequent recommendations to address institutionalised racism, it continues to this day in Victoria – as highlighted by the Commission’s recent report *Our Youth, Our Way*:

“Over-representation does not reflect the criminality of Aboriginal children and young people in the youth justice system. Rather, it is the result of structural racism produced by the structures, policies and practices that underpin our social institutions and determine how they operate.”³¹ This applies not only to the youth justice

²⁸ [CCYP | Annual Reports](#)

²⁹ Family Matter Campaign. *Family Matters Report 2020*. Available at https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf

³⁰ CCYP. *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*. 2021. Available at [CCYP | Our youth, our way](#).

³¹ ‘Structural racism’ describes the ways in which history, public policies, institutional practices and culture interact to maintain a racial hierarchy that allows privileges and disadvantages to endure and adapt over time. This definition

*system, but also to its interrelationship with other systems, including the child protection, health, housing and education systems.*³²

52. For this reason, the National Agreement on Closing the Gap is built around four Priority Reforms that are to inform the way that all governments work with Aboriginal people and communities:

- Formal Partnerships and Shared Decision Making.
- Building the Community-Controlled Sector.
- Transforming Government Organisations.
- Shared Access to Data and Information at a Regional Level.

53. Aboriginal children and their families are often forced to navigate complex, siloed and punitive systems which fail to work together to support them in a holistic way. The lack of whole of government coordination results in duplication in some areas and service gaps in others.

54. One example of a siloed approach is the way that responsibility for achieving Target 12 of Close the Gap (to reduce the overrepresentation of Aboriginal children and young people in out of home care by 45% by 2031) in Victoria rests solely with the Department of Families Fairness and Housing (DFFH). If the aim is to keep Aboriginal children out of the child protection systems, all government departments must play a role in supporting Aboriginal children and their families earlier and providing them with the resources to avoid poor outcomes. Thus, it is concerning that the responsibility for the Target actions as laid out in the *Closing the Gap Implementation Plan* is solely placed upon the Minister for Child Protection.³³ This limits the scope of actions that can be undertaken to prevent Aboriginal children from coming into contact with child protection in the first place.

conceptualises 'institutional racism' as an aspect of structural racism. As articulated by John Powell, '[i]nstitutional racism shifts our focus from the motives of individual people to practices and procedures within an institution. Structural racism shifts our attention from the single, intra-institutional setting to inter-institutional arrangements and interactions.': JA Powell, 'Structural racism: building upon the insights of John Calmore', *North Carolina Law Review*, 2008, 86(3):791–816, p 796. A structural racism lens helps us to identify and examine the racial legacy of Australia's past, how racism persists in our state institutions, and how individuals internalise and respond to racialised structures.

³² For further discussion of the relationship between different social institutions and their practices that embed racist outcomes for Aboriginal people in Australia, see C Cunneen, 'Institutional racism and (in)justice: Australia in the 21st century', *Decolonization of Criminology and Justice*, 2019, 1(1):29–51.

³³ Victoria Government. *Victoria's approach to implementing the National Agreement on Closing the Gap | First Peoples - State Relations* (firstpeoplesrelations.vic.gov.au)

55. The reduction of Aboriginal children and young people in the youth justice and child protection systems will require a significant shift in approach from all governments and service systems that addresses the structural drivers. Improving a single system alone will not prevent an Aboriginal child from experiencing racism or other barriers in another service system. Many Aboriginal children and families would benefit more from access to basic resources such as quality housing, better income supports or culturally safe childcare rather than intervention. Others may need more targeted early help or other wellbeing programs. Nevertheless, governments continue to invest most of their expenditure into tertiary systems which can exacerbate vulnerability and do more harm than good.

Current work and projects

56. The Commission is looking at Victoria's progress towards achieving Closing the Gap *Target 12: to reduce the overrepresentation of Aboriginal children and young people in out of home care by 45% by 2031* (Target 12)³⁴. This project is in its initial phases and do not currently have any progress to report.

