

# **Yoorrook - *Nuther-mooyoop* on Systemic Injustice in the Child Protection and the Criminal Justice Systems**

Victorian Aboriginal Child Care Agency

December 2022



**VACCA**

Connected by culture

VICTORIAN ABORIGINAL  
CHILD CARE AGENCY

**VACCA**

PO Box 494, Northcote Plaza  
Northcote VIC 3070

e. [vacca@vacca.org](mailto:vacca@vacca.org)

## Dedication

This submission is dedicated to the Aboriginal children and young people who have been placed in out of home care in Victoria over VACCA's 45 year history. Your stories remain with us forever. We recognise you, your dignity and identity as proud Aboriginal and Torres Strait Islander children and young people. We acknowledge your trauma and your resilience, and we will fiercely fight for your future.

## ACKNOWLEDGMENT

We acknowledge the Traditional Owners of the lands across Victoria that we work on, and pay our respects to their Elders, both past and present and to their children and young people, who are our future Elders and caretakers of this great land. We acknowledge the Stolen Generations, those who we have lost; those who generously share their stories with us; and those we are yet to bring home.

## Disclaimers

### Note on Language

- We use the term **Aboriginal** to describe the many Aboriginal and Torres Strait Islander Peoples, Clans and Traditional Owner Groups whose traditional lands comprise what is now called Australia.
- We use the term **Indigenous** as it relates to Indigenous peoples globally as well as in the human rights context.
- The terms **First Peoples and First Nations** are employed in the Australian context, by recognising that Aboriginal and Torres Strait Islander peoples are the First Peoples/First Nations of this land, it directly relates to their inherent un-ceded sovereignty.

### Note on case stories shared

All case stories shared have been de-identified, but due to the high-profile nature of some of these cases, and the relatively small and connected Aboriginal community in Victoria, we ask that these submissions are redacted if this submission is published publicly, as we do not want to cause further harm to families that are already suffering.

## Contact

For all enquiries relating to this Submission please contact the Office of the CEO at:

[Vacca@vacca.org](mailto:Vacca@vacca.org)

[www.vacca.org](http://www.vacca.org)

## Table of contents

Dedication .....	2
ACKNOWLEDGMENT .....	2
Disclaimers .....	2
Note on Language .....	2
Note on case stories shared .....	2
Contact.....	2
Table of contents.....	3
About VACCA.....	5
Executive Summary .....	7
Recommendations.....	10
Introduction .....	17
<b>Historical Context and Background .....</b>	<b>17</b>
<b>Aboriginal activism .....</b>	<b>18</b>
<b>Past inquiries and submissions.....</b>	<b>18</b>
Embedding the right to self-determination within Victoria’s Charter of Human Rights and Responsibilities Act 2006.....	19
Self-determination in design, decision-making and implementation of law, policies and programs affecting First Peoples’ children and families.....	21
<b>Bringing Them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families .....</b>	<b>23</b>
Bringing Them Home implementation priorities .....	28
Genocide Convention .....	28
Language, culture and history centres.....	29
Records.....	32
Indigenous Well-Being Model, Parenting & Family Well-Being Programs .....	34
Adoption a last resort.....	36
Social Justice Package.....	42
National Framework Legislation .....	43
Implementation Planning, Monitoring and Review .....	46
The history of systemic injustice in both the child protection and justice systems .....	47
<b>Invasion .....</b>	<b>47</b>
Collective Harm, Reparations and Truth Seeking.....	54

