WITNESS STATEMENT OF THE HON. JACLYN SYMES, ATTORNEY-GENERAL

I, Jaclyn Symes, of 1 Treasury Place, East Melbourne:

1. provide this Statement to assist the Yoorrook Justice Commission (Commission) on the subject matters about which I have been asked to give evidence.

2. wish to thank the Commission for the opportunity to provide this Statement. The contents are true and correct to the best of my knowledge.

Part 1 – Acknowledgement

3. With deep personal respect I acknowledge the Traditional Owners of the Country on which I live, the lands of the Taungurung people, and the Country on which I work, the lands of the Wurundjeri Woi Wurrung people of the Kulin nation. I acknowledge and pay my respects to ancestors of this Country, Elders, knowledge holders and leaders.

4. I acknowledge the strength of Aboriginal peoples in maintaining and protecting the world's oldest living culture. For thousands of years Aboriginal peoples in what is now known as Victoria have practised their laws, customs and languages and nurtured Country through their spiritual, material and economic connections to the land, water and resources. I acknowledge the ongoing leadership of Aboriginal communities across Victoria in striving to build on these strengths to address inequalities and improve Aboriginal justice outcomes.

5. I acknowledge the impact of colonisation and dispossession on Aboriginal peoples. The reality of colonisation involved the establishment of laws and policies with the specific intent of excluding and oppressing Aboriginal peoples and their laws, customs, cultures and traditions.

6. Victorian Aboriginal communities are culturally diverse, with rich and varied heritages and histories. The impacts of colonisation—while having devastating and ongoing effects on the lives of Aboriginal peoples—have not diminished Aboriginal peoples' connection to Country, culture or community. These rich and varied histories need to be understood and acknowledged by all Victorians, to truly understand the resilience and strength of previous generations, as well as the history of the fight for survival, justice and Country that has taken place across Victoria and around Australia.

7. I acknowledge the fact that the justice system has both recently and historically been a site of exclusion and oppression, whether through laws that were specifically targeted at Aboriginal peoples, laws that were unequally applied to them, or through the refusal to enact specific laws for the advancement of Aboriginal peoples or engage Aboriginal peoples in the design of laws that affect

them. I acknowledge that this has resulted in entrenched systemic and structural racism within the justice system and broader institutions of government. I acknowledge also that the impact and structures of colonisation are far-reaching and intergenerational and are continuing to affect Aboriginal peoples' interactions with the criminal justice system.

8. I want to particularly acknowledge and express deep sorrow for the Aboriginal people who have died in custody and, on behalf of the Victorian Government, unreservedly apologise for the ongoing pain and sadness that this has caused to their families and community.

9. It is important to begin with a recognition that most Aboriginal people never have, and never will, become involved in the criminal justice system as victims and/or offenders. However, it is important to recognise that the historical legacy of colonisation is still felt today, with systemic racism, unconscious bias in the application of the law, and the criminalisation of social and economic disadvantage all contributing to the over-representation of Aboriginal people in the criminal justice system. For the minority of Aboriginal people who do become involved in the criminal justice system, their experiences not only adversely affect the individuals involved, but significantly impact their families and the communities to which they belong.

10. As we work in partnership with the Aboriginal community to improve Aboriginal justice outcomes, support families, and make communities safer, I acknowledge the invaluable contributions of all those who have gone before us. From Uncle William Cooper to Uncle Alf Bamblett, there are countless Aboriginal people who have fought tirelessly for the rights of their people, including the right to self-determination.

11. As Attorney-General, and on behalf of the Victorian Government, I also want to recognise the immeasurable contribution, leadership and commitment of the Aboriginal Justice Caucus (AJC), supported by the Regional Aboriginal Justice Advisory Committees (RAJACs) and the many leaders, Elders and members of Aboriginal communities across Victoria, who work in partnership with government to improve justice outcomes under the Aboriginal Justice Agreement (AJA). Now 23 years on, I understand that this is the longest running Aboriginal justice partnership in Australia, and possibly the most enduring formal partnership between Aboriginal communities and a State/Territory Government across any sector.

12. **Warning**: Aboriginal people are advised that this paper contains references to Aboriginal people who have passed away.

    Terminology: the term Aboriginal is used in this document to respectfully refer to Aboriginal and Torres Strait Islander people. This is in accordance with the preference of the AJC. Other terminology, such as Koori and First Peoples, is used where it is in the name of a program, initiative or organisation.

Part 2 – Introduction

Background and qualifications

13. I provide this statement in my position as Attorney-General of the State of Victoria, a position I have held since December 2020.

14. As well as Attorney-General, I am the Minister for Emergency Services, a position I have held since August 2021. I was first elected to the Legislative Council in 2014 for the Northern Victoria region. I became a Cabinet Minister in December 2018 and have previously been Minister for Resources, Minister for Agriculture and Minister for Regional Development.

15. With respect to the Commission's criminal justice interest area my portfolio includes administration of a wide range of the state's criminal law frameworks, justice entities such as the Courts and the Office of Public Prosecutions (OPP), and justice programs. I also represent Victoria on the Standing Council of Attorneys-General intergovernmental forum.

16. As Attorney-General, I am also the First Law Officer for the State of Victoria. The role of First Law Officer has evolved over hundreds of years. As First Law Officer, I am responsible for the provision of legal advice to the government, and my role includes protecting and promoting the rule of law and the administration of justice. My corresponding roles within government, in court and in relation to the legal system are exercised accordingly.

17. In my role as Attorney-General, I am also obliged to promote the three limbs of our constitutionally established system of government (Parliament, the Executive and the Judiciary) and ensure appropriate checks and balances are maintained between them.

18. The law and its application are, and should be, open to criticism. It is incumbent upon me to engage, listen and seek to understand. Sometimes the views and interests of the community, offenders and victims align. However, often they do not.

19. In exercising my role as First Law Officer and in making decisions collectively as a member of Cabinet, I am required to balance competing objectives and priorities in the pursuit of a fair, equitable and accessible criminal justice system and associated outcomes.

20. Finding the right balance between these different objectives and priorities is a difficult task, involving professional judgment, evidence and an understanding of the impacts of decisions and broader community views, including the views of Aboriginal stakeholders. As a consequence of balancing these factors, decisions are at times made that cannot and do not meet Aboriginal community expectations. As a member of the government and First Law Officer I can promote the

development of a fair and responsive justice system that upholds human rights, including the distinct cultural rights of Aboriginal peoples.[1]

Basis of Provision of Statement

21. I provide this statement in response to Notice to Produce NTP-002-017 from the Commission dated 30 March 2023 and to specific questions posed by the Commission.[2] Should the Commission require further detail on any of the matters in this statement or otherwise, I would be happy to provide it to the extent possible. I also foreshadow, subject to Cabinet processes, that I may have more to say on some matters at a later date.

22. My opinions are informed by my own professional experience, my observations in my position as Attorney-General, and are based on the advice I receive from the Department of Justice and Community Safety (the department). In referring to facts prior to my appointment as Attorney-General I have relied on information provided by the department. In preparing this statement I have read and had regard to the Witness Statement of the Hon. Gabrielle Williams, made in her capacity as Minister for Treaty and First Peoples, dated 3 May 2022.

23. This statement will be supplemented by my oral evidence and should be read alongside the department's Agency response lodged with the Commission on 15 March 2023 (Agency response) and the Whole of Victorian Government submission – Response to critical issues in the criminal justice system lodged with the Commission on 20 March 2023 (WoVG submission).

24. This statement seeks to provide responses to the questions posed by the Commission. If the Commission would like further information on any of these matters, I would be pleased to answer further questions as part of my oral evidence and/or provide a supplementary statement. Over the coming months, government and the broader community will take steps to walk alongside the First Peoples Assembly towards Truth, Self-determination and Treaty. I thank the Commissioners for your work to lay the path forward. The weight of your task cannot be underestimated.

[1] *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 19(2).

[2] This Statement addresses questions 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 125(a), 127(a), 130, 134, 135(a), 136, 137, 138, 142(a) and (c), 147,148, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160 and 172.

Part 3 – Aboriginal over-representation in the criminal justice system

111 What are the key factors attributable to the significant growth in the rate of First Peoples in remand and/or prison in Victoria, particularly over the past 5 years, notwithstanding: (a) The Aboriginal Justice Agreement(s); (b) Closing the Gap initiatives; and (c) The recommendations of the RCIADIC.

112 To the extent not addressed in the response to paragraph (111), explain: (a) Why First Peoples prison numbers in Victoria are still rising, notwithstanding the: i. Aboriginal Justice Agreement(s); ii. Closing the Gap initiatives; and iii. Actions to implement the recommendations of the RCIADIC, and (b) The impact of the 2018 reforms to the *Bail Act 1997* (Vic) relevant rates and trends.

114 What does the State recognise as being the key failings of the CJ System as it concerns First Peoples?

115 Why hasn't the State acted before now to address the issues identified in paragraph (114)? [Note – also answered in Part 6]

116 What are the potential barriers to reform? [Note – also answered in Parts 6 and 8]

Context

25. The number and rates of Aboriginal people involved in the criminal justice system in Victoria, although lower than in most other Australian jurisdictions, are unacceptably high, particularly when compared to the non-Aboriginal population. Growth in imprisonment is also disproportionately high for Aboriginal people, especially Aboriginal women who have experienced a 115 per cent increase in the rate of imprisonment between 2000 and 2020 and often enter prison on remand.

26. It is an unacceptable reality that the number of Aboriginal people charged by police, held on remand, sentenced to custodial settings, and not released on parole, has steadily increased.[3] Time on remand and in custody can adversely impact an individual's risk of re-offending—leading to compounding disadvantage and poorer justice, social and economic outcomes. Statistically, more than half of Aboriginal people remanded in custody have returned within two years, and the majority of those in prison have had prior episodes of imprisonment.

27. While I am pleased with the progress and improvement in justice outcomes for Aboriginal children and young people, as highlighted in the WoVG submission, the fact remains that Aboriginal children and young people continue to be over-represented in the youth justice system. This is particularly acute in the remand numbers, high rates of non-custodial outcomes following remand, and short periods of remand, particularly over weekends. It suggests that Aboriginal children

[3] Increases over the last ten years are demonstrated in: Legislative Council Legal and Social Issues Committee, 2022, *Inquiry into Victoria's criminal justice system*, pp. 61–62 < LCLSIC_59-0_Vic_criminal_justice_system.pdf>.

and young people are being remanded in circumstances where alternative responses could and should be adopted.[4]

28. Aboriginal people are also overrepresented as victims of crime. According to unpublished Crime Statistics Agency data, in the 12 months to the end of September 2022, 2.3 per cent of victim reports received by Victoria Police were reported by people who self-identified as Aboriginal, while one per cent of the Victorian population identifies as Aboriginal. This may be the case to an even greater extent than the statistical data indicates as we know that not all victims of crime report their experience to the police.

29. Over half of female Aboriginal victim reports are related to a family violence incident, often by non-Aboriginal perpetrators. Aboriginal women face additional barriers to reporting violence due to multiple compounding factors such as fear of child removal, poverty, homelessness, over-policing and criminalisation, lack of awareness of legal rights and—in many areas—lack of access to culturally safe services and supports.

30. While we have made progress in improving the experiences of victim-survivors of family violence, I recognise more needs to be done. This includes greater support for Aboriginal Community-Controlled Organisations (ACCOs) to provide advice and assistance to Aboriginal people who have been victims of crime, and to enable Aboriginal communities to build and deliver self-determined solutions to prevent offending, and support and rehabilitate Aboriginal offenders.

31. Aboriginal people are also more likely to experience ongoing involvement with the justice system. As described and acknowledged in the WoVG submission, the over-representation of Aboriginal people in the criminal justice system is a consequence of systemic racism arising from colonialism, over-policing, the imposition of oppressive and discriminatory laws and, at times, courts interpreting and applying laws in discriminatory ways. This was exposed through the RCIADIC and shamefully, today we still have in place laws and systems that disproportionately and negatively impact Aboriginal people and their communities.

Key factors attributable to growth

32. Key factors attributable to the significant growth in the rate of Aboriginal people in remand and/or prison in Victoria, particularly over the past five years, notwithstanding the AJA, Closing the Gap initiatives, and the recommendations of the RCIADIC, are largely due to policies and legislation in Victoria. These policies and laws, including in the areas of bail and sentencing, were designed to enhance community safety but have had significantly disproportionate impacts on Aboriginal peoples' involvement in the justice system. These laws and policies are addressed in more detail in Part 7.

[4] The Commission for Children and Young People, 2021, *Our Youth, Our Way report*, p. 37 <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>.

33. I acknowledge the disproportionate impact of sentencing, bail, age of criminal responsibility and public intoxication laws on Aboriginal peoples, which have contributed to the significant rise in incarceration and contact with the justice system in Victoria over the last five years, particularly among Aboriginal women. The government accepts the responsibility to grapple with these issues and their complexities.

34. There are also many other factors driving rising over-representation that sit outside of the justice system. In addition to systemic racism in the criminal justice system, which I recognise as a driver of over-representation, other contributing factors include inequality in educational opportunities, economic exclusion, lack of access to housing, child protection involvement, intergenerational trauma, mental health and substance misuse issues. I have a responsibility to seek to address systemic injustices in the criminal justice system broadly, while also addressing the unique and specific factors that Aboriginal peoples face, and the ways that these injustices intersect. This is a complex task requiring the assessment of often competing considerations.

35. The justice system alone cannot address the drivers of over-representation—instead the Victorian Aboriginal Affairs Framework 2018–2023 (VAAF) and the fourth phase of the AJA AJA4 both recognise that culturally safe, intersectional, holistic, family-centred and early supports are required to address the determinants of Aboriginal peoples' contact with the criminal justice system.[5]

Systemic racism

36. I acknowledge that systemic racism is a serious and ongoing problem in the criminal justice system. I sincerely thank members of the Aboriginal community who have had the courage to share with the Commission their personal experiences of racism in the justice system.

37. The WoVG submission has acknowledged Aboriginal peoples' 'ongoing experiences of direct, indirect and systemic racism.'[6] It is simply unacceptable that Aboriginal people continue to experience racism and discriminatory outcomes within the criminal justice system. I am committed to taking action to address this serious issue, including through strengthening complaints mechanisms and their accessibility to the Aboriginal community.

38. Action to address all forms of racism in the criminal justice system must be informed by a clear understanding of the full extent of this problem and I

[5] See for example: Victorian Government, 2018, *Victorian Aboriginal Affairs Framework 2018–2023*, p. 45 <Victorian Aboriginal Affairs Framework 2018-2023 | First Peoples - State Relations (firstpeoplesrelations.vic.gov.au)> ; Victorian Government, 2021, *Whole of Victorian Government Submission to the Legal and Social Issues Committee Inquiry into Victoria's Criminal Justice System*, p. 69 and Victorian Government. 2018, *Burra Lotjpa Dunguludja: Victorian Aboriginal Justice Agreement Phase 4*, p. 23.

[6] Victorian Government, 2023, *Whole of Victorian Government submission – Response to critical issues in the criminal justice system,* p. 12, [40].

acknowledge that the government must do much more to identify structural racism within the operations of the criminal justice system. Our understanding of the problem remains piecemeal.

39. I note that the recent final report of the Cultural Review of the Adult Custodial Correctional System (Cultural Review) found that '[m]any Aboriginal people continue to experience the harmful effects of racism and discrimination in custodial environments which impact their safety, access to healthcare, mental health support, and programs to support their rehabilitation and transition into the community.' This review is a key step towards identifying and importantly - addressing the problem of systemic racism.

40. Evidence submitted by Aboriginal and culturally and linguistically diverse stakeholder groups to the recent Parliamentary Inquiry into Victoria's Criminal System also suggests that policing in Victoria disproportionately targets individuals from these communities (particularly young people), contributing to their overrepresentation in the criminal justice system.

41. Consequently, the government could do more to systematically monitor:

    a) non-Aboriginal staff attitudes towards Aboriginal and culturally and linguistically diverse people and incidents of racism within the criminal justice system, and

    b) the exercise of discretion within the criminal justice system in order to identify and address possible systemic racism (for example, sentencing outcomes, police decision-making about cautioning, the granting of bail).