57. The Commission has established an inquiry into the educational experiences of children and young people living in out-of-home care. The Commission understands the importance of quality education for these young people and its influence on their futures³⁵. Consultations have been completed, however the inquiry has not been drafted.

Key Inquiries

58. As per section 39 of the *Commission for Children and Young People Act 2021* (CCYPA), the Commission has the power to conduct inquiries into services provided or omitted to be provided to children and young people by:

- Child protection services.
- Youth justice services.
- Community services.
- Health services.

³⁴ [CCYP | Have your say in the Closing the Gap Target 12 project](#)

³⁵ [CCYP | Systemic inquiry into the educational experiences of children and young people living in out-of-home care](#)

- Human services.
- Schools.

59. In the past six years, the Commission has tabled ten systemic inquiries in the Victorian Parliament examining significant and deeply concerning issues in the child protection and out of home care systems. Of the ten completed inquiries, two relate specifically to Youth Justice, whilst eight relate to the out-of-home care and child protection systems.

60. In these inquiries, the Commission has made a raft of recommendations to government to improve the out of home care system and the child protection system. We have seen some progress including:

- Significant funding for more child protection workers (but unfortunately still many vacancies to fill).
- Preservation and reunification services, including for Aboriginal children.
- Targeted care packages.
- Building of smaller and more therapeutic residential places (KEYSS) and for the establishment of a care hub pilot.

61. Despite the significant investment, we still see the residual impact of years of chronic underfunding of a system ill-equipped to respond to the needs and experiences of Aboriginal children and young people. In many ways, we know what needs to happen to make things better. We have made recommendations for change, and we have seen some action, but we need to maintain the urgency with which change is required. A summary of our most recent inquiries is provided below.

62. I must acknowledge my predecessors in this role, Justin Mohamed and Andrew Jackomos. Their tireless advocacy in their time as Commissioner for Aboriginal Children and Young People has shown that, working with community and government, we can achieve better outcomes for Aboriginal children.

*Always was, always will be Koori Children (2016)*³⁶ and *In our best interests (2016)*³⁷

63. [*Always was, always will be Koori children*](#) is the report of an investigation into the circumstances of 980 Aboriginal children and young people in out-of-home care in Victoria. The report made 77 recommendations to reduce the number of Aboriginal children in out of home care in Victoria. The final report was tabled in the Victorian Parliament on 26 October 2016.
64. [*In the Child's Best Interests*](#) was a systemic review of the Victorian child protection system's compliance with the Aboriginal Child Placement Principle and was tabled in Parliament in October 2016. The inquiry reviewed the case files of 65 Aboriginal children placed in care during the review period. The review could not find a single case where agencies complied with all the requirements to meet the intent of the principle despite there being a legislated requirement.
65. The two inquiries had a major focus on improving outcomes for Aboriginal children in care and influenced a variety of reforms which increased access for Aboriginal children and their families to culturally safe services. This had the effect of increasing placements of Aboriginal children with Aboriginal carers and kin and increasing their connection to culture.
66. While efforts were made by Government to improve the conditions of Aboriginal children in care, sadly the numbers of Aboriginal children in care have increased substantially since 2016. There has been a lack of focus and investment to prevent Aboriginal children from being removed from their families in the first place. (see tables provided previously outlining numbers and rates of over-representation – Figures 1-11)

*Our Youth Our Way (2021)*³⁸

67. [*Our youth, our way*](#) was a systemic inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system which was tabled in the Victorian Parliament on 9 June 2021.
68. This report presents the findings and recommendations of the Koori Youth Justice Taskforce and the Commission's systemic inquiry, *Our youth, our way*. The Koori

³⁶ CCYP. *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. Available at [CCYP | Always was, always will be Koori children](#).