Stolen Wages.....	57
Spent Convictions .....	61
<b>Discriminatory Funding Models and Workforce Issues.....</b>	<b>63</b>
<b>Data Sovereignty and building and Aboriginal evidence base .....</b>	<b>65</b>
Part A – Systemic Injustice in Child Protection .....	68
<b>The criminalisation of Aboriginal children in out-of-home care.....</b>	<b>68</b>
Disconnection from community and culture for First Peoples’ children on child protection orders.....	71
<b>Impact of family violence, homelessness and housing insecurity of caregivers as drivers for involvement with systems and rates of child removal.....</b>	<b>78</b>
Family violence .....	79
Homelessness and housing insecurity .....	83
<b>Redress and Restorative Practices for Aboriginal community members who have suffered abuse while in care .....</b>	<b>85</b>
Early Help .....	90
<b>Defining Early Help .....</b>	<b>90</b>
<b>Cultural support Plans.....</b>	<b>92</b>
<b>Genograms .....</b>	<b>93</b>
<b>Confirmation of Aboriginality.....</b>	<b>93</b>
Over-representation of Aboriginal children in Child Protection in Victoria.....	95
<b>Impacts of Aboriginal population growth on service demand .....</b>	<b>96</b>
<b>Family Support and Early Help for Aboriginal families.....</b>	<b>97</b>
<b>Early Childhood Care and Development.....</b>	<b>99</b>
Developmental vulnerability of Aboriginal children .....	100
<b>Aboriginal Community Controlled Early Learning and Care Services.....</b>	<b>101</b>
<b>Victorian Policy and Service System Context.....</b>	<b>103</b>
<b>Key issues with provision of early help to Aboriginal children and families .....</b>	<b>107</b>
Cultural safety .....	107
Aboriginal families want access to Aboriginal-led early help .....	107
<b>Cradle to Kinder Program.....</b>	<b>107</b>
<b>The Orange Door.....</b>	<b>108</b>
<b>The Aboriginal Family Preservation and Reunification Program .....</b>	<b>108</b>
<b>The Aboriginal Child Protection Diversion Program Trials.....</b>	<b>109</b>

Ongoing barriers in accessing the right supports at the right time .....	110
Reliance on evidence-based, imported models of care .....	110
Promising Practices in Australia.....	112
Aboriginal and Torres Strait Islander Family Wellbeing Services .....	112
Aboriginal Children and Family Centres.....	113
Part B – Systemic Injustice in the Criminal Justice System.....	115
<b>Systemic Issues in the Criminal Justice System.....</b>	<b>116</b>
<b>Health and disability screening and services .....</b>	<b>124</b>
<b>Connections between systemic injustice in the criminal justice system and systemic injustice relating to issues including child protection, homelessness, family violence, health, mental health and disability and substance misuse .....</b>	<b>127</b>
<b>First Peoples’ lore, culture and early intervention.....</b>	<b>134</b>
Criminal Justice Recommendations .....	143
Appendix A.....	145
<b>Timeline of Invasion in Victoria.....</b>	<b>145</b>
<b>Missions/reserves where children were often kept apart from families in dormitories.....</b>	<b>147</b>

## About VACCA

Established in December 1976, the Victorian Aboriginal Child Care Agency (VACCA) is the lead Aboriginal child and family support organisation in Australia and the largest provider of Aboriginal family violence, justice support and homelessness services in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive. We do this by advocating for the rights of children and providing everyone who walks through our doors with services premised on human rights, self-determination, cultural respect and safety.

We provide support services to over 4,500 children and young people, and their families and carers each year. VACCA provides support services for Stolen Generations through Link-Up Victoria, which has been in operation since 1990. Link-Up Victoria provides family research, family tracing and reunion services to the Stolen Generations survivors to reunite them with their families, communities, traditional country and culture.

VACCA shows respect for observance of and compliance with Aboriginal cultural protocols, practice and ceremony. VACCA emerged from a long and determined Aboriginal Civil Rights

movement in Victoria. Today, we continue to act, serve and lobby for the rights of Aboriginal Victorians, especially children, women and families.

While VACCA is a statewide service provider, we operate primarily in metropolitan Melbourne, Inner Gippsland and the Ovens Murray regions. Across our six regions, we deliver over 80 programs tailored to the needs of the communities we serve including child and family services, child protection, family violence and sexual assault supports, youth and adult justice supports, early years, education, homelessness, disability, AOD, cultural programs and supports for Stolen Generations. We employ over 1000 staff, making us one of Victoria's biggest employers of Aboriginal people. Our Aboriginality distinguishes us from mainstream services and enables us to deliver the positive outcomes we achieve for our people.

VACCA is guided by *Cultural Therapeutic Ways*, our whole-of-agency approach to our practice of healing for Aboriginal children, young people, families, community members and carers who use our services, and to ensure that VACCA is a safe and supportive workplace for staff. The framework acts at the intersection of cultural practice with trauma and self-determination theories. The aim of *Cultural Therapeutic Ways* is to integrate Aboriginal culture and healing practices across the organisation and guide our service delivery approach to be healing, protective and connective.

## Executive Summary

It is time to own the past.