42. More broadly, the government is committed to strengthening anti-vilification protections in Victoria. In 2021 the Legislative Assembly's Legal and Social Issues Committee undertook an inquiry into anti-vilification protections in Victoria. The government supported, or supported in principle, 34 of the 36 recommendations of the inquiry, including recommendations about extending civil and criminal anti-vilification protections to cover the attributes of race and religion and recommendations about supporting research on the drivers behind vilification conduct and prejudice. Planning is underway to determine the best way to implement the reforms.

Barriers to reform

43. In reforming the criminal justice system, a difficulty faced by the government exists in squarely identifying any single policy, law or operation within the criminal justice system to be the root cause of systemic injustice and structural racism. These issues are complex and multi-faceted. Through this Yoorrook truth-telling process the government will further reflect and critically assess the criminal justice system, laws and policies and their impact on Aboriginal people and partner with the Commission and the Aboriginal community to continue to identify and implement meaningful solutions for change.

44. When examining the profile of those who come into contact with the justice system, it is also notable that there is a high representation of people who have an acquired brain injury,[7] who experience mental illness[8] and who experience socio-economic disadvantage. This broadly reflects inequities that exist within the community and demonstrates the breadth of systemic injustices within the criminal justice system.

45. In saying that, I acknowledge that Aboriginal peoples face unique and pervasive inequities that go over and beyond those experienced by other vulnerable cohorts and indeed the broader community. This includes structural racism that is a product of the devastating effects of colonisation. Regrettably, our current structures, laws and policies can serve to compound those inequities.

46. Law reform and policy development is often a complex and difficult task for the government, involving the balancing between different and often competing objectives and priorities, including the appropriate weighting of community safety concerns. In pursuing outcomes that promote community safety, the government accepts that it also has a responsibility to give adequate weight to the impacts of reform on Aboriginal peoples, and there are certainly opportunities to embed processes that hold government to account to better acknowledge and address the risks of injustice to Aboriginal peoples. At times we have failed to get the balance right.

47. There is also no question that the government has full responsibility for addressing systemic injustices that exist within the criminal justice system.

48. As First Law Officer, I take this responsibility very seriously and continue to pursue ways in which we can better and more appropriately respond to those who come into contact with the justice system. Addressing systemic injustices means investing in programs that seek to divert people away from the justice system, to prevent them from entering altogether.

49. The government acknowledges that funding of the criminal justice system has predominately been reactive and focused on "crisis" points such as the expansion of our prison system[9] and police force.[10] There have been many targeted initiatives

[7] Forty-two per cent of men and 33 per cent of women in Victorian prisons showed evidence of an acquired brain injury (ABI), compared with an estimated prevalence of ABI among the general Australian population of two per cent. (Jackson M, Hardy G, Persson P and Holland S, 2011, *Corrections Research Paper Series, Acquired Brain Injury in the Victorian Prison System,* <acquired_brain_injury_in_the_victorian_prison_system.pdf (corrections.vic.gov.au)>.

[8] Approximately one third of people in all Victorian prisons have a mental health diagnosis, with depression, drug abuse disorders and anxiety disorders representing almost three quarters of all diagnoses. Emma Cassar, Commissioner for Corrections, 2020, *Witness statement to the Royal Commission into Victoria's Mental Health System*, p.13 <http://rcvmhs.archive.royalcommission.vic.gov.au/Cassar_Emma.pdf>.

[9] The Budget 2018/19 included $680m asset funding to expand the Lara Prison Precinct with 700-beds (BP3). The Budget 2019/20 included $1.4b asset, and $390m output funding to increase capacity of the men's and women's prison system including increased beds at existing prisons, expansion of the Chisholm Road Prison Project and additional beds and the Dame Phyllis Frost Centre (BP3).

and programs focused on prevention and rehabilitation, but more needs to be done. The government has so far failed to adequately address the systemic injustices faced by Aboriginal peoples within the criminal justice system.

Aboriginal over-representation is unacceptable

50. In recognising and discussing the concepts, laws and policies that drive Aboriginal over-representation in the criminal justice system, I would be remiss not to acknowledge the lived experiences of the Aboriginal community members who have generously shared their profoundly personal and often devastating experiences with the criminal justice system.

51. Aunty Vicki's story, shared with the Commission in December last year, along with what we have heard from the families of Ms Veronica Nelson and Ms Tanya Day regarding their tragic and wholly preventable experiences of the justice system, are completely indefensible. These experiences have profound and long-lasting impacts on not only the individual but also their families who vicariously experience the immediate and intergenerational trauma through the horrific experiences their loved ones have had to endure.

52. It is important to acknowledge historical and more recent negative experiences of policing, combined with fears of over-policing or under-policing. This issue is most recently highlighted in the Commission for Children and Young People's report *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* (2021), where Aboriginal children and young people, family members, Elders and service stakeholders shared compelling and concerning stories about negative experiences with Victoria Police. These included experiences of police mistreatment, excessive detention in police cells, a lack of faith in the police complaints process, and an unacceptable discrepancy in the use of cautions between Aboriginal and non-Aboriginal children and young people.[11]

53. What has happened and continues to happen to Aboriginal people in the justice system is completely unacceptable and I am committed to working in partnership with the Aboriginal community and with my ministerial colleagues to achieve meaningful and enduring change.

54. The government needs to do more to address systemic injustices, by adequately setting up the justice system to be a positive intervention with a greater focus on rehabilitation and investing further upstream in early intervention and prevention.

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[10] The Budget 2016/17 included $596m for 406 police. The Budget 2017/18 included $2b for an additional 2,729 police. The Budget 2022/23 included $342m for an additional 502 police and 50 Protective Service Officers (PSOs). The overall number of additional police funded since 2016/17 is 3,637, representing an increase of approximately 88 per cent compared to the number of police FTE in 2015/16 (13,188).

[11] The Commission for Children and Young People, 2021, *Our Youth, Our Way summary report*, p.19, <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Summary-Final-090621.pdf>.

Most importantly, it is clear that systemic injustices faced by Aboriginal peoples can only be properly addressed where self-determined solutions are fostered and embedded.

Part 4 – Self-determination in justice

147 What key initiatives has the State introduced in the period since 1 January 2017 to strengthen First Peoples-led oversight and accountability across the CJ System?

148 Does the State consider that the programs and initiatives identified in response to paragraph (147) afford sufficient self determination to Victorian First Peoples? [Note – also answered in part 6]

55. Self-determination is a fundamental right of Aboriginal peoples and is espoused in international covenants and declarations.[12] I recognise that the evidence-based position is that the best outcomes are achieved when policies and programs are led and guided by Aboriginal peoples' knowledge and expertise. The right to self-determination is also recognised in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* and is a core principle underpinning Victoria's Treaty process.[13]

56. The government also recognises that the commitment to self-determination is essential to the success of any future reform. While it has pursued self-determination as a principle for six years, the government must continue to develop and hone its approaches to practically apply self-determination and achieve meaningful results. As described in Minister Williams' evidence, the "thinness of knowledge" and lack of lived experience in the government is compounded by the short-term institutional knowledge of the public service bureaucracy, election cycles and changes in government.

57. This has created inconsistencies, fragmented, often short-term and piecemeal policy. I acknowledge that the lack of consistency in long-term policy has meant that the intent to bolster self-determination has fallen short of community aspirations. Future reforms to address structural racism within our criminal justice system require targeted, tailored and self-determined responses.

58. Through the VAAF, government recognises that the continuum towards self-determination ultimately means going beyond consulting and partnering with Aboriginal peoples, to fostering Aboriginal decision making and control of resources. I have hope that the path towards self-determination is accelerated through Victoria's Treaty process and future Voice to Parliament.

[12] Article 1, International Covenant on Civil and Political Rights (ICCPR); Article 1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); Article 3 of the Declaration on the Rights of Indigenous Peoples.
[13] *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) s 22.

59. Before those reforms occur, work must continue and evolve within our current structures to advance self-determination.

60. Advancing self-determination in the justice system is a complex challenge. It requires recognition of the unique cultural and historical circumstances of Aboriginal communities and taking their perspectives and experiences seriously. It requires government to self-reflect, to have the courage and determination to challenge old paradigms, and the persistence to work closely with communities to build their capacity to drive change. This includes, for example, funding for community-led initiatives, investing in education and training programs, and working with Aboriginal communities to develop and deliver culturally appropriate justice processes.

61. I understand that defining self-determination in a justice system, a system that at times detains people in custody and away from their usual freedoms, is complex. There are few precedents in Australia to draw upon. I am conscious that Aboriginal peoples will seek to propose justice solutions that meet their needs as we consider how the existing justice system can shift to include greater Aboriginal control.

62. For example, we know that Aboriginal community representatives deliberately decided when developing the Koori Court model that it was not desired that Elders determine someone's guilt or innocence. Another example is that we experience ongoing challenges in recruiting Aboriginal staff to work in prisons, which, alongside organisational cultural issues, is partly attributed to a reluctance to 'lock up' other community members.

63. I look forward to working with Aboriginal stakeholders, and being guided by the Commission, to understand from Aboriginal peoples what Aboriginal self-determination looks like in the Victorian justice system – and working together to achieve these aspirations.

Aboriginal Justice Agreement (AJA)

64. The AJA is a ground-breaking formal partnership. Its first phase was launched in 2000, between the Victorian Government and Aboriginal communities. The AJA is Victoria's response to the RCIADIC and is aimed at reducing the over-representation and improving outcomes for Aboriginal people in the justice system. While there is much more work to be done, significant progress has been, and continues to be, made through the AJA.

65. The AJA seeks to address the root causes of over-representation of Aboriginal people in the justice system through a range of strategies, including early and secondary prevention, diversion and support services.

66. Now in its fourth phase, the vision of *Burra Lotjpa Dunguludja* (2018–present) is that: 'Aboriginal people have access to an equitable justice system that is shaped

by self-determination, and protects and upholds their human, civil, legal and cultural rights.'[14]

67. Critically, the AJA provides robust avenues for the Victorian Government to have regular and open dialogue with Aboriginal communities and is Victoria's primary mechanism for Aboriginal accountability and oversight of the criminal justice system. While the AJA is a strong partnership, and is on the continuum of self-determination, I acknowledge that it may not afford a level of self-determination that accords with community aspirations.

68. A key element of AJA governance is the AJC. In addition to the nine elected Chairs of the RAJACs, the AJC also includes Aboriginal representatives from Aboriginal peak bodies and some ACCOs. The government formally liaises with the AJC through the Aboriginal Justice Forum (AJF), which meets three times per year. Through the AJF, and other AJA governance structures, the government gains insights and understanding directly from the Aboriginal community, while also providing a forum for the Aboriginal community to hold government to account.

69. In addition to its partnership governance structures, the AJA has also created specific initiatives designed to enhance accountability and oversight of the criminal justice system by Aboriginal people, including:

    a) the Aboriginal Independent Prison Visitors Scheme.

    b) public updates on the progress of AJA initiatives, published on the department's website, and

    c) community forums at each AJF, which allow Aboriginal community members to raise concerns directly with the most senior departmental representatives responsible for those matters. Community forums occur at least three times per year and provide both accountability for resolving specific issues and for the identification of systemic issues.

70. We have heard, through the statements and evidence given to the Commission, some of the challenges Aboriginal people face in the justice system, including lack of access to legal services, cultural barriers and systemic biases. These challenges, and many more, are aired by community members at Aboriginal Justice Forums.

71. The establishment of the Commissioner for Aboriginal Children and Young People, in 2013, provided another significant Aboriginal oversight and accountability mechanism. The Commissioner's work includes independent scrutiny and oversight of services for Aboriginal children and young people in the youth justice system. The 2021 *Our Youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* report illustrates the Commissioner's important role.

[14] Victorian Government and AJC, 2018, *Burra Lotjpa Dunguludja - Victorian Aboriginal Justice Agreement Phase 4*, p. 28.

72. In recent years, the department has taken steps to further reflect the voices of Aboriginal people in policy and program development. Examples of initiatives since 2017 to strengthen Aboriginal oversight and accountability of Victoria's criminal justice system include:

    a) Funding in the Victorian Budget 2018/19 to investigate Aboriginal Impact Assessments to consider potential impacts of policy and/or legislation on Aboriginal peoples. This work is a partnership with the AJC through the AJA4 Policy and Legislative Change Collaborative Working Group.

    b) Developing a public data dashboard to make data more accessible and user-friendly to Aboriginal people. Youth Justice are also designing a dashboard to support access to data concerning the interactions of Aboriginal young people with the justice system.

73. Since its launch in 2018, the Victorian Government has provided over $100 million to support the implementation of AJA4. This includes over $15 million and $33 million allocated in the 2022/23 and 2021/22 Budgets respectively. This funding continues and expands programs aimed at reducing Aboriginal over-representation in the justice system and preventing Aboriginal deaths in custody. It includes community-based, Aboriginal-led diversion and residential programs, Aboriginal Wellbeing officers, an Aboriginal Healing unit for Aboriginal women in prison, additional Aboriginal youth justice hubs, and Aboriginal legal services to support operation of the new Bendigo Law Courts.

74. This funding includes over $30 million per annum for a suite of AJA community grants programs, which primarily fund ACCOs to deliver community-based initiatives aimed at preventing contact with the justice system or improving outcomes in the justice system. In addition, grant funding is also provided from other resources for Aboriginal-specific initiatives – this funding totals approximately $10 million per annum and primarily provides supports to Aboriginal adults and youth in custody. These grants programs recognise that Aboriginal communities are best placed to design and deliver initiatives for Aboriginal peoples.

75. The Budget 2022/23 invested more than $135 million to improve outcomes for Aboriginal people, families, communities and organisations, to be administered by the department. This included funding for the Aboriginal led review of the RCIADIC implementation and an additional $15 million for community programs and services aimed at reducing the numbers of Aboriginal young people and adults in the criminal justice system.

76. The majority of funding from the Budget 2022/23, $115 million of the $135 million, provided for the establishment of the Stolen Generations Reparations Package (the Package). The Package opened on 31 March 2022 and is designed to help address the trauma and suffering caused by the forced removal of Aboriginal children from their families, community, culture, identity and language.

77. I am proud of the establishment of the Package, but I know that no amount of reparations can ever make up for what happened. The Package is designed to go

some way towards addressing the actions of past governments that resulted in ongoing suffering for Stolen Generations members and communities. Those who are eligible can apply to receive financial reparations of $100,000 as well as a personal apology from the government, access to healing and reconnection to Country programs, and an opportunity to share their story. To date there have been over 580 applications for the Package.

78. I thank the AJC for their leadership and contribution to enhancing our understanding of how Aboriginal self-determination might be more fully expressed in the justice system. I also thank all our stakeholders who have been involved in the development and implementation of the AJA. Their commitment and expertise have been crucial in improving the Victorian criminal justice system to better respond to the needs of Aboriginal peoples. Our work in partnership with the AJC and Aboriginal community stakeholders is significant, but there is much more to be done to genuinely embed self-determination across the justice system.

79. Despite the strength and successes of the AJA partnership, I recognise that the government has not always acted on the voice of community and there have been instances where Aboriginal stakeholders have raised matters of concern and have expressed disappointment that we have not acted or have not acted quickly enough. I hear this first-hand as I attend the AJF and meet with the Chairs. I acknowledge that many of the agenda items have been on the agenda for many years.

80. For example, since 2005, the AJC has been calling for the establishment of an Aboriginal Social Justice Commissioner to provide greater independent oversight of the Victorian justice system and its responsiveness to Aboriginal peoples. I understand that the AJC has a preference to have this established within the Victorian Equal Opportunity and Human Rights Commission. During this period, government has taken steps to improve Aboriginal led oversight of the justice system, such as establishing the Aboriginal Commissioner for Children and Young People and enhancing the Aboriginal Independent Visitor Program. However, I acknowledge this has again fallen short of the community's aspirations.

81. The recent Cultural Review made several recommendations to improve oversight of the corrections system, including the creation of an Aboriginal Inspector of Adult Custodial Services to oversee inspections of custodial sites and the conditions in custody for Aboriginal people. We will work with Aboriginal community stakeholders in the development of our response to the Cultural Review, including considering this recommendation in the context of the AJC’s desire for greater accountability through the establishment of an Aboriginal Social Justice Commissioner. The Treaty process may also include changes in community governance and oversight of services, and we welcome further recommendations of the Commission on this matter.