³⁷ CCYP. *In the child's best interests: systemic review of the Victorian child protection system's compliance with the Aboriginal Child Placement Principle*. 2016. Available at [CCYP | In the child's best interests](#).

³⁸ CCYP. *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system*. 2021. Available at [CCYP | Our youth, our way](#).

Youth Justice Taskforce was a partnership project with the Department of Justice and Community Safety and considered all Aboriginal children and young people in contact with Youth Justice from October 2018 to March 2019. The Commission commenced its systemic inquiry in May 2019. The inquiry sought to understand the lived experiences of Aboriginal children and young people in Victoria and the factors contributing to their over-representation in the youth justice system.

69. The report asserted that the stark over-representation of Aboriginal children and young people in Victoria's youth justice system can only be eliminated by placing them together with their families, communities and culture at the heart of finding and implementing solutions.
70. The inquiry made 41 findings and 75 recommendations that can be implemented within five years and calls for a 're-imagined' youth justice system to end over-representation of Aboriginal children and young people.
71. The inquiry contributed to the development of Wirkara Kulpa, Victoria's first Aboriginal Youth Justice Strategy, launched in February 2022.

*Keep Caring (2020)*³⁹

72. [Keep caring](#) was a systemic inquiry into services for young people transitioning from out-of-home care which was tabled in the Victorian Parliament on 9 December 2020.
73. The inquiry looked at whether young people in out of home care get enough help to transition to adult life. As part of the inquiry the Commission spoke to over 100 young people and reviewed over 160 Child Protection files (including 64 for Aboriginal young people) to determine the quality of leaving care planning and the supports children received. We also conducted an in-depth file review for 30 young people who were about to transition or had transitioned from care.
74. The report found:
 - The out-of-home care system is not doing enough to help young people to plan and prepare for their lives after care.
 - When young people leave care, they lose a lot of help they relied on in care, leaving many homeless and disconnected from educational, social and mental health supports.

³⁹ CCYP. *Keep caring, Systemic inquiry into services for young people transitioning from out of home care*. 2020. Available at [CCYP | Keep caring](#).

75. The file review confirmed that culture is usually not prioritised in leaving care planning. The inquiry found that leaving care planning rarely addresses the cultural needs of Aboriginal young people – including how they will maintain a connection to culture – upon leaving care. While Aboriginal children face an acute risk of disengagement from education, unemployment or homelessness, generally, leaving care planning does not go far enough to address these vulnerabilities by timely planning for:

- Enduring physical and mental health supports post-care
- Re-engagement with work or vocational training
- Sustainable and culturally safe accommodation.

76. The report also found one in four Aboriginal young people miss out on the opportunity to receive culturally appropriate support from an ACCO in the years immediately prior to their exit from care. Further, ACCO-run Better Futures (program to support young people transition from care) are not funded proportionate to Aboriginal young people's representation among care leavers.

*Out of sight (2021)*⁴⁰

77. *Out of sight* was a systemic inquiry into children and young people who are absent or missing from residential care which was tabled in the Parliament of Victoria on Thursday 24 June 2021.

78. This inquiry found that reporting of children going missing from care is inconsistent and that, as a result, no-one knows the full extent of the problem. While Aboriginal children are over-represented in out of home care overall, the rate at which they are reported absent or missing from residential care is lower than for non-Aboriginal children.

79. This gives rise to concerns that Aboriginal children going missing is under-reported. The Commission found that children that go missing are vulnerable to sexual exploitation and abuse.