While the Yoorrook Justice Commission's role is to look into both past and ongoing injustices experienced by Traditional Owners and First Peoples in Victoria in all areas of life since colonisation; this is not the first time truth telling has occurred. The massacre sites in Victoria are well known. As are the Governments' forced removal-of-children policies, practices and their impacts, as well as Victoria's current growing rates of Aboriginal child removals. The most important truth this commission can unlock is what Government has done (failed to do) to rectify these truths.

You and I know the answer, but owning the past is also about accountability. Accountability of government and the religious and private welfare providers who supported and profited from Government action (inaction).

The racially defined notion of what was in the best interests of First Nations people prevails across all so-called care and protection systems within Victoria today. State, Federal and Local governments together with churches, religious based organisations and private child welfare providers, both past and present, have a history of walking away from Aboriginal people after they have destroyed families and communities, leaving only trauma in their wake.

Victoria has by far, the best child protection system in the Nation. On the face of it, Aboriginal children and families have never been in better hands, better supported to thrive and be connected to their culture. The truth, however, is this record investment is predicated on the enforced failure of Aboriginal parents, families and communities. This innovative and ground breaking system, created and maintained by government, entrenches disadvantage, intergenerational poverty and cultural genocide on Aboriginal Victorians as a condition of help and support.

Every problem we have today in Victoria's child protection and criminal justice systems is a direct result of centuries of racist policies, legislation and reinforced discriminatory practice. Fundamentally the evidence shows that government and mainstream providers can't be trusted to care for Aboriginal children and families and they must atone for their complicity and the actions their forebears.

Those, including governments, who were actively involved in removing our children for over 260 years still exist under different names. They have been able to rebrand, rebadge and continue to profit off Aboriginal children and families, and be rewarded financially by Government to assimilate Aboriginal people, destroy our links to culture, language and Country.

It is impossible to do justice in a single submission to Victoria's true history, nor to the 45 years of VACCA's operations where we have seen so many injustices, systemic racism and significant inequity in practice by Government and mainstream providers towards Aboriginal children as well as towards Aboriginal Community Controlled Organisations (ACCO) like VACCA.

However, due to the strength, resilience and activism of VACCA we have also seen great innovation, achievements and changed life trajectories because of the work of our staff, carers, Elders and the communities that drive and sustain us.

This submission is an attempt to synthesise an evidence-based narrative of the learnings and experiences our clients have shared with us over the history of our organisation.

The desired outcome of all the recommendations we make within this submission is the self-determination of Aboriginal Victorians. While our evidence documents difficult truths and facts of historical, contemporary and emerging issues within Victoria's child protection and justice systems; we also provide evidence and data on what works for Aboriginal Victorians now and into the future.

VACCA views the Yoorrook Justice Commission's process as an opportunity to develop not only a thorough account of the injustices experienced by Aboriginal peoples in Victoria, but to critically examine the reforms that have been put in place thus far to address both historical and contemporary injustices.

VACCA encourages the Yoorrook Justice Commission to use their investigatory powers to interrogate what evidence is put forward. Whilst this current call for submissions is limited to child protection and criminal justice, we strongly recommend that this Commission look into every part of the systems that has disenfranchised, oppressed and traumatised Aboriginal peoples for generations.

The Yoorrook Justice Commission holds the power to authorise the environment for what is internationally recognised as the "right to know about the circumstances of serious violations of victims' human rights and about who was responsible,"<sup>1</sup> and determine what reparations can be sought from government and mainstream attributing to the collective harm experienced.

In VACCA's *nuther-mooyoop* (submission) we have responded to the two Issues Papers on the systemic injustices in both the child protection and criminal justice submissions released by Yoorrook in late October 2022.

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<sup>1</sup> ICTJ: Truth and memory. Accessed on 24/12/22 via: <https://www.ictj.org/truth-and-memory>



We strongly contend that ACCOs should have been resourced to give the Yoorrook Justice Commission the best evidence we could, to research our case files over our 45 years of operation, to bring stories and case studies as evidence. That Government denied us this opportunity speaks to the truth and enduring lesser value placed on ACCOs and Aboriginal Victorians. We have done our best with limited time and no resources and we acknowledge that we are only scratching the surface of what we should be submitting as evidence for truth and justice. Our submission does attempt to paint a picture of what child protection for Aboriginal children would look like in Victoria without VACCA.