National Legal Assistance Partnership

82. Victoria is partnering with Aboriginal legal services (Victorian Aboriginal Legal Service (VALS) and Djirra) to contribute to the upcoming Review of the National Legal Assistance Partnership (NLAP Review) to specifically raise the cultural appropriateness of legal assistance services for Aboriginal people, and to recognise the unique service delivery models offered by Aboriginal legal services as key priorities for Victoria. The NLAP Review will evaluate the effectiveness and challenges of service delivery, specifically services offered for Aboriginal people, acknowledging the diversity of Aboriginal culture, and the alignment between legal assistance services and the priority reforms and targets under Closing the Gap.

83. One key component of work under that Strategy is the development of an Australian first, stand-alone Aboriginal Legal Assistance Strategy dedicated to supporting the delivery of culturally appropriate legal services to Aboriginal people, recognising the importance of self-determination and acknowledging the significant work on data sovereignty that is underway in Victoria. It will build on AJA4 and reflect the systemic issues experienced by Aboriginal people which lead to interactions with the criminal justice system.

Truth and Treaty

84. In 2016, the government committed to pursuing Treaty. The fundamental importance of, and respect for, self-determination, underpins this commitment. Treaty is about recognising the unique rights and cultures of Victorian Traditional Owners and presents a significant opportunity to acknowledge the injustices of the past and work towards a more equitable future. Together with Truth, we are working to create a shared understanding of our history and finding ways to move forward together. Truth and Treaty are critical steps in determining the future direction of criminal justice in Victoria.

85. The government recognises that this commitment to Treaty should not, and affirms that it will not, mean that government devolves complex and long-standing social issues to Aboriginal people and their communities to solve alone. While solutions are most effective when self-determined, we will achieve better outcomes together. We know that the Treaty process is complex, and it will take time to negotiate agreements that reflect the diverse needs and priorities of Aboriginal communities across Victoria.

118 Explain what has been done by the State to implement the recommendations of the RCIADIC, including (but not limited to) recommendations relating to Victoria: a) The Criminal Justice System: Relations with Police (R60-61); b) Young Aboriginal People and the Juvenile Justice System (R62); c) Diversion from Police Custody (R79-90); d) Imprisonment as a Last Resort (R92-120); e) Custodian health and safety (R122-167); f) The Prison experience (R168-187); g) The Path to self-determination (R188 – 204); h) Improving the Criminal Justice System: Aboriginal People and Police (R214-233); and i) Breaking the Cycle: Aboriginal Youth (R234-245). Provide an overview of the key processes followed by the State prior to the introduction of the 2018 bail reforms, to assess and mitigate possible impacts on First Peoples.

125 Explain what the State intends to do to in response to the recommendations of the Nelson Report, particularly relating to: a) Legislative change (R3-6); …[Note further answered in Part 7.2 below] .

127 Explain what the State has done, or intends to do, in response to the recommendations of the report of Deputy State Coroner Caitlin English on the Inquest into the Death of Tanya Louise Day dated 9 April 2020 (Day Report), including: a) Decriminalisation of the offence of public drunkenness and replacement with a public health response; ….[Note further answered in Part 7.1 below].

130 What is the State's position on an independent investigation body to investigate deaths in custody?

157 What processes are underway and/or planned, for the State to confirm its intended response to the Nelson Report recommendations?

Part 5 – Aboriginal Deaths in Custody

86. Tragically, there have been 22 Aboriginal deaths in adult prisons and 10 Aboriginal deaths in police custody and custody-related operations in Victoria since the RCIADIC released its final report in 1991.[15] Since January 2020, 5 Aboriginal people have passed in Victorian prisons:

    a) Ms Veronica Nelson, a Gunditjmara, Dja Dja Wurrung, Wiradjuri and Yorta Yorta woman, passed on 2 January 2020 at Dame Phyllis Frost Centre (age 37 years)

    b) Mr Michael Suckling passed on 7 March 2021 at Ravenhall Correctional Centre (age 41 years)

    c) Ms Heather Calgaret, a Yamatji, Noongar, Wongi and Pitjantjatjara woman, passed on 29 November 2021 at Sunshine Hospital while in custody at Dame Phyllis Frost Centre (age 30 years)

[15] Corrections Victoria data shows that between 1991 and November 2022, there have been a total of 303 deaths in Victoria's custodial system. Just over 7 per cent of these were Aboriginal deaths (22 deaths in total). There has been a further 10 Aboriginal deaths in Victoria Police custody and custody-related operations. At present there is no single source of information related to the number of Aboriginal deaths in custody in Victoria. Rather, statistics pertaining to deaths in custody rely on the triangulation of several sources. The Australian Institute of Criminology reports annually on deaths in police custody and custody-related operations and deaths in prison using data collected from the department and Victoria Police.

d) Mr Joshua Kerr a Yorta Yorta, Gunai and Gunditjmara man, passed on 10 August 2022 at Port Phillip Prison (age 32 years), and

e) Mr Clinton Austin, a Gunditjmara and Wiradjuri man, passed on 11 September 2022 at Loddon Prison (age 38 years).

87. I unreservedly apologise for the lasting pain and devastation caused by these passings to the families and communities of the people who have sadly died, and the wider Aboriginal community.

88. Aboriginal people are too often held in Victoria's custodial system without culturally safe conditions or adequate supports. This deficiency, combined with the unacceptable reality that Aboriginal people continue to be disproportionately imprisoned and often enter prison on remand, results in disproportionately high Aboriginal deaths in custody. This is shameful and preventable, and the Victorian Government recognises change must be delivered without delay.

89. I acknowledge the evidence provided to the Commission to date that Aboriginal deaths in custody have not been addressed adequately, and I have heard that we have failed to take into account Aboriginal peoples vulnerability while in custody.

RCIADIC

90. It has been more than 30 years since the publication of the RCIADIC final report. I acknowledge not all RCIADIC recommendations have been fully implemented. Over this course of time, RCIADIC has been squarely within the focus of the department's work and is a regular feature at AJFs.

91. As addressed in the department's Agency response, the 1997 National Ministerial Summit on Indigenous Deaths in Custody resulted in a shift away from annual reporting on implementation of RCIADIC recommendations.[16] I understand that Aboriginal leaders from Victoria attended that summit. Following the summit, Victoria commenced progressing and monitoring the RCIADIC recommendations through the development of the AJA, acknowledging that efforts were required between governments and Aboriginal peoples to tackle the problem of over-representation. Victoria was the first jurisdiction to create an AJA. These plans, including the current AJA4, aim to achieve the underlying intent of the RCIADIC's recommendations through reducing Aboriginal over-representation in the criminal justice system.

92. This shift in approach supports the state, in partnership with Aboriginal stakeholders, to:

a) respond to the current reform priorities of Victoria's Aboriginal community, and

[16] Ministerial Summit on Indigenous Deaths In Custody, 4 July 1997, *Agenda, Ministerial Summit Outcomes Paper.*

b) adapt responses to the system as it is now rather than to the system which existed at the time the RCIADIC made its recommendations.

93. At **Appendix A**, I have identified the key strategies and initiatives that broadly respond to the themes of RCIADIC recommendations. There is some difficulty in tracking recommendations and taking a 'tick a box' approach to acquitting the RCIADIC recommendations. For example, several were not implemented because they were nationally focussed, and others, due to changes in laws, policies and institutions over the past 30 years, have been overtaken. In some instances, however, government has not done enough. The tragic deaths in custody of Ms Day in 2017, Ms Nelson in 2020 and the four subsequent deaths of Aboriginal people, demonstrate that more, and urgent, action is needed.

94. There have been two major reviews of the RCIADIC final report and its 339 recommendations. In 2005, the department partnered with Aboriginal academics to produce a community-led review of Victoria's progress against RCIADIC recommendations. The review concluded that a significant body of work was remaining to meet the desired outcomes of the RCIADIC's recommendations. An independent national review of the implementation of the recommendations was later commissioned by the Department of the Prime Minister and Cabinet in August 2018. I acknowledge that Victorian Aboriginal stakeholders raised concerns about the Commonwealth review, including about the lack of Aboriginal community involvement and belief that it gave an overly positive assessment. The department has worked with its Aboriginal partners, to ensure the relevant findings of these two reviews inform our approaches to improving Aboriginal justice outcomes – primarily through consideration of these findings in evolving AJA and its initiatives.

95. The AJA (described above in Part 4) was established in response to the RCIADIC. *Burra Lotjpa Dunguludja* ('Senior Leaders Talking Strong' in Yorta Yorta language) is the fourth phase of the AJA (AJA4) and has led to the planning, implementation and monitoring of a broad range of justice initiatives and programs aimed at eliminating the over-representation of Aboriginal people in the justice system and ending Aboriginal deaths in custody. This includes the introduction of a legislated spent convictions scheme, passing a Bill to decriminalise public drunkenness, and making the commitment to reform bail laws to reduce the disproportionate and discriminatory impacts this legislation has had on Aboriginal people.

96. Government remains deeply committed to continuing work with Aboriginal peoples to do more to prevent Aboriginal deaths in custody, respond to recommendations from the RCIADIC and implement AJA4.

Aboriginal led review of progress in implementing the RCIADIC recommendations

97. The Victorian Government was pleased to provide funding to initiate an Aboriginal led review of the state's progress against the RCIADIC recommendations and

other inquiries that related to Aboriginal deaths in custody. The AJC is leading this work which is currently underway.

98. An Aboriginal assessment of progress in implementing the RCIADIC recommendations had not been undertaken since 2005 and was among the highest priorities of the AJC when developing the fourth phase of the AJA. The Aboriginal assessment of Victoria's implementation of RCIADIC recommendations seeks to understand whether the actions being taken by government are meeting the intent of reducing rates of incarceration and advancing self-determination. This may include identifying new or innovative responses that are required to meet the intent, rather than directly in the form, of the original recommendation. The scope of this review encompasses recommendations made in relation to Aboriginal deaths in custody in Victoria since the RCIADIC, responding to concerns among the Victorian Aboriginal community that such recommendations have been routinely ignored by government agencies and departments.

99. The review commenced in August 2022 with a current date for completion of January 2024. I understand the AJC will provide the Commission with a copy of the final report upon completion.

100. Many relevant recommendations to reduce Aboriginal over-representation and deaths in custody are gender specific, with many focused on the experiences of Aboriginal women. Assessing progress of these with a view to enhancing responses to unfinished business is likely to have a significant impact on improving justice outcomes for Aboriginal women.

101. Consistent with the principles of self-determination, the assessment is being overseen and directed by the AJC.

Response to recent coronial recommendations

102. I acknowledge the terrible pain, sorrow and anger caused by the tragic passings of Ms Veronica Nelson and Ms Tanya Day and recognise more could have been done to prevent the passings.

103. The Victorian Government is carefully considering the recommendations of the coronial inquest into the passing of Ms Veronica Nelson (Veronica Nelson Inquest) and will respond formally to the coroner within the three-month response period. As these recommendations fall within different portfolio responsibilities, government is working to ensure responses to the coroner are coordinated and speak to system-wide work underway.

104. The Veronica Nelson Inquest has particularly highlighted that the *Bail Act 1977* (Vic) (Bail Act) has a discriminatory impact on Aboriginal people resulting in grossly disproportionate rates of remand in custody, with the most significant impact being on Aboriginal women. Government has publicly committed to amending these laws and the department is currently consulting on a suite of changes.

105. The coronial inquest into the passing of Ms Tanya Day (Tanya Day Inquest) directed two recommendations to the former Attorney-General:

    a) Recommendation 1: that the offences of public drunkenness be decriminalised and that section 13 of the *Summary Offences Act 1966* be repealed.

    b) Recommendation 2: amend the *Coroners Act 2008* (Vic) (Coroners Act) to provide that the coroner in charge of a coronial investigation may give a police officer direction concerning investigations to be carried out for the purpose of an inquest or investigation into a head being investigated by the coroner, thus legislatively recognising the role of the Coronial Investigator.

106. Since the Tanya Day Inquest, the Victorian Government has passed legislation to decriminalise public drunkenness, which will take effect from November 2023. More detail is provided in Part 7.1 below (Public Intoxication Reforms). Work relating to the recommended legislative amendments to the Coroners Act is being led by the department and is underway.

Response to recommendations for an independent investigation body

107. In Victoria, independent oversight and investigation of deaths in custody occur by way of IBAC's oversight of critical incidents and through independent investigations conducted by the Coroners Court of Victoria.

108. IBAC and Victoria Police have roles in the investigation and oversight of critical and serious incidents (where police contact results in death or serious injury to a person). We are working to improve the state's police oversight system to ensure it is strong, transparent, and meets the needs of all Victorians. That is why we have conducted a systemic review of police oversight. The review has been considering a range of issues with Victoria's police complaints and oversight system, including whether IBAC has the necessary powers to undertake its vital police oversight functions.

109. Independent investigation of deaths in custody is also undertaken by the Coroners Court of Victoria. The Coroners Court has three roles:

    a) to independently investigate reportable deaths and fires

    b) reduce preventable deaths, and

    c) to promote public health and safety in the administration of justice.

110. There are specific obligations in relation to deaths in custody, including that all such deaths must be reported to the Court or the Victorian Institute of Forensic Medicine without delay, and that a coronial inquest must be held. An inquest is a public hearing. Upon completion of the inquest, the investigating coroner will publish findings. The Coroners Act allows the coroner to make recommendations to

any minister, public statutory authority or entity, which may help prevent similar deaths.

111. Several recent recommendations to government have also touched on the processes for investigating deaths in custody.

112. The Veronica Nelson Inquest Report recommended that the department urgently redesign the Justice Assurance Review Office and Justice Health Data in Custody reviews.

113. The Cultural Review also recommended that government establish a new independent statutory Inspectorate of Custodial Services that would have discretion to conduct reviews of critical incidents and deaths in custody when systemic and serious human rights issues are raised.

114. In line with these recommendations, changes are already underway to improve the department's internal review processes for reviewing passings in custody. However, as the responses for these particular recommendations sit within the portfolio responsibilities of the Minister for Corrections, it is appropriate that he provides any further comments on the progress and implementation of these recommendations.

Part 6 – Whole of Justice System Reform

115 Why hasn't the State acted before now to address the issues identified in paragraph (114)?

116 What are the potential barriers to reform?

117 Given Victorian First Peoples' experiences with State interventions in the period since colonisation, how can they have any confidence that recent government remarks and announcements about proposed reform with the CJ System will delivery meaningful and lasting change? [Note – also answered in Part 8]

Significant and structural reform of the justice system is crucial

115. I acknowledge that significant and structural reform of the justice system is needed. It is simply unacceptable that Aboriginal people continue, year-on-year, to be significantly overrepresented in the justice system.

116. Government is alive to the fact that the criminal justice system has historically, and in some respects continues to be, a structurally racist system which can exclude and fail to support the needs of Aboriginal people. This is often on top of systemic inequality across the broader community, which is particularly felt by Aboriginal peoples.

117. Systemic racism, causing mistrust of government and the criminal justice system has had very real implications which are evident today.

Government has attempted, but not been successful in addressing the systemic injustice of Aboriginal people in the justice system

118. The government has attempted, but not succeeded, in addressing ongoing systemic injustices and historical wrongs—nor the entrenched disadvantage which drives contact with the criminal justice system.

119. Since the first AJA was established in 2000, government has worked with Aboriginal representatives and communities to develop portfolio-specific strategies and establish partnership governance structures, to improve Aboriginal outcomes. Government has worked in partnership with the AJC, under the AJA, to identify and prioritise budget initiatives to improve Aboriginal justice outcomes.

120. This partnership approach has led to the creation and operationalisation of innovative and significant solutions—such as the Wulgunggo Ngalu Learning Place, statewide networks of Aboriginal liaison and welfare roles, the Koori Court network, mature partnership structures at state, regional and local levels, and culturally safe and tailored diversion programs for Aboriginal people.