80. Consultations suggested that a lack of support to maintain Aboriginal children and young people's connection to their community, country and culture was one of the reasons children may go absent or missing to reconnect. One Aboriginal child told us:

⁴⁰ CCYP. *Out of sight: systemic inquiry into children and young people who are absent or missing from residential care*. 2021. Available at [CCYP | Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care](#)

"I have tried getting things done – confirmation of Aboriginality – they won't do that. I tried to do a return to country. They have not done that. The only thing they have done is ordered me stuff that is made on my land. They have not even assigned me to an Aboriginal lawyer. (Rohan, residential care, 17, Aboriginal)"

81. The report also found that an overreliance on warrants to find and return children who are absent or missing from residential care has the potential to criminalise children and cause more trauma. This in turn makes children unlikely to trust police in the future as a victim and to make complaints.
82. With regard to recommendations and findings from the Out of Sight Inquiry, the Commission has expressed concern with the delay of the first action plan and disappointment that some of the proposed actions did not adequately respond to key recommendations. Improved responses to these inquiry recommendations have since been received but much of the action needed to prevent children leaving residential care placements and to protect them from sexual exploitation and other abuse has yet to commence.

*Lost, not forgotten (2019)*⁴¹

83. [Lost, not forgotten](#) was an inquiry which captured the stories of 35 children and young people who committed suicide within a year of their last involvement with Victoria's child protection system. The report was tabled in the Victorian parliament on the 30 October 2019. Of the 35 children identified in the report, a total of six children (17 percent) were Aboriginal.
84. All the Aboriginal children were recorded as having experienced four forms of child abuse and maltreatment. Intergenerational trauma was a feature in the lives of all Aboriginal children reviewed. 83% of the children had their first contact with Child Protection by age five.
85. The cases featuring Aboriginal children featured lengthy, intergenerational child protection histories. Despite this, there was no evidence that Child Protection considered cumulative harm when assessing risk or planning.

⁴¹ CCYP. *Lost, not forgotten: Inquiry into children who died by suicide and were known to Child Protection*. 2019. Available at [CCYP | Lost, not forgotten](#).

86. In the six cases involving Aboriginal children:

- Four of the six children were eligible for an Aboriginal family-led decision-making meeting, but a meeting was held for only one of the children.
- Two children were at various stages entitled to a Cultural Support Plan, but in neither case was one completed.
- Failure to comply with the Aboriginal Child Placement Principle was recorded with respect to three of the children placed in out-of-home care.
- Consultation with the Aboriginal Specialist Advice and Support Service occurred in four of the six cases.
- Koori Education Support Officers worked with four of the six Aboriginal children.

*In our own words (2019)*⁴²

87. [In our own words](#) was a systemic inquiry into the lived experiences of children and young people in the Victorian out of home care system in 2019.

88. Through this inquiry, the Commission had the privilege of speaking to over 200 children and young people with an experience of care, more than 80 of the young people identifying as Aboriginal and/or Torres Strait Islander. It was encouraging to hear that some flourished in safe, stable and loving placements, with supportive and skilled carers and workers.

89. However, far too many of the children and young people told the Commission they felt lost in an overstretched and chaotic care system. Many experienced the stress and upheaval of constantly shifting placements. Many cycled through so many case workers, they gave up on the idea of having someone who knew their story and could support them. Others, particularly those in residential care, described feeling unsafe and alone in bleak and run-down accommodation.

90. Among the report's key recommendations were:

- an integrated, whole-of-system investment model for a safe and quality system (recommendation 1),
- a review to embed children's participation in decision-making (recommendation 4),

⁴² CCYP. *In our own words: Systemic inquiry into the lived experience of children and young people in out of home care (2019)* [CCYP | In our own words](#)

- the allocation of a key worker with decision-making power for every child and young person in care (recommendation 5),
- and the establishment of an independent and child-centred complaints mechanism for children and young people in state care (recommendation 6).

91. Collectively, these inquiries provide clear evidence of systemic failures impacting the safety, wellbeing and rights of children and young people.

*Individual Inquiries and Child Death Inquiries published in the Commission's [Annual Reports](#)*⁴³

*Individual Inquiry – ‘Jane’*⁴⁴

92. In 2020, the Commission completed an inquiry into services provided to a young Aboriginal child, ‘Jane’, who was known to Child Protection. The inquiry was established following a recommendation to the Commission from the Minister for Child Protection in 2019

93. The Commission examined Jane’s experience of the service system and the extent to which services successfully identified and managed risks, ensured quality of care and provided child-centred, culturally safe and effective support between the period 22 March 2013 and 13 August 2018.