We detail the historical impact of invasion, with forced removal policies, where the *Bringing Them Home* Report marked a significant turning point in the collective understanding of the impact on the Stolen Generations and their descendants. We look at stolen wages and spent convictions as a means of understanding the ongoing impact of colonial control on economic, cultural and spiritual prosperity and criminalisation of Aboriginal children, young people and adults. ACCO workforce capacity and resourcing is identified as a contributing factor to the systemic injustice.

Part A identifies the systemic injustices in the ***child protection system***. It looks at the criminalisation of Aboriginal children and young people in out-of-home care, the impacts of family violence and homelessness and housing insecurity. We also look at historic cases of institutional child abuse and reflect on the ineffective systems currently available for redress. We also look at the deficiencies of funding models, reform agendas and the crimes of churches and mainstream providers in their inhumane treatment of Aboriginal people, especially children.

We also specifically look at early help, family support and the early intervention aspects of the Child protection system. It identifies the critical need for an intergenerational *Aboriginal Child and Family Wellbeing Strategy* and the development of an *Aboriginal led early help, family support and early intervention system*, as we strongly believe these could be key mechanisms to address the over-representation of Aboriginal children and young people in the child protection system into the future.

In Part B focusses on the systemic injustice experienced in the ***criminal justice system*** and seeks to identify the connections between criminal justice, child protection, homelessness, mental health, AOD and family violence. We also include good and promising practice examples in both sections.

The 52 recommendations VACCA has provided across both submissions cover seven key themes including reforms to: legislation; systems and funding, governance and accountability; policy frameworks and agreements; practice approaches; research; data and records and truth seeking, reparations, redress and memorials. The outcome of all the recommendations is self-determination. They are listed below in the order they appear in the submission.

## Recommendations

1. That the Yoorrook Justice Commission look more closely at the status of the recommendations of previous inquiries that relate to the rights of Aboriginal children and families'; and why these processes have not resulted in the level of change they called for.
2. That the Yoorrook Justice Commission call on the Victorian Government to amend the Charter of Human Rights and Responsibilities Act 2006 to recognise the right of Aboriginal peoples to self-determination.
3. That the Yoorrook Justice Commission call on the Victorian Government to pass the Children and Health Legislation Amendment (Statement of Recognition and other Matters) Bill 2022, as an urgent priority.
4. That the Yoorrook Justice Commission pursue the implementation of the Genocide Convention with full domestic effect including assessing the necessity to pursue legislative reform at the Commonwealth and State levels.
5. That the Yoorrook Justice Commission support and advocate for significant, sustained State Government investment in Victorian Aboriginal Language, Culture and History centres to drive the revitalisation of Victorian First Nations languages.
6. That the Yoorrook Justice Commission, convene hearings with private child and family services organisation (mainstream) that may hold records or materials of Stolen Generations or their descendants, to gather testimony on their involvement as non-State entities in forcible child removal policies and practices; and assess and review current practices in relation to care, custody and access to those records and materials
7. That the Yoorrook Justice Commission support and advocate for the following in relation to records preservation, access and repatriation:
  - amendments to the (Commonwealth) Archives Act 1983 to enable the repatriation of records relating to First Nations communities and people to First Nations
  - regulatory reforms in Victoria to Human Services Standards and/or Child Safe Standards to establish mandatory practice standards in relation records management, access and repatriation.

### Child Protection

8. That the Yoorrook Justice Commission support and advocate for the development and funding an Aboriginal community based Early Help and Family Support System as a

preventative response to the over representation of Aboriginal families and children in Victoria's child protection system.