121. However, these solutions have not led to enough change. The unacceptable rates of Aboriginal overrepresentation in the justice system remain. Aboriginal people continue to experience inequitable justice outcomes, and have traumatic experiences in the justice system. It is critical that government reflects on why, despite the significant investment to date, we are in the position we are in today.

122. I acknowledge that law reform and its implementation is challenging and complex and requires balancing a range of factors—including community sentiment, buy-in and support across the political spectrum, competing priorities and the availability of resources and evidence.

123. I understand that this has meant that some reforms have taken longer than anticipated. It has also meant that not all laws have struck the right balance in addressing these range of competing factors while protecting the rights and needs of Aboriginal people within the justice system. I particularly acknowledge significant reforms such as the 2018 bail reforms were made in response to significant community pressure for change and had devastating impacts for Aboriginal people.

124. I have heard that high levels of mistrust of the law and government have translated into unmet legal needs, for example, avoidance and delay in Aboriginal people seeking the assistance they need.

125. It is therefore imperative that government builds trust and works on repairing its relationship with the Aboriginal community. In order to do so, government must commit to addressing unconscious bias and discrimination in the design and application of laws, in policy, practice, systems and institutions.

Building trust in the system and prioritising cultural safety

126. Government has heard directly from Aboriginal people about their desire for greater self-determination within the criminal justice system and is committed to building a new relationship with the Victorian Aboriginal community, one which will empower

them to achieve long-term generational change and improved justice outcomes. This is critical to achieving meaningful structural reform and rebuilding a relationship underpinned by trust.

127. Laws do not exist in a vacuum and are framed by the cultural, social and historical context within which they are developed. Many of the laws and changes within the criminal justice system did not take into account the views and aspirations of the Aboriginal community and many have negatively impacted Aboriginal people and communities.

128. While the Victorian Government recognises self-determination as the guiding principle for Aboriginal affairs, government policies including those in the justice portfolio do not always align with the principles of self-determination. Justice strategies are at different stages of advancing self-determination. I appreciate that self-determined approaches, which include transferring decision-making control to Aboriginal communities, lead to the strongest outcomes.

129. We are making progress on this continuum towards self-determination, including through the Treaty process and a Voice to Parliament. I am open to participating in criminal justice system reforms as part of these processes.

Piecemeal reforms that are not integrated or tailored to the specific needs of Aboriginal peoples

130. In addition to empowering Aboriginal communities, ideally reform would be holistic and consider addressing whole-of-justice system challenges. However, law reform can often be piecemeal and focus on issues in isolation often without sufficient consideration to flow-on impacts across the justice or broader services system.

131. A one-size fits all approach to the criminal justice system can fail certain groups; this is particularly evident with regards to Aboriginal people. Although there has been significant work undertaken within the criminal justice system, to develop and implement culturally safe laws, policies and programs, often there are gaps that mean system responses are not effective or sufficiently receptive to the specific needs of Aboriginal peoples.

132. It is therefore imperative that government builds trust and respect with the Aboriginal community. In order to do so, government must commit to addressing unconscious bias and discrimination in the design and application of laws, in policy, practice, systems and institutions. It must also continue to progress self-determined approaches in the justice system. I am committed to continuing to work with Aboriginal communities on this, building on the work achieved to date with the AJC.

6.1 Overview of the State's consideration and progress on implementing the findings and recommendations of key reviews

119 Please provide an overview of the State's consideration and/or position and progress on implementing the findings and recommendations of the: a. Australian Law Reform Commission (ALRC) Pathways to Justice report - Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133); b. Parliamentary Inquiry (June 2022) into the Criminal Justice System; and c. Cultural Review of Correctional Services (December 2023).

120 In the case of any recommendations identified in paragraph (118) or (119) which have not been implemented, or have not been fully implemented, provide: (d) An explanation of the reasons; and (e) Details of any ongoing and/or planned further actions.

142 Explain the status of the State's assessment of, and response to, the findings and recommendations within: ...; … c) Parliamentary Inquiry (June 2022) into the Criminal Justice System.

Parliamentary Inquiry into Victoria's Criminal Justice System

133. The Victorian Government welcomes the Legal and Social Issues Committee's Inquiry into Victoria's Criminal Justice System report and the opportunity to further strengthen our justice system.

134. Now that the report has been tabled, government is carefully considering the Inquiry's 100 recommendations and 73 findings, which span Victoria's criminal justice and social service systems.

135. Many of the Inquiry's recommendations propose significant service improvements, new funding arrangements and reforms.

136. Taken together, these reforms are significant and complex, and require careful consideration. I acknowledge that the issues raised in the inquiry are not new to government. Government has in place a significant program of work to address these issues, including:

    a) the Crime Prevention Strategy, which sets out a clear, long-term approach for how we intervene early and prevent crime

    b) the Youth Justice Strategic Plan 2020–2030, which sets out the government's vision for a leading youth justice system

    c) reforms that provide greater support to victims of crime and give them a stronger voice in our justice system

    d) proposed reforms to Victoria's system for the oversight of police and the police complaints system

    e) proposed reforms to the bail system, and

f) the response to the final report of the Cultural Review.

137. Notwithstanding the work to date, these is much more to be done as the inquiry report makes clear. I thank the members of the committee and the secretariat for their work and I particularly recognise the many stakeholder groups and individuals who made submissions and participated in hearings. Much of the committee's work compliments the priorities and actions within government, particularly within my portfolio.

Cultural Review of the Adult Custodial Correctional Services

138. On 24 March 2023, the final report of the Cultural Review was released. The Victorian Government also released its response to the final report on that day.

139. On behalf of the government, I again thank the Expert Panel for their thorough and thoughtful recommendations, which propose the most significant and wide-ranging changes to the corrections system in decades. I also want to extend my thanks to the many dedicated and professional staff within Corrections Victoria and the department who work tirelessly to rehabilitate and provide culturally safe care to people in custody, and to the more than 1700 staff and people in custody who courageously shared their views and experiences with the Expert Panel.

140. I acknowledge that the Review, and many Aboriginal stakeholders, have emphasised that significant change is required to make Victoria's custodial system more culturally safe for Aboriginal staff and people in custody. And I reiterate the government's commitment to continue to work with Aboriginal communities and stakeholders – including the AJC, First Peoples' Assembly, and Aboriginal legal, health and justice organisations – to deliver meaningful change as part of our ongoing commitment to AJA4, Burra Lotjpa Dunguludja, the Yoorrook Justice Commission, and the Treaty process.

141. As the response to the final report of the Cultural Review is being led by the Minister for Corrections, it is appropriate that he provides any further comments on the progress and implementation of the recommendations.

Australian Law Reform Commission (ALRC) Pathways to Justice report

142. The Australian Law Reform Commission's 2018 Pathways to Justice Report was a significant report which included very concerning data on the disproportionate incarceration of Aboriginal people nationwide. The Victorian Government did not formally respond to the report. I note that it is convention of state governments not to respond to Commonwealth reports and that the report was tabled in Federal Parliament with the key recommendations requiring a national response.

143. However, the department did brief the former Attorney-General in May 2019 on the report and its recommendations. At that time, of the 35 recommendations in the ALRC Report, the department advised of activity in place that directly responded to 27 report recommendations.

144. In particular, the 2018 launch of the fourth phase of the AJA addressed several report recommendations through existing or new initiatives, further supported by the AJA4 Implementation plan. AJA4 continues to embed Aboriginal self-determination as an underpinning principle of the government's approach to addressing over-representation. AJA4 also continues to support a place-based approach that empowers Aboriginal communities to drive local solutions to justice issues in a way that gives voice to the Aboriginal community's right to self-determination, enhances collaboration, and provides a person-centred approach to improving the lives of Aboriginal people in contact with the justice system.

145. Further, many of the report's recommendations will be addressed as part of work being undertaken in response to RCIADIC, the Parliamentary Inquiry into Victoria's Criminal Justice System, the Cultural Review and other relevant reviews.

Part 7 – Detail of criminal justice reform work – past, current and future

146. This Part outlines detail of policies and reform work, including recent reforms, work underway, and reforms the Victorian Government has committed to prioritise.

7.1 Public Intoxication reform

127 Explain what the State has done, or intends to do, in response to the recommendations of the report of Deputy State Coroner Caitlin English on the Inquest into the Death of Tanya Louise Day dated 9 April 2020 (Day Report), including: a. Decriminalisation of the offence of public drunkenness and replacement with a public health response; ...

134 Explain the State's intended processes for evaluating and public reporting on the use of existing Police powers in the case of public drunkenness (including any powers that may be used by police to manage people in the community that do not consent to a health response or where a health response is simply not available) to ensure the decriminalisation of public drunkenness has the intended effect of reducing the rate of incarceration of First Peoples.

147. Decriminalisation of public drunkenness in Victoria has been long overdue and delivers on recommendations of the RCIADIC, the findings of the Tanya Day Inquest, the recommendations of the Expert Reference Group (ERG), and the decades-long advocacy of Aboriginal communities.

148. From November 2023, it will no longer be a crime to be drunk in public and a new health-based response, led by the Minister for Mental Health and the Department of Health, will be implemented to prioritise the health, safety and well-being of those who are found intoxicated in public. This reform recognises that the historic approach to public drunkenness is not appropriate or effective, and disproportionately impacts and causes harm to Aboriginal communities.

149. To deliver on the government commitment to reducing the over-representation of Aboriginal people in the justice system and supporting a true transition away from a police response to public intoxication, the government will not legislate replacement

powers for Victoria Police to respond to individuals who are intoxicated. Victoria will not have a protective custody regime, and a person will not be placed in a police cell solely on the basis of being intoxicated in public.

150. I am proud of the fact that Victoria is the first jurisdiction in the country to decriminalise public drunkenness without implementing replacement powers for police, delivering a genuine shift away from the archaic laws that have so disproportionately impacted Aboriginal communities. This decision was based on extensive consultation with Aboriginal community members – particularly the Day family, VALS and the AJC – and research into the experience of other jurisdictions which collectively demonstrated the risks of continued coercive police approaches to public intoxication in a decriminalised environment.

151. In August 2020, the ERG recommended the establishment of trial sites for the new health-based response. These trial sites were to inform development of the statewide response, to be implemented ahead of decriminalisation.

152. Implementation of the health-based response falls under the responsibility of the Minister for Mental Health, who I understand will provide further detail on this on behalf of the State.

153. As the Minister for Mental Health will explain, impacts of COVID-19 meant that the health service system had to divert critical resources to the pandemic response. This delayed implementation of the trial sites and therefore, in June last year, government made the difficult decision to defer the repeal of public drunkenness laws by one year, to November 2023.

154. While challenges to the health system have been ongoing, and recognising the significant work this year to ensure the health-led response is operationalised by November, we are committed to deliver on this reform. We will work in close partnership with the Day family and Aboriginal community stakeholders ahead of decriminalisation and beyond.

155. I understand that Aboriginal communities are concerned that any involvement of police, however small, may lead to the escalation of situations and behaviours, resulting in criminal charges. We all want to see this reform implemented in a way that will improve outcomes for the community and reduce the ongoing risks of justice system contact.

156. There must be oversight of this reform following decriminalisation to assess our progress and to ensure the reform is supporting the broad objective of reducing the rate of incarceration of Aboriginal people. In particular, the evaluation must consider the changes to the way police respond to public intoxication, including the use of existing police powers, and include analysis of the reasons and appropriateness of these changes.

157. This is why we will be appointing an independent evaluator to oversee reform implementation, delivering an objective review of the outcomes and findings of the reform.

158. The independent evaluator will be appointed by November 2023, ensuring that they can commence the important process of evaluating this reform immediately following decriminalisation. The independent evaluator will be tasked with designing and undertaking an evaluation, and this will include engaging closely with Aboriginal communities on the evaluation framework, and through the evaluation itself. It is important that the story of this reform is not told solely through data but incorporates the voices of those that are engaging with the system and the voices of Aboriginal communities.

159. The extent to which the evaluator will report publicly on key findings is still being considered, but in recognition of the intergenerational impacts of public drunkenness laws and the need for trust and confidence in this reform, my priority is ensuring that we are as transparent as possible with the Victorian community.

7.2 Bail laws

125 Explain what the State intends to do to in response to the recommendations of the Nelson Report, particularly relating to: (a) Legislative change (R3-6);….

150 Provide an overview of the key processes followed by the State prior to the introduction of the 2018 bail reforms, to assess and mitigate possible impacts on First Peoples.

151 Provide an overview of:
a. The key processes followed by the State subsequent to the introduction of the 2018 bail reforms, to monitor and assess the impacts of the bail changes in the case of First Peoples; and
b. The key adverse observations and findings from the processes described in sub-paragraph a.

152 What potential reforms, programs or initiatives to address the negative impacts of the 2018 bail reforms on First Peoples have been considered by the State to date?

153 Does the State accept the following observations and criticisms within the Nelson Report as to the effect of the 2018 bail reforms: "I find that the Bail Act has a discriminatory impact on First Nations people resulting in grossly disproportionate rates of remand in custody, the most egregious of which affects alleged offenders who are Aboriginal and/or Torres Strait Islander women." [8] "[T]he 'complete and unmitigated disaster' of the 2018 changes to the Bail Act is most obviously inflicted on the accused who are incarcerated, often for short periods and for unproven offending of a type that often ought not result in imprisonment if proven. Short periods in custody are destabilising and often serve to exacerbate issues underlying the person's alleged offending by producing loss of housing, work or income, the breakdown of relationships and support networks, and disrupted access to treatment and other services. These outcomes are plainly antithetical to rehabilitation and adversely affect the underlying social issues that drive offending." [9].

154 Was the State aware of the adverse impact of the 2018 bail amendments on First Nations people and children prior to the Nelson Report and, if so:
a. Which agencies had what information or knowledge about that adverse impact; and
b. When was that information or knowledge obtained?

155 With respect to the information in Question 154:
a. What was done to reduce this adverse impact and when was it done
b. What unimplemented recommendations were made to reduce this adverse impact and why were they not implemented?

156 Why hasn't the State acted sooner to address the negative impacts of the 2018 bail reform in the case of First Peoples?

158 Explain the State's position on each of the proposed urgent legislative amendments to the Bail Act set out in Recommendation 4 of the Nelson Report.

160 Explain any current or planned reform in respect of cultural awareness training for bail decision-makers.

160. In this Part I provide answers to each of questions 150–156 and 158–160, and in answering question 158 I am also responding to question 125 to the extent that it relates to my portfolio responsibilities. As some of the questions raise common themes, I have broken my responses up into three parts:

    a) The first part answers questions about the processes for assessing and mitigating the negative impacts of the proposed 2018 bail reforms, prior to the commencement of those reforms (Q 150).

b) The second part is focused on the period following the 2018 bail reforms but prior to the Veronica Nelson Inquest. It answers questions about the processes for monitoring and assessing the negative impacts of the bail reforms, the state's level of awareness of those impacts during this period, and responds to the characterisation of these reforms in the Veronica Nelson Inquest (Q 151, 153 and 154). It also answers questions about the potential reforms, programs or initiatives that were considered by the state to address these negative impacts (Q 152), identifies where the state considered but did not implement such reforms, programs or initiatives, and, where unimplemented, explains why they were not implemented (Q 155).

c) The third part is focussed on the future and explains the state's position on each of the proposed urgent legislative amendments to the Bail Act set out in recommendations of the Veronica Nelson Inquest (Q 158). This section also attempts to explain why the state did not act sooner to address the negative impacts of the 2018 Bail reforms (Q 156).

161. Much of my response to these questions is based on the information provided to me by my department, and which I believe to be true, as it predates my appointment as Attorney-General.

Key processes followed by the state prior to 2018 bail reforms

162. The government introduced changes to Victoria's bail laws in 2017 in response to the tragic events on 20 January of that year, when James Gargasoulas murdered six people and injured many others by driving a stolen vehicle at speed through Melbourne's central business district. Mr Gargasoulas was on bail at the time of the killings, after being granted bail by a bail justice.

163. In response to the community outrage at these events, on 23 January 2017, the government announced that it would establish a Night Court for magistrates to hear bail requests during weekend hours. Government also engaged the Honourable Paul Coghlan QC to undertake an urgent review of Victoria's bail laws, with an aim to increase community safety and restore public confidence in the bail system.