94. The Commission found not only a series of extremely concerning failures in the way Jane’s case was managed, but also evidence of systemic racism, which had significant consequences for Jane’s physical and cultural safety and wellbeing.

95. The Commission found that during an identified period of Jane’s life, Child Protection did not carry out essential tasks to ensure her safety. Tasks not carried out included home visits, direct engagement with Jane, and following up on concerns repeatedly expressed by the local Aboriginal community, including the local ACCO, to Child Protection about Jane’s safety. Based on this, Child Protection failed to meet its statutory obligations to Jane

96. Details relating to the findings and recommendations from this inquiry can found within the Commissions 2020-21 [Annual Report](#)

⁴³ [CCYP | Annual Reports](#)

⁴⁴ [Annual-report-2020-21.pdf \(ccyp.vic.gov.au\)](#) pp 31-32

97. The Commission is subject to s 55 of the CCYP Act which prohibits the Commission from disclosing protected information except in limited circumstances, for example, where it is necessary to perform its functions or exercise its powers, or where expressly authorised, permitted or required to disclose the information. To disclose protected information contrary to the CCYP Act is a criminal offence. The Commission is therefore constrained in its ability to disclose publicly identifying information or the individual inquiry concerning *Jane*. The information contained in this statement concerning Jane has been published in the Commission's annual report 2020-21 and has attracted parliamentary privilege.

Child Death Inquiries

98. As set out within the CCYP Act, one of the statutory functions of the Commission involves conducting inquiries into services provided or omitted to be provided to children and young people who have died and were involved with Child Protection in the 12 months before their death.

99. These inquiries aim to identify aspects of the service system that need to be improved to help children in the future.

100. While the death of a child is a trigger for an inquiry, the Commission makes no findings as to the cause of death. Instead, we focus on services provided to a child before they died.

101. Of the 45 child death inquiries reported in the 2020-21 Annual Report, thirteen related to Aboriginal children.⁴⁵

102. In the child death inquiries conducted in 2020–21, we identified a number of issues prompting recommendations for improvements to services. Some of these have highlighted emerging issues with service practice and responses, but many of these themes were consistent with those identified in previous years. Themes and issues of concern arising in 2020–21 included:

- Lack of engagement with children
- Adequacy of risk assessment
- Information sharing and agency collaboration

⁴⁵ [Annual-report-2020-21.pdf \(ccyp.vic.gov.au\)](#) pp35-45

- Delayed identification of Aboriginal children

Common themes and observations impacting Aboriginal children

103. As a result of conducting a range of our statutory functions, the Commission has raised common themes in respect to child protection practice that disproportionately impact Aboriginal children due to the rates of over-representation. These have been referred to in a number of published annual reports⁴⁶ and systemic inquiries⁴⁷ including:

- Poor information gathering
- Inadequate risk assessment
- Lack of collaboration between services and information sharing
- Poor responses to children experiencing family violence
- Poor responses to children experiencing poor mental health and cumulative harm
- Missed opportunities to provide early supports in the event of receiving an unborn notification
- Aboriginal children's right to culture
- Lack of early support for vulnerable mothers

Conclusion

104. The Commission for Children and Young People encourages the Yoorrook Justice Commission to consider the depth of information and data available in our published work – specifically, our previously published annual reports and systemic inquiries.

105. The Commission for Children and Young People acknowledges that the detail contained within this statement is not exhaustive.

⁴⁶ [CCYP | Annual Reports](#)

⁴⁷ [CCYP | Systemic inquiries](#)

A handwritten signature in black ink, appearing to read 'M. Singh'.

Meena Singh

Commissioner for Aboriginal Children Young People