9. That the Yoorrook Justice Commission call on government to:
  - Amend the Children, Youth and Families Act 2005 to require that DFFH receive the resourced approval of an ACCO authorised under s18, and the relevant Traditional Owners Corporation(s) for the child prior to placing an Aboriginal child for adoption or a permanent care order;
  - Amend the Victorian adoptions Act 1984 to include a statute of limitation of sealed records for adoptions;
  - Advocate for the reform of the Victorian Adoptions Act 1984 consistent with the advice of the Victorian Law Reform Commission; and
  - As a matter of urgency inquire into the placement of Aboriginal children for adoption by the Secretary of DFFH under Section 173(2) of the Children, Youth and Families Act (2005)
10. That the Yoorrook Justice Commission develop advice for governments, Commonwealth and State, on the scope and resourcing of a Social Justice Package as envisaged by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families.
11. That the Yoorrook Justice Commission call on the Victorian government to support the development of a distinct Aboriginal Children, Youth and Families Act.
12. That the Yoorrook Justice Commission recommend the Victorian Government convene and resource participation in a *Bringing Them Home* implementation governance group with implementation arrangements to include annual audits of progress prepared by the Victorian Aboriginal Children's Commissioner who is enshrined in legislation.
13. That the Yoorrook Justice Commission call on the Victorian Government to fund Link-Up Victoria so they can continue to roll out the Stolen Generations Marker Project.
14. That the Yoorrook Justice Commission consider recommending a Victorian frontier wars memorial.
15. That the Yoorrook Justice Commission reconsider their decision not to engage with private child and family (mainstream) service organisations and instead use their Royal Commission powers to call them to provide evidence.

16. That the Yoorrook Justice Commission call on the Victorian Government to establish a reparations scheme for Aboriginal communities impacted by Stolen Generations, not just individuals for the collective harm suffered.
17. That the Yoorrook Justice Commission recommend that financial reparations are made to First Nations communities in Victoria for all stolen wages, commensurate to the living wage today.
18. That the Yoorrook Justice Commission call on the Victorian government to apologise for the policies that led to the economic disempowerment, discrimination and oppression of First Nations communities.
19. That the Yoorrook Justice Commission includes a metric of economic loss due to spent convictions in how it builds an assessment for redress as part of the truth-telling process.
20. That the Yoorrook Justice Commission use its investigatory powers and call for evidence on the historical and contemporary funding models for mainstream, government and Aboriginal child and family service providers and youth justice providers and compare the rates of funding from early intervention and prevention, family services and child protection and investigations programs in child and family services and then for youth justice, early intervention, prevention and diversion programs for both Aboriginal and non-Indigenous children and families within 12 months of Yoorrook's final report being released.
21. That the Yoorrook Justice Commission call on the Victorian Government to backpay ACCOs for underpayment of services delivery contracts, including proportionate early help funding for the last 10 years.
22. That the Yoorrook Justice Commission call on the Victorian government to commit to developing a sustainable 10 year ACCO workforce strategy that supports the growth of an Aboriginal workforce within ACCOs across all government portfolios.
23. That the Yoorrook Justice Commission call on the Victorian Government to commit to publicly review current service agreements and the Whole of Victorian Government Intellectual Property Policy and make recommendations about how to better protect IP and ICIP rights.
24. That the Yoorrook Justice Commission convene hearings with the signatories of the Framework to Reduce Criminalisation of Young People in Residential Care to gather testimony on the treatment of Aboriginal children and young people in residential care who are in contact with Victoria Police, and their compliance with the directives in the framework.

25. That the Yoorrook Justice Commission advocate for the Victorian Government to amend the Children, Youth and Families Act 2005 to require that DFFH receive the approval of an Aboriginal agency, and the relevant Traditional Owners Corporation(s), or another entity with cultural authority for the child prior to placing an Aboriginal child for adoption.
26. That the Yoorrook Justice Commission call on the government to increase the Kinship Carer allowance to match the Foster Carer allowance; and that both allowances are increased in line with the true cost of providing a safe and nurturing environment to raise children and young people.
27. That the Yoorrook Justice Commission call on the Victorian Government to improve funding and resourcing for cultural support plans, including directly to ACCOs to implement the activities within the plans.
28. That the Yoorrook Justice Commission call on DFFH for greater priority is given to keeping sibling groups together, both in decision-making about placements and in the allocation of resources.
29. That the Yoorrook Justice Commission call upon the Victorian Government to prioritise proportional investment in ACCOs to deliver and expand Aboriginal-led, delivered and evaluated early intervention, prevention, and family preservation and reunification programs to address the risk factors that contribute to the involvement of Aboriginal families with the child protection system.
30. That the Yoorrook Justice Commission call upon the Victorian Government to expand the availability of Aboriginal led transitional and crisis accommodation and support services for Aboriginal women and children experiencing family violence, including facilities that can support Aboriginal women presenting with AOD issues.
31. That the Yoorrook Justice Commission call on the Victorian Government to fund ACCOs to engage in consultation process around redress and reparations and support survivors and Aboriginal Victorians to apply for these schemes.
32. That the Yoorrook Justice Commission call on the Victorian Government to implement mandatory and ongoing training for all child protection staff to identify and respond to trauma, abuse and sexualised behaviours to minimise future harm to children.
33. that the Yoorrook Justice Commission recommend that DFFH undertake research to investigate the historical removal patterns that have led to the high number of Aboriginal

children in Victoria's child protection system coming from interstate. This should cover at a minimum that last 10years of data relating to Aboriginal children in Care.