164. In the language used at the time, government sought to take the frustration, anger and the deep sadness that Victorians felt after the Bourke Street tragedy and to put that into reform and change.[17]

165. The tragic events in Bourke Street followed other unspeakable acts of violence, involving offenders on parole or bail; there was immense public concern about community safety and expectations on government to take swift, firm action.

166. Justice Coghlan's review received 115 submissions and involved 39 consultation sessions with 34 different stakeholder groups and reported to government in April (first report) and again in May 2017 (second report).

[17] Premier Media Release, 23 January 2027, *Major Shake Up of Bail Announced,* <Major Shake Up Of Victoria's Bail System | Premier of Victoria>.

167. That consultation, and Justice Coghlan's advice identified potential negative impacts on vulnerable communities and Aboriginal people in securing bail, given the stringency of the proposed measures. While Justice Coghlan proposed measures to mitigate these effects, these were not implemented as the government's focus was on ensuring the bail laws were as stringent as possible.

168. In his first report, Justice Coghlan recognised that Victoria's bail system was 'already arguably the most onerous in Australia' and that his recommendations, which included the retention of the reverse onus tests, 'will probably result in more people charged with violent offences, or with relevant offending whilst on bail, being remanded in custody'.[18] However, to mitigate the impacts of his recommendations, Justice Coghlan noted that it was 'also incumbent on [him] to consider ways of removing those who should not be on remand from the remand system.'[19] Accordingly, Justice Coghlan noted that his 'second advice will include recommendations that aim to get people at the other end of the offending scale (i.e. those accused of minor or non-violent offending) out of the bail/remand system.'[20]

169. In the second advice, Justice Coghlan recommended that 'summary and minor indictable offences' be removed entirely 'from the bail system', noting that bail is 'rarely an appropriate process in cases involving minor, non-violent offending'.[21] Justice Coghlan stated that these offences, which would not ordinarily attract a sentence of imprisonment, were likely to be a significant driver of the increasing numbers of Victorian people, and in particular women, on remand.[22]

170. Justice Coghlan specifically recognised the particular disadvantages faced by Aboriginal people, who he noted continued to be over-represented in Victorian prisons.[23]

171. I understand that government knew that in years prior to 2017 there had been a significant growth in the number of people being refused bail, resulting in a substantial increase in the number of people being held on remand. Aboriginal people were already overrepresented in the remand population. Data on the corrections population was and continues to be publicly reported.[24]

172. In May 2017, just prior to introducing the first of two bail reform Bills to implement the Coghlan recommendations, the government committed publicly to implementing, or going further than, all recommendations in the first report and conducting further consultation as part of consideration of the longer-term

[18] The Hon Paul Coghlan QC, April 2017, *Advice*, [2.14] (April 2017 Coghlan Advice).
[19] April 2017 Coghlan Advice, [2.15].
[20] April 2017 Coghlan Advice, [2.15].
[21] The Hon Paul Coghlan QC, 1 May 2017, *Bail Review: Second Advice to the Victorian Government* (1 May 2017), Ch 2 (May 2017 Coghlan Advice).
[22] May 2017 Coghlan Advice, [2.4]-[2.7].
[23] May 2017 Coghlan Advice, [3.27].

recommendations in the second report.[25]

173. The government introduced the first of two bail reform Bills implementing the Coghlan recommendations into Parliament in late May 2017. The reforms had the effect of requiring bail decision makers to place a higher priority on community safety when making bail decisions. This was achieved by making a greater range of offences subject to the 'exceptional circumstances' reverse onus, which previously applied only to murder and terrorism offences. These offences were set out in Schedule 1. Further offences were also made subject to the 'show compelling reason' reverse onus. These offences were set out in Schedule 2.

174. A further feature of Schedule 2 was that a person alleged to have committed any indictable offence could be 'uplifted' into Schedule 2 if they were alleged to have committed the indictable offence in certain circumstances, including while being on bail for another indictable offence. In addition, a person whose alleged offence fell within Schedule 2 could be 'uplifted' from the 'show compelling reason' test to the 'exceptional circumstances' test under certain circumstances (including where they were alleged to have committed a further indictable offence while on bail).

175. The first Bill also introduced a limitation that only courts could grant bail in relation to those who were subject to the 'exceptional circumstances' reverse onus – that is, police could not grant bail and had to take the accused person before a court.

176. As part of the Victorian Budget 2017/18, the government invested $25.2 million to continue and expand the Court Integrated Services Program (CISP) and the CISP Remand Outreach Pilot. The program is designed to increase monitoring, treatment and supervision of persons on bail and remand, and target the underlying causes of offending and help reduce the rate of recidivism, and in part, implemented a recommendation from Justice Coghlan's second advice.

177. The government introduced the second Bail Amendment Bill in December 2017. It completed the full implementation of Coghlan's first report and some recommendations from his second report. This Bill enabled police to 'remand' a person provided the accused could be brought before a court within 48 hours. That is, police no longer had to bring a person before a bail justice as soon as practicable if the person could be brought before a court within 48 hours.

178. While the change was considered important in terms of increasing the proportion of initial bail decisions that were made by a court, children, Aboriginal people and 'vulnerable adults' (such as those with a cognitive impairment) were still required to be taken before a bail justice as soon as practicable if arrested outside court hours. This was intended to ensure those groups were able to make a bail application at the earliest opportunity.

[25] Media Release, 8 May 2017, *Community Safety The Priority in Bail System Overhaul,* <Community Safety The Priority In Bail System Overhaul | Premier of Victoria>.

179. The second Bill further expanded the range of offending for which only a court could grant bail, to specifically include a person accused of a Schedule 2 offence while on two or more undertakings of bail in relation to other alleged indictable offences. However, again, children, Aboriginal persons, vulnerable adults and those charged with repeat, lower-level offences were excluded, and in all cases remained able to be granted bail by a senior police officer or a bail justice.

180. The Bill also clarified the tests for granting bail by better articulating when the unacceptable risk, show compelling reason and exceptional circumstances tests applied, and by introducing a non-exhaustive list of factors to be considered when applying the tests.

After introduction of the 2018 reforms

181. The reforms progressively came into effect from May 2018 coinciding with commencement of the Bail and Remand Court, implementing another recommendation from Justice Coghlan. The Budget 2018/19 provided $128.9 million to increase courts' capacity, including a new Supreme Court judge, two new County Court judges and 18 new magistrates. These new resources were aimed at reducing overall court delays, with three magistrates dedicated to the Bail and Remand Court at the Melbourne Magistrates Court to hear bail applications after hours and on weekends.

182. Other services received consequential funding to support court operations including $37.3 million over four years to Victoria Legal Aid to deliver more legal services, including duty lawyers and grants of legal aid, as well as funding for police prosecutors and the OPP to support the additional court services.

183. The Budget 2018/19 also included funding for Corrections operations and infrastructure. Modest investments were also made in programs, including $4.2 million over three years to support the expansion of the statewide Indigenous arts in prisons and community program and to continue the Out of the Dark family violence recovery program and family violence specialist trauma counselling in women's prisons.

184. In respect of question 154, I am in a position to make observations in respect of agencies within my portfolio responsibility, based on advice from the department.

185. I accept that the state knew that the reforms were likely to make securing bail harder for vulnerable communities and Aboriginal peoples. Ultimately, as I have said publicly, the net was cast 'too wide' and the legislation needs to be amended.

186. The department used a range of information sources to monitor and advise on the impact of reforms, including operational data from justice agencies, information received from justice partners and stakeholders and public discourse. There are limitations in quality, access and coherence of data sets. Bail decisions are made by a range of decision-makers with data recorded for operational, not monitoring purposes. This made monitoring at the point of bail decisions challenging. The

impacts, however, were clear. The reforms were increasing the remand population. The reforms were capturing people on remand who, as Justice Coghlan said, 'should not have been captured by the remand system'.

187. In 2019, it was becoming apparent that Aboriginal women were particularly disproportionately impacted. These are matters of fact and are publicly reported.[26] I concur with the coroner's finding that short periods in custody are destabilising and often serve to exacerbate issues underlying the person's alleged offending by resulting in loss of housing, work or income, the breakdown of relationships and support networks, and disrupted access to treatment and other services. I agree that these outcomes are antithetical to rehabilitation and adversely affect the underlying issues that drive offending.

188. Safeguards in the current bail framework, such as the existing section 3A and the 2018 provision for children, vulnerable people and Aboriginal people, combined with programmatic responses, such as cultural awareness training for bail justices, CISP Bail and community support programs, many of which are outlined in the department's statement, did not do enough to offset and mitigate the disproportionate outcomes.

189. Having said this, I differ from the coroner's findings in attributing these impacts to the 2018 bail reforms alone and therefore do not accept the characterisation set out in question 153 of the reforms in the Veronica Nelson Inquest. I concur with other evidence before the Commission that the prison population, and in particular, the remand population began to rise significantly from 2013 onwards. There are legislative and non-legislative drivers for the increases in Victoria's remand population, including successive amendments to sentencing legislation, provision for bail compliance offences, and increases to the number of operational police officers.

190. The 2018 bail reforms should have been designed to avoid the disproportionate and harmful impacts on Aboriginal people and other overrepresented groups. By way of explanation but not excuse, the circumstances of the time demanded swift action to protect community safety and restore public confidence in the bail system.

191. The net cast by the new bail laws was too wide. The strict, 'reverse onus' elements of Victoria's bail laws have captured people who have committed repeat offending for which they are unlikely to receive a custodial sentence and do not pose an unacceptable risk to community safety.

192. In light of what was known, the government began considering reforms, programs or initiatives to address the negative impacts of the 2018 bail reforms on Aboriginal people shortly after their commencement. For example, in 2019 the department proposed a number of priority reform packages to address the disproportionate

[26] Corrections Victoria, *Infographic Aboriginal Prisoners, <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>.*

impact of changes to bail and sentencing laws over the previous five years on Aboriginal people, and in particular Aboriginal women. These reform packages included proposals for an effective courts package, including an expanded drug court, a summary offence reform package and a women's diversion and rehabilitation package.

193. The women's diversion and rehabilitation package is discussed in the Minister for Corrections' statement. The summary offence reform package, based on Justice Coghlan's second advice to government, was deferred due to the COVID-19 pandemic.

194. The effective courts package was implemented, including establishing the Bail and Remand Court, expanding the Drug Court, developing and expanding the CISP and the CISP Remand Outreach Pilot (CROP), and expanding the use of videoconferencing of hearings in the Magistrates' Court.

195. The government has been examining and considering reforms to the Bail Act for some time. REDACTED REDACTED

196. Years 2020-2022 were largely disrupted by the pandemic and government priorities were rightly directed to protecting the health of Victorians, there was resulting impacts on Parliament and legislative programs. Despite some efforts I was disappointed that legislation to implement bail reforms was not finalised before Parliament prorogued in 2022.

197. The concerns around bail laws became most apparent to me shortly after I was appointed Attorney-General in December 2020. Aboriginal and legal stakeholders highlighted the adverse impacts to me, and I understood that it was imperative that changes be made. As mentioned above, various options were considered prior to the 2022 election and upon being re-elected and reappointed as Attorney-General, my number one priority has been bail reform – and I am pleased that previous work, recommendations and feedback have now culminated in updated advice and a proposal for reform is now well advanced.

Future reform

198. I will soon introduce legislation into Parliament to amend the Bail Act to address the adverse impacts that have been well documented through this statement, earlier evidence and of course in the broader community conversation. The reforms will maintain proper consideration of community safety in decision-making by

maintaining an appropriately 'tough' approach to those accused of serious offending who pose an unacceptable risk to community safety.

199. Importantly, reverse-onus bail tests will be limited to only those charged with serious offences and those who pose a terrorism risk. There will also be refinements to the unacceptable risk test to strike the right balance between violent and non-violent crime. These are not reforms I am prepared to defer further but they are most certainly not the only reforms that respond to the overrepresentation of Aboriginal peoples in the justice system that I am prepared to prioritise for consideration during the time I have the privilege of being the Attorney-General.

200. I am not in a position to provide specific detail about the proposal that is currently the subject of consultation before finalisation of this statement. I hope to have more to share with the Commission on these matters at a later time that will assist in your deliberations and report.

201. On 1 March 2023, a Consultation Paper (Consultation Paper) regarding reforms to the *Bail Act 1977* was provided on a confidential basis to relevant stakeholders. The purpose of the Consultation Paper is to seek feedback regarding proposed amendments, to inform the drafting of provisions. The proposed amendments are intended to be consistent with recommendation 4 of the Veronica Nelson Inquest.

202. The proposed amended legislation is intended to appropriately address the issues identified with the current bail laws, which are echoed in the Veronica Nelson Inquest and to give effect to these policy objectives:

    a) refining the bail tests to focus on serious alleged offending and serious risk

    b) reducing the overrepresentation of vulnerable groups in the justice system including women, Aboriginal people and children

    c) promoting alternatives to remand that deal with the root causes of offending behaviour, and

    d) balancing the reforms with the rights and protection of victim/survivors and the community.

203. The first proposed amendment is a differentiated child bail test where the reverse onuses no longer apply to children, with limited exceptions. The Bail Act would be amended to exclude children from the application of the show compelling reason test and exceptional circumstances test (with two exceptions). The intended effect of this amendment would be to reduce the incidence of remand of children, including Aboriginal children. Bail decisions relating to children would be solely based on the unacceptable risk test in the vast majority of cases.

204. The overarching intention of applying a differentiated approach to bail for children is to reiterate that custody must be used as a last resort for children.[27] Having a

[27] *Consultation paper: Reforms to the Bail Act 1977,* 1 March 2023, p. 4.

one-step bail test for almost all children would be simpler for a bail decision maker (including police and bail justices) to apply and would be intended to focus attention on risk and ensure that community safety is not compromised.

205. The proposed amendments also include the introduction of Aboriginal child specific considerations. This includes introducing separate specific considerations that would be required to be taken into account by a bail decision maker where the accused is an Aboriginal child. The AJC is being consulted as to the wording of these considerations. I am very grateful for the wisdom, expertise and engagement of the AJC working group that is specifically engaged on this.

206. 'Uplift provisions' were primarily designed to encourage compliance with bail by imposing more onerous bail tests on accused persons who were alleged to have offended while subject to a court order or awaiting trial or sentence. Uplift is now understood to be a key driver of the remand of persons accused of repeat lower-level offences who pose little risk to the community. The effect of uplift means some accused persons face a presumption against bail based solely on when and how they offended, irrespective of the nature or seriousness of the offending they are accused of, or of the risk they post to the community.[28] These amendments would reduce that impact.

207. The proposed amendments also involve refining the unacceptable risk test to focus on community safety. By the proposed amendment, which takes into account recommendation 4.11 of the Veronica Nelson Inquest the unacceptable risk test in section 4E(1)(a) would be amended to provide that the risk that the accused will commit an offence while on bail can only be an unacceptable risk if that offence would endanger the safety or welfare of any person. It is understood that the application of the second limb of the unacceptable risk test – committing an offence on bail – may be contributing to remand of children and adults due to a perception that it is intended to capture *any* risk of re-offending. Based on examination of remands, this appears to be including re-offending that, even if it eventuated, is minor and poses no risk to community safety.

208. The Consultation Paper also sets out a proposed amendment to section 3A of the Bail Act. This proposal takes into account recommendation 4.10 of the Veronica Nelson Inquest. That is, to update the existing set of principles that bail decision makers must take into account when making a determination under the Act with respect to an Aboriginal adult as part of meeting the identified policy objectives including overrepresentation of Aboriginal People and children in custody. As with the child-specific considerations, these considerations are currently subject to consultation with the AJC.

209. It is also proposed to amend the Bail Act to require a bail decision maker to consider whether there is 'no real prospect' that the defendant will be sentenced to a custodial sentence in the proceedings, were they to be found guilty of the

[28] Ibid, p.6

charges.[29] This amendment would broadly follow the United Kingdom's 'no real prospect' test. It would reinforce that if a custodial sentence would be an excessive response to the alleged offending, then there will only be limited circumstances where remand is an appropriate precaution for the risk posed by the accused.

210. Finally, and specific to the above policy objectives as well as recommendation 4.8 of the Veronica Nelson Inquest, we are considering whether section 18AA of the Bail Act should be amended so that an applicant for bail will not have to satisfy the court of new facts and circumstances when making a second application for bail. The rationale for this proposed amendment is to address stakeholder concern that having to overcome the new facts and circumstances rule, if bail is refused, results in many accused making in-person applications in the first instance or delaying making an initial application until they have sufficient material to support a grant of bail.[30]

211. There is a concern that this threshold requirement particularly impacts vulnerable people in the community including children and Aboriginal people who already experience barriers in the criminal justice system. Reforms that encourage earlier, represented, bail applications without fear of being barred from a subsequent application should result in fewer unnecessary remands.[31]

212. I acknowledge that the proposed reforms may not go as far as many, including legal stakeholders and ACCOs such as VALS have advocated for. The reforms will also not go as far as those recommended by the coroner in the Veronica Nelson Inquest findings. However, as with most justice reform pieces the conversations, shared lived experience and consideration of further reform will continue. It is important to me to demonstrate action – it may not be everything that everyone wants but it will be a significant step in the right direction and will produce better outcomes for many Aboriginal people.

213. As discussed earlier it is the Aboriginal stakeholders along with the community legal sector and Victoria Legal Aid amongst others who have been urging me to act with haste regarding bail reform and I value their input immensely. I cannot however hold the reforms out to the Commission as an example of true self-determination in law-making. Self-determination in respect of law-making, in the criminal justice system is something that I, the government and community are yet to fully resolve.

Cultural awareness training for bail decision-makers

214. I acknowledge the importance of cultural awareness training for bail decision-makers. Commencing in 2022, Aboriginal Cultural Awareness Training is a requirement under section 23 of the *Honorary Justices Act 2014* and funded in

[29] Ibid, p.9
[30] Ibid, p.10.
[31] Ibid, p.10.

the State Budget 2021/22. Eight sessions were facilitated by Tarina Fanning Aboriginal Consultancy Training Services (TFACTS) between October 2022 and February 2023. 63 out of the 74 bail justices completed this training.

215. The training program sought to reflect the importance of Aboriginal cultural considerations in bail/remand hearings and Interim Accommodation Order hearings. In doing so, it has incorporated consideration of cultural bias, reflects on Aboriginal history, and provides an overview of legislative principles and scenarios to guide decision-making processes. Learning outcomes covered in the training include:

    a) reflection on Aboriginal history, including justice initiatives and the broader justice system

    b) consideration of identity

    c) practical consideration of 'cultural safety'

    d) wellbeing concepts and broader kinship ties

    e) consideration of cultural bias and possible impacts

    f) introduction to local Koori culture through highlighting local Koori supports, and

    g) legislative principles and scenarios to guide hearing processes.

216. In developing the training, feedback was sought by the facilitator from the Victorian Aboriginal Legal Service (VALS) and Djirra. The training provider previously delivered Koori Cultural awareness training for the department in 2018 and consulted with the Koori Justice Unit in developing that package.

217. Recommendation 28 of the Coghlan Review proposed specialised training for bail justices on children and youth issues, Aboriginality, family violence, mental illness and cognitive disability, homelessness, and substance abuse. This recommendation was incorporated into the preparation of the training materials.

218. All bail justices who are yet to complete the training will be provided with further opportunities to undertake the training on 22 May and 10 July 2023. The Aboriginal Cultural Awareness Training package has not been evaluated as it has only recently been delivered. Future evaluation will assess whether the training achieved its objectives and whether there is any correlation between the training provided and remand rates of Aboriginal peoples. The evaluation will commence in July 2023 and will also obtain feedback from participants and the facilitator.

219. In February 2023, the equal lowest remand rate of Aboriginal peoples by a Bail Justice over the past twelve months was recorded (a rate of 86 per cent). However, given this reflects only a single point in time, further evaluation and analysis will be undertaken as more data becomes available.

220. Aboriginal Cultural Awareness Training is a mandatory requirement for all new bail justices prior to their commencement in the role.

221. Following the evaluation of the training package, consideration will be given to how the training modules can be improved, including through greater consultation with the Aboriginal legal services and the department's Koori Justice Unit.

7.3 Age of Criminal responsibility

135 Explain the State's position on the proposal for each of the following: (a) The age of criminal responsibility to be raised to 14 years; (b) The age of incarceration to be raised to 16 years; and (c) No one under 18 years of age transferred to an adult prison.

136 Describe the status of Commonwealth level discussions on raising the age of criminal responsibility (including the State's position).

137 At the Standing Council of Attorneys-General on 9 December 2022, participants agreed to release a draft Report from 2020 on the Age of Criminal Responsibility recommended that the minimum age of criminal responsibility should be raised to 14 years of age (see R2). The communique released noted that this report was "never agreed by all jurisdictions" Please confirm the State's position in respect of the release of the draft Report.

138 On 20 December 2022 Premier Andrews said, in relation to the minimum age of criminal responsibility "If we, however, cannot deliver as a nation consistent set of laws, then the government reserves the right to make further announcements". Explain what the State will do if a national consensus cannot be reached on raising the age of criminal responsibility (including by providing timings and milestones for deliverables in making any change).

222. In response to question 135(a), I am committed to reforming the minimum age of criminal responsibility.

223. In Victoria, a child as young as 10 can be charged, remanded, prosecuted, convicted and sentenced for behaviour that could constitute a criminal offence. Questions 135(b) and (c) are matters in the portfolio responsibility of the Minister for Youth Justice.

224. I take this issue incredibly seriously, and make a point to keep a close eye on the numbers of young people between the ages of 10 and 13 in our custodial system, and those numbers remain very small here in Victoria. As at today, 31st March 2023, I am advised that there are no children aged 10, 11 or 12 in a Victorian youth justice facility and there are six who are either aged 13 or 14.

225. In my view a young child should not be in custody. But any change in the age of criminal responsibility needs to be coordinated with support services for young people to address behaviour and risk factors, so we are not simply postponing their interaction with the justice system.

226. I am not able to advise on the state's position on the minimum age of criminal responsibility, as a final position has not been approved by Cabinet. In response to question 138, I am also unable to confirm the state's position on timing and

milestones for reforming the minimum age of criminal responsibility, given this issue is under active Cabinet consideration.

227. A number of critical policy and service design questions are currently being worked through by the department including:

a) what the new minimum age of criminal responsibility should be in Victoria, noting that other jurisdictions such as the Northern Territory and the Australian Capital Territory are progressively raising the age starting from 12, and

b) the alternative service response that stands in lieu of the criminal justice response, and its capacity to properly hold children to account, address the underlying root causes of problematic behaviours and maintain community safety, particularly in circumstances involving serious and violent conduct.

228. The minimum age of criminal responsibility (MACR) is currently legislated in section 344 of the *Children, Youth and Families Act 2005*, but the age of 10 was determined almost 40 years ago. It is now inconsistent with the evidence about children's cognitive development and the harmful impacts of justice system involvement, and international human rights standards and legal norms. I am aware that the Commission has heard evidence from experts in child development, Dr Mick Creati and Professor Stuart Kinner on the development of impulse control and consequential thinking.

229. There is a common law presumption that states a child aged 10 to 13 does not have the required mental intent to commit a crime unless the prosecution can prove the child knew their conduct was seriously wrong (referred to as *doli incapax*). While this is an important safeguard, stakeholder feedback, including evidence to the Commission from Victoria Legal Aid,[32] has highlighted that it is inconsistently applied (if at all), particularly in areas of the state where there is no specialist Children's Court, and that issues with its application can simply prolong contact with the criminal justice system instead of acting as a diversionary measure.

230. In Victoria, Aboriginal children are over-represented among children aged 10–13 in contact with police and the youth justice system compared to older children, and three-quarters of Aboriginal children aged 10–13 in contact with Youth Justice had previous contact with Child Protection. This 'cross over' between both the child protection and youth justice systems, as evidenced in multiple studies[33] and highlighted in evidence to the Commission by the Commissioner for Aboriginal

[32] Nicholson, D., Executive Director Criminal Law, Victoria Legal Aid, 15 December 2022, <https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/01/Transcript-15-Dec-2022.pdf>, p. 39.
[33] Sentencing Advisory Council, June 2020*, 'Crossover Kids': A comparison of two studies*, <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-12/Crossover_Kids_Comparison_of_Two_Studies.pdf>; Commission for Children and Young People, 2021, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system,* <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>.

Children and Young People particularly with respect to the criminalisation of children in out of home care,[34] is concerning and unacceptable.

231. Other groups of children are also over-represented in the criminal justice system, particularly children from culturally and linguistically diverse backgrounds and those with a history of child protection involvement.

232. Research also shows that children who come into contact with the criminal justice system at a younger age are more vulnerable to ongoing harm and risk of becoming entrenched in the criminal justice system.

233. In comparison, diverting young children from the criminal justice system has profound positive impacts on reducing recidivism rates, changing offending trends, and improving both community safety and the welfare and life prospects of these children. Emphasising diversion at a young age also reflects the evidence and data, including the Sentencing Advisory Council's findings that for every year a child was older when they first appeared before the criminal court, there was an 18 per cent decline in the likelihood of reoffending.[35]

234. I acknowledge the sustained and widespread advocacy on this issue to date, including from the Commission's interim report and the open letter that was sent to me by co-Chair of the First People's Assembly, Aunty Geraldine Atkinson, who has also provided evidence to the Commission.

National consideration of the minimum age

235. In response to question 136, Victoria remains actively engaged in a national process to consider the minimum age through the Standing Council of Attorneys-General (SCAG). The government's position has been that achieving consensus through the SCAG process is a preferable outcome. Consistent laws across all Australian jurisdictions would provide clarity and consistency about when a criminal justice response is to be used to respond to children that exhibit harmful behaviour. This is particularly important for cross-border communities.

236. However, the Premier's recent public comments have accepted that the current minimum age of criminal responsibility of 10 years needs to change, and that Victoria is prepared to undertake this reform independently if the national process does not deliver.

237. The early focus at a national level was on identifying and seeking national consensus for a specific minimum age. This work commenced in 2018 as part of the then Council of Attorneys-General (CAG) work program. A draft report that

[34] Commissioner for Aboriginal Children and Young People, Meena Singh, 5 December 2022, <https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/01/Transcript-5-Dec-2022.pdf>, p. 71.
[35] Sentencing Advisory Council, 2016, *Reoffending by children and young people in Victoria*, <https://www.sentencingcouncil.vic.gov.au/sites/default/files/2019-08/Reoffending_by_Children_and_Young_People_in_Victoria.pdf>, p. 26.

considered legislative reform options to achieve a raised MACR was produced in 2020 (draft 2020 Report) but was not agreed to by all jurisdictions and was not formally considered by Attorneys-General. In July 2020, CAG agreed for further work to occur regarding the need for adequate processes and services for children who exhibited offending behaviour. At the Meeting of Attorneys-General (MAG) in November 2021, state Attorneys-General supported development of a proposal to increase the minimum age of criminal responsibility from 10 to 12, including with regard to any carve outs, timing and discussion of implementation requirements.

238. At the MAG in August 2022, under new federal leadership, participants agreed the Age of Criminal Responsibility Working Group (ACR WG) would continue to develop a proposal to increase the minimum age of criminal responsibility, paying particular attention to eliminating the over-representation of Aboriginal children in the criminal justice system.

239. At the December 2022 SCAG meeting, participants agreed to release the draft 2020 Report on the Age of Criminal Responsibility. The draft 2020 Report gave detailed consideration to the existing legal and policy framework and the reforms that could be considered to raise the age of criminal responsibility. However, the ACR WG identified the need for further work to occur regarding the need for adequate supports and services for children who exhibit offending behaviour. This is the current focus of the reconvened ACR WG, which is now co-chaired by Western Australia and the Commonwealth.

240. The Australian Capital Territory and the Northern Territory have already taken steps towards increasing their MACR. The work done in both jurisdictions so far has been a helpful source of information about the range of issues to be considered as part of any package of reforms for Victoria. There are also examples of reforms that have been implemented internationally that we have learned from as we consider the approach to be taken here.

241. In response to question 137, the draft 2020 Report was not settled at officer level. Notwithstanding this, the department recommended In Principle support for its release in October 2021, however, its release was not formally considered by the CAG.

242. When the release of the draft 2020 Report was again considered by SCAG in December 2022, the department recommended agreeing to its release, which, as noted above, occurred.

Victoria's approach to considering the minimum age

243. As noted above, a detailed government position on what Victoria's preferred minimum age may look like is yet to be settled by Cabinet.

244. However, I expect the government will take a thorough approach to weighing up the principles and practical considerations of the reforms. I expect the aims of any reforms to consider the principles, such as to:

a) minimise children's unnecessary contact with the criminal justice system as far as appropriate and possible

b) address and respond to children's needs in ways that are culturally appropriate, evidence-based, proportionate and support accountability, rehabilitation and positive change

c) use government resources smartly to achieve the most effective community safety outcomes in the longer term, and

d) ensure that victims who are affected by harmful behaviour of children are adequately supported.

245. A key issue for consideration is what mechanisms are in place to respond appropriately to seriously harmful behaviour. From a practical perspective, it would not be feasible to entirely withdraw the criminal justice system response without being clear about the alternative service response and its capacity to manage community safety risks and properly hold children to account for harmful behaviours or which support and wellbeing measures are best deployed as a response.

246. Some jurisdictions have adopted a blended approach where criminal and non-criminal responses could be available as an option for supporting children with more complex needs. For example, New Zealand has a diversionary model that allows for family group conferences to take place before a decision is taken to institute criminal proceedings against a child.

247. We will consider the varying impacts of potential reform options, including for particular groups of children and communities, when determining the preferred policy settings. Any reforms to the minimum age in Victoria will need to be informed by relevant data to ensure that government has an accurate picture about these young children and to ensure reforms are appropriately targeted and impactful.

248. Key data that will be used to inform this thinking includes the volume and character of offending by different age groups, the number of children that have contact with the criminal justice system and the nature of that contact. In recognition that many of the young children involved with the criminal justice system have faced multiple layers of complex disadvantage in their lives in circumstances beyond their control, insights will also be drawn from the intersection of crime statistics data with other sources such as, for example, child protection data.

249. Once a decision is made about the appropriate minimum age, it is expected that there will be many additional legislative issues and service design issues to consider to ensure that reforms to the minimum age of criminal responsibility are implemented in a safe and considered way.

Additional legislative issues to consider if the minimum age is raised

First responders and community safety

250. If the minimum age is raised, government will consider the appropriate powers for first responders, including Victoria Police. Other jurisdictions who have acted to raise the age have differed in their approach to this issue. While some have opted not to include replacement police powers other than an obligation to take a child home to a parent or guardian, others have included statutory frameworks allowing the investigation of harmful conduct by police in limited circumstances.

251. Victoria will consider a principled approach to this issue, with the objective of ensuring that police can provide a first response at incidents that maintains public safety, while also recognising that another objective of MACR reform is to minimise children's contact with police and the criminal justice system.

252. It will also be important to avoid any adverse consequences. For example, concerns have arisen about the risk that children under the minimum age could be exploited by older children or adults. Government will need to consider if there are any gaps in existing laws that would need to be addressed to prevent new community safety risks from emerging.

Victims of crime

253. The government is also committed to upholding the rights of victims. While reforms to the MACR recognise that criminal prosecution and sanctions are not developmentally appropriate for young children, we know that a child's behaviour may still cause real harm to victims. In principle, it would be appropriate to ensure that victims should have access to broadly equivalent supports and entitlements as they do in the criminal justice system.

254. This will include appropriate avenues for victims to communicate the harm they have experienced. Consideration will also be given to the operation of financial assistance schemes, and rights to information under the *Victims Charter Act 2006*. It will be important to clarify the triggers for these entitlements if criminal investigations and prosecutions cease under revised MACR settings, to determine whether legislative or practice changes are required.

Other issues

255. Depending on the key policy parameters, government may also consider the desirability of improvements to the legal and practical operation of the presumption of *doli incapax* to promote its early and consistent consideration by police, legal practitioners and courts and to ensure it is being used to divert the most vulnerable children away from the harmful effects of the criminal justice system.