34. That the Yoorrook commission recommend that the Victorian Government amend the Child Youth and Family Act 2005 to ensure that all children who enter the child protection system receive a developmental disability assessment before the age of 7 years or immediately upon entering care if aged over 7 years.
35. That the Yoorrook Justice Commission support and advocate for the co-development between the ACCO sector and State Government of an intergenerational Aboriginal Child and Family Wellbeing Strategy to address the intergenerational over-representation of Aboriginal children in the statutory child protection system
36. That the Yoorrook Justice Commission recommend that the development of the intergenerational Aboriginal child and family wellbeing strategy be co-developed between the Aboriginal Community Controlled Services Sector and the State Government within 12 months of the release of the Commission's findings on Victoria's child protection system
37. That the Yoorrook Justice Commission recommend that the intergenerational Aboriginal child and family wellbeing strategy include a focus on resourcing the capacity of ACCOs to deliver interconnected mental health, child development, social and emotional wellbeing, justice, housing and family supports
38. That the Yoorrook Justice Commission recommend that the State Government commit to aligning State Budget program funding allocations intended to benefit the Aboriginal community with population growth in the Aboriginal community
39. That the Yoorrook Justice Commission recommend that the State Government take immediate steps to reduce the over-representation of Aboriginal children in child protection and OOHC including:
  - providing additional investment to Aboriginal Community Controlled Services for Early Help services to ensure that the Aboriginal children and families enjoy access to these supports at a level not less than their non-Aboriginal peers and not less than their proportion of the OOHC population, and
  - increase funding for Intensive Family Support Services (IFSS) provided by ACCOs to ensure that Aboriginal families have parity of access to this service offering within two years (by the 2024-25 State Budget)
  - committing to and commencing work in partnership with the ACCO sector to co-design and develop an Aboriginal-led early help, family support and early intervention system with funding aligned to the level of need in the Aboriginal community and Aboriginal population growth

40. That the Yoorrook Justice Commission support and advocate for the expansion in the number and scope of Aboriginal Early Learning and Care Services in Victoria through a minimum allocation of 10% of the \$9B funding in the State Government Best Start- Best Life program
41. That the Yoorrook Justice Commission recommend that not less than five of the fifty new early learning and care services promised under the Best Start- Best Life program be Aboriginal community controlled and operated services
42. That the Yoorrook Justice Commission recommend that the State Government seek a matched funding contribution from the Commonwealth to expand the number of new early learning and care services to ten new Aboriginal community controlled and operated services
43. That the Yoorrook Justice Commission recommend that the development of the intergenerational Aboriginal child and family wellbeing strategy consider promising practices and programs from other jurisdictions including the Queensland Aboriginal and Torres Strait Islander Family Wellbeing Services and the NSW Aboriginal Child and Family Centres.

#### **Criminal Justice**

44. That the Yoorrook Justice Commission recommend review the files over the past twelve months of all Aboriginal incarcerated children (under 18yo) to seek information about what preventative and diversionary programs each child had access to, prior to, during and post release. Questions should be raised about reasons for being held on remand and bail conditions outlined by the court alongside what cultural support services they have access to including Return to Country and Family Finding.
45. That the Yoorrook Justice Commission call on the Victorian Government to immediately raise the age of criminal responsibility from 10 to at least 14 years of age.
46. That the Yoorrook Justice Commission call on the Victorian government to immediately cease solitary confinement and isolation of children and young people in youth justice detention.
47. That the Yoorrook Justice Commission seek an update on the process of review from the incoming government on the eight recommendations from Our Youth Our Way that were not fully committed to, alongside update on the progress of the Wirikara Kulpa the Aboriginal Youth Justice Strategy.