256. Government will also consider transitional arrangements for the phasing in of any changes. This could include consideration of issues such as the status of convictions for offences that would no longer be possible under a higher minimum age.

257. Finally, in the absence of national consensus about the appropriate minimum age, Victoria would also need to consider extradition or interstate transfer arrangements for Victorian children who may be subject to criminal proceedings in other jurisdictions.

Service design issues

258. Any change to the minimum age of criminal responsibility will require careful planning and engagement with community partners and experts to determine the most appropriate settings, and alternative services that will provide appropriate support for children in lieu of a criminal justice response. A thoughtful and measured approach is needed so that the best outcomes are achieved for children and their families, while ensuring the safety of all Victorians.

259. This will require engagement with Aboriginal people and organisations, legal stakeholders, social services providers, community and advocacy groups, victims of crime, law enforcement and government agencies. It will also require consideration of data, evidence and overseas experience, and community engagement and education.

260. This has worked successfully with other forums such as the Youth Collaborative Group of the Aboriginal Justice Forum, which is focused on the key issues and needs of Aboriginal children at risk of, or in contact with, Youth Justice. This has included the AJC and ACCOs, as well as external stakeholders. Themes and key discussion points from these meetings have enabled initiatives, such as those under Wirkara Kulpa (detailed below), to progress to better meets the needs of Aboriginal children and community.

7.4 Oversight of Police

142 Explain the status of the State's assessment of, and response to, the findings and recommendations within: a. Independent Broad-based Anti-corruption Commission (IBAC) Audit of Police Complaints made by Aboriginal People (May 2022)

261. Government is committed to ensuring Victoria has a police oversight system that is robust, transparent and effective in meeting the needs of Victoria's diverse communities, with a framework that maintains the highest standards of integrity and public trust in the police force.

262. Ensuring public confidence in Victoria Police, and the effectiveness and legitimacy of the often complex and challenging work of policing, depends on holding officers who do the wrong thing, and any systemic issues that enable this wrongdoing, to account.

263. Aboriginal and Torres Strait Islander peoples have for 200 years seen police across this continent shoot Aboriginal and Torres Strait Islander people – and face few, if any, consequences.[36]

264. Any negative and distressing experiences that Aboriginal people have further perpetuate and entrench Aboriginal trauma which, as we are aware, can lead to further and worsening interactions with the justice system. A robust, culturally safe and responsible oversight system is critical.

265. There have been many independent reports and inquiries over the years, both across Australia and in Victoria, that have found Aboriginal people do not have trust in police complaints systems, resulting in under-reporting of police misconduct.

266. In Victoria, the most recent example is the Independent Broad-based Anti-corruption Commission's (IBAC) Audit report into Victoria Police's handling of complaints made by Aboriginal people (May 2022), which found that Aboriginal people lack confidence in Victoria's police complaints system with specific concerns being held about matters including:

    a) inherent bias in investigation processes

    b) lack of adequate evidence gathering

    c) poor communication with complainants, and

    d) low substantiation rates.

267. As all the recommendations in that report are directed to Victoria Police, the Chief Commissioner for Police is best placed to answer questions regarding the implementation of those recommendations. I am pleased to have been advised that Victoria Police has accepted all 10 of the recommendations.

268. The government is committed to Aboriginal self-determination and walking alongside Aboriginal communities to ensure our police oversight system is robust, complainant-centred, culturally and practically safe, and promotes public trust.

269. We are working to improve Victoria's police oversight system to ensure that it is strong, transparent and meets the needs of all Victorians. That is why government conducted a systemic review of police oversight in 2021–22.

270. The review responds to recommendation 61 of the Royal Commission into the Management of Police Informants and the policy work arising from the Parliament's

[36] Daley, P., 2022, 'Police interactions with Aboriginal people are scarred by Australia's violent frontier history', *The Guardian*, 19 March, <https://www.theguardian.com/australia-news/postcolonial-blog/2022/mar/19/police-interactions-with-aboriginal-people-are-scarred-by-australias-violent-frontier-history>. Aboriginal and Torres Strait Islander peoples historical experiences with policing, combined with more recent experiences of incidents of racist policing across Australia and deaths in custody, contribute to present day mistrust in Victoria's police oversight system, and in policing more broadly.

2018 IBAC Committee Inquiry into the external oversight of police corruption and misconduct in Victoria (IBAC Committee Inquiry).

271. The Commission found that the oversight model in Victoria is fragmented, inconsistent and limited by its focus on procedural compliance. It therefore recommended that government undertake a principles-based review of the police oversight system, within two years, to ensure that the system:

    a) is consistent and coherent

    b) contributes to improved police accountability, and

    c) delivers meaningful, outcome-focused monitoring of police decisions and actions.

272. The Commission also commented that the work to undertake the policy response to the 2018 IBAC Committee Inquiry could be undertaken in tandem with the review, which is what has occurred.

273. The review has consulted with the AJC, Aboriginal representative stakeholders with day-to-day experience of Aboriginal peoples' interactions with policing, and Aboriginal people. The review also conducted a public consultation process. In addition, the review has been informed by a range of contemporary policy materials, including the Victorian Aboriginal Legal Service's Policy Brief – Reforming Police Oversight in Victoria (2022).

274. We are carefully considering all feedback and evidence received by the review to ensure our police oversight system is more effective and places greater focus on the needs of complainants and victims of police misconduct, especially the unique needs and experiences of Aboriginal people.

275. The evidence received by the review has been instructive. Aboriginal representative organisations identified the historical and ongoing impacts of policing on Aboriginal communities and submitted that the complaints and oversight system should have specific measures in place to ensure the process adequately considers allegations of racism, is free from bias and is culturally safe.

276. To support this process, they submitted that it is important that any independent police oversight agency employ Aboriginal staff, particularly in key decision-making positions, to ensure the agency's processes are culturally safe and to assist with the assessment of complaints made by Aboriginal people.

277. In addition, to ensure cultural competency, all non-Indigenous staff must also be required to undergo training in cultural awareness, systemic racism, anti-racism, unconscious bias and trauma-informed approaches.

278. Some Aboriginal stakeholders submitted to the review that the current system – whereby police investigate police contact deaths – is deeply problematic for Aboriginal families whose loved ones have died in police custody or as a result of police contact. They recommended establishing an independent Aboriginal-led

body to investigate Aboriginal deaths in custody or a specialist team in the independent oversight agency.

279. Importantly, the government recognises that public trust in the police complaints and oversight system requires a greater number of complaints about police to be independently investigated, especially where those complaints are made by Aboriginal people and by people from vulnerable and marginalised groups.

280. However, it is also important to recognise that under the current system for police oversight, IBAC's independent police oversight role is not limited to assessing, investigating or reviewing complaints about police conduct. For example, IBAC's strategic plan for 2021–2025 identifies a targeted approach to police misconduct as one of four key streams of work, with its current annual plan further identifying three strategic focus areas for Victoria Police misconduct, being:

    a) high-risk police units, divisions and regions

    b) use of force on people at risk (which specifically identifies Aboriginal and Torres Strait Islander peoples), and

    c) police responses to police family violence incidents.

281. In 2022, IBAC released two important reports relevant to police misconduct – the Audit of Victoria Police's handling of complaints made by Aboriginal People and a Special report on police misconduct issues and risks associated with Victoria Police's Critical Incident Response Team (October 2022). Among other matters, both these reports identified concerning deficiencies in relation to Victoria Police personnel's compliance with the Charter Act and made recommendations to Victoria Police to improve its policies, practices and training.

282. It is also important to recognise that a lot of the work that IBAC undertakes does not receive public attention. Under the current legislative framework, the recommendations IBAC makes to Victoria Police cannot be published unless they are contained in a published special report. The impact of this limitation is just one of many issues that government is considering in deciding how to best reform Victoria's police oversight system.

283. Most importantly, and consistent with the feedback received by the systemic review, the government recognises that in order to promote public trust, any independent oversight agency overseeing police conduct must be complainant-centred and must be able to undertake its functions in a manner that is culturally and practically safe for complainants and witnesses of police misconduct.

284. In relation to Aboriginal complainants, the review received evidence that this means that the independent complaints body must:

    a) raise awareness of the complaints process within Aboriginal communities, including via outreach

b) establish culturally appropriate options for complaint lodgement

c) liaise with Aboriginal complainants throughout the complaint process

d) provide and/or coordinate culturally safe support for complainants, and

e) include a broad-standing to make a complaint, including via advocates supporting a person who has experienced misconduct, and organisations, such as ACCOs, that are well-placed to identify systemic issues.

285. I acknowledge that government publicly committed to introduce legislation to reform Victoria's police oversight system arising from the findings of the systemic review in the previous term of government, and that this commitment has not been met.

286. Reforming Victoria's police oversight system is a complex task. There are many intersecting and overlapping parts of the system. For example, complaints about police conduct may be made to IBAC, directly to Victoria Police, and in some circumstances, to the Victorian Equal Opportunity and Human Rights Commission.

287. The system is also governed by several intersecting, and complex pieces of legislation, including *the Independent Broad-based Anti-corruption Commission Act 2011*, the *Victoria Police Act 2013*, the *Public Interest Disclosures Act 2012*, and various legislative schemes established to provide bespoke oversight to Victoria Police's use of specialist coercive and intrusive powers (for example, Victoria Police's use of telecommunications intercepts and firearms prohibition orders).

288. In relation to Victoria's independent police complaints system, it is also important to acknowledge that views differ on how best to reform that system.

289. There are also other complexities that must be carefully considered when determining which reforms will be effective, practical and implementable. For example, the IBAC Committee Inquiry recognised the challenges for IBAC in recruiting appropriate investigators to handle complaints about police as well as the need for an increased investigative workload to be adequately resourced.

290. The systemic review received similar evidence, including that there is currently a general shortage of operational staff across Australia. The systemic review also heard that many stakeholders consider that an independent police oversight agency should generally not employ or engage current, former or seconded Victoria Police officers.

291. In considering the potential reforms that may be required to Victoria's police complaints system, the government is guided by the review's seven outcomes which, taken together, form the basis of a robust, accountable, transparent and complainant-focused police complaints system. The outcomes are:

a) the roles and responsibilities of all agencies within the police oversight system are clearly articulated and effective in driving accountability in police practice and public confidence in the system

b) all agencies within the police oversight system have the powers they need to perform their functions effectively

c) the legislation and policy framework that underpins the police oversight system is clear, consistent, transparent and accessible

d) Victoria Police's primary responsibility for detecting and preventing crime, upholding ethical standards in policing and their vital role in holding police personnel accountable for misconduct, is appropriately reflected in all aspects of the oversight system

e) the exercise of police powers, decisions and actions are subject to appropriate outcome-focused monitoring

f) all police misconduct complaints are assessed, classified and addressed consistently, and are managed in a way that appropriately reflects the nature and seriousness of the complaint, and

g) a complainant-centred approach that reflects and supports the diverse needs of complainants is embedded in all stages of the complaint handling process.

292. Among other things, the review received evidence that suggested the complaint process could be made more culturally safe by:

a) Victoria Police and the independent oversight agency attending Aboriginal communities, particularly in regional areas, to establish and maintain relationships

b) allowing complaints to be taken by Aboriginal liaison officers (currently, complaints to Victoria Police can only be received by police officers and protective services officers, but not other members of Victoria Police personnel who are Victorian Public Service employees)

c) minimising the number of people an Aboriginal complainant must deal with to make a complaint and throughout the complaint process. This was seen as important to building trust in the complaints process and the complaint-handling agency

d) providing other culturally safe ways to obtain complaints, such as via community-based forums where Aboriginal people may feel comfortable to share their stories, and

e) resourcing ACCOs to support Aboriginal complainants through the complaint/investigation process and allow access to funded legal assistance.

293. We are considering all these matters carefully. There is still a long road ahead to delivering on our commitment to fully restoring confidence in Victoria's police oversight system. Systemic and lasting changes will take time and effort and will require ongoing dialogue with Aboriginal people and other stakeholders.

294. The government is committed to getting these important police oversight reforms right and will continue to work with Aboriginal representative bodies and communities to do so.

295. I will have more to say on police oversight reforms in the coming months following Cabinet deliberations.

296. I intend to directly consult with the Aboriginal community on the development of legislative reforms and recognise that the systemic changes that are required must be directly informed and shaped by the experiences of the community.

7.5 Sentencing and custodial systems

163 What is the State's position on the adequacy and accessibility (as at February 2023) for First Peoples of: (a) Community-based sentencing; (b) Cautions and diversionary programs; and (c) The range of options, accessibility and efficacy of community-based sentencing options, in each case, for First Peoples men, women and/or children.

164 As at February 2023, are any possible amendments to the Sentencing Act under contemplation on the part of the State, to increase the range of sentencing options for First Peoples men, women and/or children? Provide an explanation of the underlying factors/ rationale.

165 What are the opportunities and barriers for increasing First Peoples participation in the processes in paragraph (163), including: a) Changes to criminal justice legislation, policy and procedures; b) Adjustment to police powers re: Court ordered diversion?

166 What structures are in place to support First Peoples supervision of community-based sentences?

297. The legislative framework for sentencing falls within my portfolio responsibilities, as do the courts. Implementation and administration of community correction orders, however, are a matter for the Minister for Corrections. Matters relating to police cautions and diversions is an operational matter for the Chief Commissioner of Police and falls within the portfolio responsibilities of the Minister for Police.

298. As described below, a comprehensive review of the *Sentencing Act 1991* is proposed. Victoria's sentencing legislation is now over 30 years old and has been amended countless times, resulting in an Act that is overly complex, is labyrinthine in its length and structure, and which no longer meets the needs of the contemporary Victorian community. Government is some way off settling a final policy position on these matters.

299. Sentencing is a cornerstone of community safety and a fair and transparent justice system. It is therefore vital that Victoria's sentencing laws are clear, certain and fair. Sentencing law must also balance many competing demands. It must keep the community safe; adequately punish, deter and denounce high-harm offenders; divert low-risk offenders from the criminal justice system; avoid entrenchment of disadvantage or over-representation; and maximise opportunities for rehabilitation. It must do so giving due regard to the harm caused and impact on the victim. It must do so within the practical realities of the corrections system and in a way that supports efficient resourcing and functional administration.

300. Despite the relative stability or decline in the crime rate over recent years, the proportion of court cases resulting in sentences of imprisonment has increased. This is particularly so for Aboriginal people.

301. High imprisonment rates, and the 'churn' of short periods has entrenched disadvantage for groups overrepresented in the criminal justice system, such as Aboriginal people. Short periods of imprisonment are highly criminogenic and can lead people down a path of cycling through the criminal justice system for life.

302. We have gone a limited way to addressing this through the establishment and subsequent expansion of Koori Courts in the Children's Court, Magistrates' Court and County Court. The first Koori Court was established at the Shepparton Magistrates' Court in 2002 in response to the findings and recommendations of the Royal Commission into Aboriginal Deaths in Custody. Since then, Koori Courts have been expanded to 15 Magistrates', 12 Childrens' and 7 County Court locations. The government is committed to exploring its further expansion under Wirkara Kulpa: Aboriginal Youth Justice Strategy 2022–2032.

303. The Koori Court is presided over by a Magistrate or Judge and involves an Aboriginal Elder or Respected Person to advise on cultural issues relating to the accused and to provide background information for possible reasons for the offending. Elders or Respected Persons have an active role in the sentencing conversation, and while the Judge or Magistrate is the ultimate decision-maker, Aboriginal offenders are spoken to by Elders or Respected Persons about the ramifications of their behaviour.

304. An independent evaluation of the Magistrates' Koori Court in 2005 found that Aboriginal people before the Court had an emotional response to Elders and that 'shaming' often acted as a deterrent to reoffending. A 2011 evaluation of the County Koori Court found that it had resulted in reduced rates of reoffending and improved awareness of justice processes within Aboriginal communities.

305. The AJC identified the introduction of Aboriginal Community Justice Reports as a priority reform. A pilot project is being undertaken from 2020-2023 as part of AJA4: *Burra Lotjpa Dunguludja* and is being led by the Victorian Aboriginal Legal Service. The project aims to improve sentencing processes and outcomes for Aboriginal defendants by providing courts with information about the personal and community circumstances of Aboriginal individuals before the courts, and which provide relevant sentencing options that are accompanied with appropriate supports.