48. That the Yoorrook Justice Commission hold government and private child and family community organisations (mainstream) accountable for timely implementation of all actions and commitments as identified in Victoria's Implementation Plan for the National Agreement on Closing the Gap targets and Priority Reform Areas.
49. That the Yoorrook Justice Commission promote an Aboriginal led multi sector approach to providing support that focusses on early intervention, prevention and diversion, rather than incarceration for all Aboriginal children engaged with the youth/criminal justice system. This should build on the learnings of VACCA's Youth Through Care program, and we believe an equivalent model should be applied to adults.
  - Provision of specialised, culturally appropriate health care and therapeutic supports in custodial settings for Aboriginal children, young people and adults with mental health, disabilities and/or substance abuse issues
  - Create and transform workplace practices to be trauma informed and culturally safe for staff and clients
  - Mandatory Aboriginal Family Violence training for Victoria Police, with a cultural lens to family violence identification and response
50. That the Yoorrook Justice Commission call on the Victorian Government Implement all recommendations of the Armytage and Ogloff 'Youth Justice Review and Strategy' (2017) as a matter of priority.
51. That the Yoorrook Justice Commission call on the Victorian Government as a matter of critical priority, to legislate an obligation for all justice system decision makers including the Courts, to give evidence as to how they provide recognition of a child's best interests throughout all aspects of the criminal justice system (including the sentencing of parents with children):
  - The Bail Act 1977 (Vic) must be amended to repeal the reverse onus provisions
  - Reform to the Bail Act and sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage, as well as the impacts that parental imprisonment has on children in all cases
52. That the Yoorrook Justice Commission call on Government to authorise an Aboriginal Children in Aboriginal Care (ACAC) equivalent model in the justice system for all Aboriginal children aged under 16years.



## Introduction

VACCA welcomes the opportunity to provide a *nuther-mooyoop* (submission) on Systemic Injustice in the Child Protection and the Criminal Justice Systems to the Yoorrook Justice Commission.

VACCA's participated in both round table discussions hosted by the Commissioners to define the terms of reference for this submission.

Child protection and criminal justice are two of the most significant issues facing the Aboriginal community in Victoria. While a month is not adequate nor a reasonable timeframe or an adequate reflection of the resources it takes to respond so the scope of this inquiry, these topics are too important to not provide evidence.

VACCA's submission is based on our unique position and role we play as an ACCO providing a suite of services across the state supporting children, young people, families and community members. We have protected and promoted the rights of Aboriginal children and families for over 45 years. VACCA believes that all children have a right to feel and be safe and live in an environment that is free from abuse, neglect and violence. We are committed to promoting and upholding the rights of Aboriginal children to maintain and celebrate their identity and culture, recognising that connection to culture is critical for children's emotional, physical and spiritual wellbeing.

## Historical Context and Background

VACCA acknowledges that the work of the Yoorrook Justice Commission takes place within the context of decades of advocacy by Aboriginal peoples, organisations, and communities to address the injustices perpetrated against Aboriginal peoples. Indeed, there have been numerous Royal Commissions, inquiries, and review processes established to address systemic discrimination and structural inequalities experienced by Aboriginal peoples in legislation, policy, and practice.

Aboriginal peoples, organisations, and communities have committed their time, resources, and knowledge to such processes, outlining the solutions required to address systemic racism and discrimination, with the hope that they would result in substantive change. Despite these efforts, contemporary Aboriginal Affairs policy has been characterised as in a state of crisis and subject to an endless cycle of reform, reinvention, and reformulation.<sup>2</sup> From VACCA's perspective this is because governments have failed to enact the solutions for change proposed by our communities.

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<sup>2</sup> Strakosch, E. (2018). The technical is political: Settler colonialism and the Australian Indigenous policy system. *Australian Journal of Political Sciences*. DOI: 10.1080/10361146.2018.1555230

Moran, M. (2016). *Serious whitefella stuff: When solutions became the problem in Indigenous affairs*. Melbourne, VIC: Melbourne University Press.

Indeed, all of these processes have resulted in numerous recommendations for reform, which have been implemented to varying degrees.

### Aboriginal activism

Victorian Aboriginal Community Controlled Organisations, like VACCA, were all born from Aboriginal political activism. In Victoria still, our Aboriginal communities remain strong advocates that lobby, rally and hold Aboriginal providers to account for our actions within the systems they operate. We as ACCOs continue to protest at how regulatory systems function to disempower and criminalise Aboriginal Victorians. Activism is our way of providing informal regulation on systems that too often don't want to be held accountable.