306. Despite these steps, I acknowledge that Victoria's sentencing settings have had, and continue to have, a disproportionate impact on Aboriginal people. While Aboriginal people make up only one per cent of Victoria's population, as at 30 June 2022, 9.6 per cent of the total sentenced prison population identified as Aboriginal, while 8.2 per cent of the total community corrections population identified as Aboriginal.

307. A 2013 Sentencing Advisory Council report found that in the Magistrates' Court, Aboriginal people who had committed offences were more likely to be sentenced to imprisonment than non-Aboriginal people (37 per cent versus 29 per cent), even taking into account other factors that may influence the sentence imposed in any given case. This report is a cause for deep reflection for governments and those who administer justice in Victoria.

308. The current sentencing settings do not sufficiently provide for adequate and accessible community-based sentencing options that offer genuine options to keep Aboriginal people out of the custodial system.

309. The disproportionate impact of sentencing laws on Aboriginal people has been documented in various reviews over many years, many recommendations for reform have been made, beginning with the RCIADIC, but also including the Australian Law Reform Commission's Pathways to Justice report and the final report of the Parliamentary Inquiry into Victoria's Criminal Justice System. The sentencing project is exploring a range of ideas from these reports, including:

    a) introduction of a presumption against short sentences

    b) including in sentencing legislation a requirement for courts to take into account unique systemic and background factors affecting Aboriginal people

    c) developing, in partnership with Aboriginal communities, schemes that would facilitate the preparation of 'Gladue' style reports

    d) examining the range of non-custodial sentencing options available to ensure that an appropriate range of options is available

    e) if necessary, expanding the range of community-based sentencing options available to the court, to ensure that imprisonment genuinely is an option of last resort

    f) parole reforms and early release, and

    g) introduction of home detention.

310. The current legislation does not require courts to specifically take into account factors unique to Aboriginal communities when deciding the appropriate sentence. While submissions may be made on any relevant childhood deprivation that would reduce a person's culpability or cultural background that may make imprisonment more onerous, there are otherwise no formal mechanisms for recognising a person's Aboriginal cultural history and its relevance to the sentencing exercise. Clearly this is inadequate. I have also heard about the importance of frameworks that view Aboriginality as a strength and not a deficit or risk factor.

311. Since commencing the project, the department has sought submissions from key ACCOs and partnered with the AJC to develop proposals for inclusion in a new

Sentencing Bill. This work resulted in the following proposals to include in new sentencing legislation:

a) A statement of recognition as a formal recognition of the historical laws, policies and practices that have led to the over-representation of Aboriginal people in the criminal justice system, and which acknowledges the harm that has been done and continues to be done to Aboriginal people by colonisation.

b) A purpose of the legislation to promote progress towards Aboriginal self-determination, consistent with the government's commitment to progressing self-determination.

c) Principles of self-determination to support the purpose.

d) A sentencing factor that allows the court to take into account the unique systemic and background factors that affect Aboriginal peoples. This additional factor would allow courts to consider the historical laws, policies and practices that have informed the drivers of over-representation and how that history may have ongoing effects on individuals, allowing a more complete picture of an Aboriginal person to be presented to a sentencing court.

312. I am yet to present the outcome of this work to Cabinet and reauthorise its progress during this term. This is important work, and it is incumbent on me and the department to work in partnership with the community to get it right. It will affect Aboriginal people who are victims, as well as those who commit offences. It will affect the broader community. It is therefore critical that these complex issues, and often competing perspectives, are worked through carefully and methodically. This is fundamental to achieving outcomes that strike the appropriate balance between all those competing priorities and are appropriately adapted to reduce the over-representation of Aboriginal people in the criminal justice system, whether as a person who commits offences, or as a person who is the victim of offending.

7.6 Optional Protocol to the Convention against Torture

113 Explain (as at February 2023) the State's progress in establishing independent oversight of custodial systems in compliance with the Optional Protocol to the Convention against Torture (OPCAT).

313. The Victorian Government supports the principles of the Optional Protocol to the Convention against Torture (OPCAT) and has oversight regimes which aim to ensure the protection of people in detention against torture and other cruel, inhuman or degrading treatment.

314. Through a system of domestic and international inspection of, and reporting on, places of detention, OPCAT provides for a preventative-focussed approach to oversight.

315. In 2022, the Victorian Government enacted legislation to facilitate the international inspection processes required under OPCAT and provided access by the United Nation's Sub-Committee on the Prevention of Torture (UN SPT) to Victorian places of detention.

316. Victoria has existing oversight arrangements for places of detention that address many of OPCAT's objectives. IBAC, the Ombudsman, human rights agencies, specialist commissioners and voluntary visitor schemes are in place to prevent acts of torture and other cruel, inhumane or degrading treatment or punishment against people deprived of their liberty. Victoria runs three voluntary independent visitor programs that conduct regular monitoring visits to prisons, youth justice centres and accommodation facilities for people with disabilities and mental impairments.

317. The requirements under OPCAT apply to all places of detention. However, there is, understandably, a focus on the oversight arrangements for custodial settings. There is more work to be done to make custodial settings safer and more responsive to the needs of Aboriginal people. To this end, the government welcomes the final report of the Cultural Review and I reiterate the government's commitment to appoint a new Assistant Commissioner for Aboriginal Services, to ensure that Aboriginal recruitment and retention remains a key priority, and to expand culturally safe spaces in Victoria's correctional facilities.

318. Victoria has been consistent in its position that a sufficient and ongoing funding commitment from the Commonwealth is essential to effectively deliver on Australia's OPCAT obligations – now, and into the future.

319. Specifically, Victoria will not fully implement the Optional Protocol through nominating a National Preventive Mechanism (NPM) unless sufficiently funded by the Commonwealth to do so. If appropriate ongoing funding is achieved, additional time will be required to develop legislation to establish Victoria's NPM.

320. Victoria has been consistent in its position from this time of ratification – alongside other states, particularly New South Wales – that a sufficient and ongoing funding commitment from the Commonwealth is required to implement and deliver on those obligations which go over and beyond the robust oversight regimes that we already have in place in Victoria.

321. Any model that would implement OPCAT in Victoria will be designed in collaboration with the Aboriginal community.

322. We are continuing discussions with the Commonwealth to facilitate the implementation of OPCAT in Australia in a way that is effective and sustainable.

7.7 Spent Convictions scheme

172 Does the State accept Coroner McGregor's observation in the Nelson Inquest that: "the interpersonal and socio-economic consequences of having a criminal record, conviction or serving a term of imprisonment are broad-ranging and long-lasting and are likely to entrench social disadvantage."

323. I accept Coroner McGregor's observation in the Veronica Nelson Inquest that "the interpersonal and socio-economic consequences of having a criminal record, conviction or serving a term of imprisonment are broad-ranging and long-lasting and are likely to entrench social disadvantage." Our government recognises the impacts that convictions have on a person's participation in society and the barriers to employment, housing and other opportunities they create.

324. In response to this, the government introduced the *Spent Convictions Act 2021* (Spent Convictions Act) which enables individuals who have committed certain offences to be eligible to have their conviction spent. In the cases of low-level offending this may be instant, in others it is after they have demonstrated their ability to rehabilitate by completing a period without most reoffending, of ten years for adults, or five years for a child or young person, to be eligible to have their conviction spent. For more serious offending the individual will need to apply to the court to have their conviction spent.

325. The Spent Convictions Act generally aligns with the position put forward by the Woor-Dungin Criminal Record Discrimination Project, which was endorsed at the Aboriginal Justice Forum in 2017. The Act also follows the 2019 recommendation of the Legislative Council's Legal and Social Issues Committee that government introduce legislation for a spent convictions scheme

326. The Spent Convictions Act supports Aboriginal people who are disproportionately represented in the criminal justice system, by addressing the discrimination and ongoing impact that criminal records can have. In recognition of the impact of discrimination based on criminal records for Aboriginal people, the Spent Convictions Act also amended the *Equal Opportunity Act 2010* to prohibit discrimination based on a spent conviction in certain circumstances.

327. I am pleased that the Legislative Council Legal and Social Issues Committee's final report of the Inquiry into Victoria's criminal justice system — tabled on 24 March 2022, reported that the Act has reduced the negative stigma formerly incarcerated people face when seeking employment.

328. The Victorian Government is continuing to work closely with the justice sector, law enforcement agencies, community groups including the AJC, and victims' representatives to implement the scheme. There is more work to be done with the Aboriginal community, ACCOs and support services such as legal, housing and employment services to ensure that Aboriginal people are aware of convictions

being spent automatically, and the opportunity to apply to the court for more serious convictions to be spent.

329. A statutory review of the Spent Convictions Act will take place, commencing in July 2023, and is due to be presented before both houses of Parliament by the end of this year. The review will include a particular focus on the effect of the legislation on Aboriginal people, to ensure that it continues to support meaningful change in these communities.

Part 8 – Potential barriers and opportunities for reform

116 What are the potential barriers to reform?

117 Given Victorian First Peoples' experiences with State interventions in the period since colonisation, how can they have any confidence that recent government remarks and announcements about proposed reform within the CJ System will deliver meaningful and lasting change?

A whole of system approach is needed

330. We cannot address over-representation in the justice system in isolation. In conjunction with justice system investment and reform, a coordinated and strategic whole-of-system response is critical to meaningfully improve long term justice outcomes for Aboriginal people.

331. Whole-of-system reform recognises that social disadvantage and inequality are not the result of individual failures, but rather systemic failures that require system-wide solutions. It requires engagement with a wide range of stakeholders, including Aboriginal people, service providers, and experts in relevant fields together with a whole-of-government commitment to achieving long-term, sustainable change.

332. We know that individuals involved in the criminal justice system have complex and intersecting needs, and that the risk factors for offending span social and justice services. Many agencies across government have an important role to play in intervening early to reduce justice system involvement, and diverting people to more therapeutic, prosocial pathways.

333. We also know from annual reporting on the VAAF and the national Closing the Gap agreement, that Aboriginal people continue to have poorer health, education, mental health, social and economic outcomes. This has occurred for reasons outside their control, including the impacts of systemic racism, culturally unsafe approaches and lack of self-determination and engagement of Aboriginal communities in policies affecting their lives.

334. These factors continue to lead to Aboriginal overrepresentation in the criminal justice system. When people have access to education, employment, sustainable housing, have strong physical and emotional wellbeing, and are connected to family and culture, they are more likely to be thriving and living pro-social lives in the community. The government must therefore intervene earlier in the cycle of offending and in a more holistic manner to address people's underlying needs that

can lead them to offend, which can include drug and alcohol misuse, unstable housing or employment, mental health issues and complex cognitive issues.

335. The government has committed to the transition of relevant decision-making control to the Aboriginal community. As part of this transition, government will continue to engage with the Aboriginal community on resourcing and funding for the design and delivery of programs and reforms. The government is, and will continue to be, accountable for transforming its systems, structures and service delivery to better reflect and enable the aspirations of Aboriginal communities.

336. Funding challenges experienced to date, including the way government currently funds Aboriginal organisations, have had detrimental long-term effects on the ability to support better outcomes for Aboriginal people. I know that funding for Aboriginal justice organisations and mainstream justice organisations providing services to Aboriginal people must be transparent, equitable, community-led, flexible and sustainable. This will enable Aboriginal justice organisations to be strong, sustainable and resourced to deliver self-determined justice initiatives, and build culturally responsive and safe institutions, which can help rebuild trust with, and improve the engagement by, Aboriginal people accessing the justice system. The review and renegotiation of the NLAP is an important anchor in justice system reform.

337. In addition to my commitment to continuing engagement with Aboriginal communities on opportunities for justice system reform, I am dedicated to working with my Ministerial colleagues to progress a joined-up justice and social services system which will better support Aboriginal people.

338. The Commission has asked me to reflect on how Aboriginal people can have confidence in government regarding proposed reforms within the criminal justice system delivering meaningful and lasting change.

339. I recognise that members of the Aboriginal community feel a deep sense of mistrust in justice institutions, and the broader justice system itself. They have every right to feel this way given the significant wrongs perpetuated against Aboriginal people throughout history, including through prejudice, discriminatory laws, and a lack of upholding the rights of Aboriginal peoples.

340. I will not and cannot justify historical wrongs perpetuated, nor can I explain a lack of action taken by previous governments. Aboriginal people need to play the leading role in self-determination, in terms of shaping the response to past and ongoing wrongs and deciding on what form self-determination takes. It is not for me, as a person who does not identify as Aboriginal, to tell community how they should feel about government and what government is proposing to deliver, or how well they feel government is achieving self-determination.

341. I can try to understand, but I acknowledge I will never be able to fully appreciate the devastating impacts that the justice system has historically, and continues to have, for Aboriginal people.

342. I would also like to acknowledge the great strength and resilience of Aboriginal people, who have endured travesties of justice in their engagement with the criminal justice system, and who continue to be impacted.

343. It is the challenge for the government now to make sure that in setting up this truth-telling process, in our commitment to Treaty and a Voice to Parliament, that we make this Victoria's turning point and do not repeat the grave mistakes of the past.

344. However, I am hoping that, building on the goodwill and strong outcomes we have achieved with the Aboriginal community to date, including with the AJC in the justice space, that the Aboriginal community can have confidence that this government is serious about delivering significant reforms, and that we will be guided by Aboriginal peoples in the design and delivery of these reforms

345. I also sincerely hope, in light of the government having established the Commission and the government's commitment to progressing Treaty that it is clear to the Aboriginal community, that we see these reforms not just as Aboriginal aspiration but our aspirations.

346. I acknowledge that self-determined approaches aren't the responsibility of the Aboriginal community alone. We cannot expect and should not expect Aboriginal people to be the sole drivers of this change. We cannot place the burden of systemic and transformative change on Aboriginal communities.

347. This does not seek to diminish the great advocacy, strength and resilience of Aboriginal people in this cause. What this acknowledgment does is recognise that if we do not engage the hearts and minds of the wider community, if we do not declare this a community wide aspiration and duty, the effect is it constrains the ability of government to ensure truth telling and Treaty process are incorporated across all areas of government policies and programs.

348. Part of this will be ensuring there are strong mechanisms to hold the government accountable. This includes independent, Aboriginal community-led and resourced accountability mechanisms, Aboriginal organisations, and government-funded mainstream services.

349. The progress Victoria has made towards achieving self-determination, reducing over-representation of Aboriginal people in the justice system and implementing reforms to prevent deaths in custody must be attributed to the tireless advocacy of the Victorian Aboriginal community.

350. Tackling complex sectoral issues and cross-sectoral reforms is challenging, but I will continue to work with Aboriginal community stakeholders through the AJA to strengthen our relationship and ways of working to genuinely embed self-determination in criminal justice system reform to achieve meaningful, sustainable and long-lasting change.

351. It will also be achieved through prioritising the progression of priority reforms. This includes the decriminalisation of public drunkenness and implementation of a

health-based approach and reforming the current bail laws, which have a disproportionate impact on Aboriginal people.

352. As we continue to move towards self-determination, it also means working with the Aboriginal community to progress Aboriginal Data Sovereignty, which I acknowledge is a key outcome for the AJA4.

353. I understand that both the Commission and First Peoples' Assembly acknowledge this as important work and something they can provide guidance to government on. I appreciate also that this is a whole-of-government matter and I look forward to working with the Aboriginal community and also my other ministerial colleagues across government, to help support change in this space.

354. We all have a shared responsibility to support a better future. This means we must ensure cultural competency across the entire justice system. Aboriginal people have long advocated that non-Indigenous staff should receive training in cultural awareness, systemic racism, anti-racism, unconscious bias and trauma-informed approaches.

355. It also means ensuring that Aboriginal people are employed across the system, particularly in key decision-making positions, to support new approaches and processes that are culturally safe and lead to better outcomes.

356. Effective, meaningful and sustainable change will only occur with the empowerment and self-determination of Aboriginal people to identify issues and propose and lead solutions, and to do this in partnership with government.

Jaclyn Symes MP
Attorney-General

31/03/2023