### Past inquiries and submissions

All governments love the use of commissions, inquiries, reviews and advisory groups. It is a ritualised process that is big on policy, but poor on listening, meaningful action, participatory decision making and implementation. Two of the biggest Royal Commissions in Victoria, both the family violence and mental health reviews, affected Aboriginal people disproportionately and through their recommendations have created landmark reform and investment.

However, look more closely at both. Of the Aboriginal specific recommendations relating to family violence, these have taken the longest to implement while record investment in government and private institutions that are meant to act for Aboriginal people have rolled out quickly with long term funding. In addition, the interim report from the mental health commission determined that the mental health of Aboriginal people would be more open in terms of service options and providing meant health care for children across a range of settings, yet now care is only through primary care, tertiary or private providers. There are no dedicated Aboriginal funding streams. Here where there are Aboriginal commitments, they have limited transparency in decision making or on implementation and have low accountability to the communities they are meant to serve.

In addition, since 2015, the Commission for Children and Young People has undertaken over 10 systemic inquiries which document serious shortcomings in the delivery of youth justice and child welfare services in Victoria. In addition, the *Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*, was released over 25 years ago, and had 54 recommendations. As documented [below](#), VACCA and others are still calling for full implementation of the intent of these recommendations.

Countless other federal and state-level inquiries have documented pervasive and systemic issues related to upholding the rights of Aboriginal peoples and made recommendations to redress these problems. VACCA's own submissions [page](#) show how prolific we are in informing the many formal requests for comment and is only a selection of the advocacy work we do.

Yet, despite all these opportunities for government to address ongoing harms done through the laws and practices of criminal justice and child protection systems, as well as more broadly, serious reform has remained elusive, with Aboriginal children continuing to be overrepresented across both systems.

The status of the recommendations of previous inquiries requires scrutiny, including *Bringing Them Home; Our Youth, Our Way*; as well as the state's compliance with provisions under the *Children, Youth and Families Act (CYFA) 2005, particularly around the implementation and adherence to the Aboriginal Child Placement Principle and the impact of permanency reforms on Aboriginal children and young people and their connection to their family, community and culture.*

**Recommendation 1: That the Yoorrook Justice Commission look more closely at the status of the recommendations of previous Inquiries that relate to the rights of Aboriginal children and families; and why these processes have not resulted in the level of change they called for.**

Research has found that inquiries and reform processes are sometimes used by governments as political tools to give the appearance of government action, however actual implementation of recommendations, particularly those that relate to structural change, often does not occur.<sup>3</sup> Indeed, by presenting the government as open to scrutiny, capable of reform and accountability, reform efforts can serve to bolster state power, rather than support Aboriginal self-determination and shared decision-making. The real value of these processes comes in assessing the government's capacity to implement the recommendations provided to it, and whether their actions lead to more equitable power sharing between Aboriginal peoples and the state.<sup>4</sup> Whilst it is beyond the capacity of VACCA to provide a full analysis of previous reform efforts, we do wish to highlight several key areas where government reform has been ineffective or not fully realised, and where we continue to see inaction on embedding the rights of Aboriginal peoples within Victoria's legislative and policy landscape.

#### Embedding the right to self-determination within Victoria's Charter of Human Rights and Responsibilities Act 2006

As documented throughout our submission, the Victorian Government has historically neglected and actively breached the rights of Aboriginal peoples, with numerous intentional strategies suppressing rights and perpetrating cultural genocide. To remedy this, VACCA and others have consistently called upon the government to ensure that the right to self-determination is

<sup>3</sup> Marchetti, E. (2006). The deep colonizing practices of the Australian Royal Commission into Deaths in Custody. *Journal of Law and Society*, 33(3), 451-474.

<sup>4</sup> Anthony, T. (2020). The perils of positivism in the NT Royal Commission into youth detention: The case for a post-positivist frame for First Nations justice. *Griffith Law Review*, 29(1), 43-72.

legislatively enshrined, protected and aligned with the United Nations on the Rights of Indigenous Peoples (UNDRIP). At the state-level, Victoria has the *Charter of Human Rights and Responsibilities Act* (the ‘Charter’) and provides a legal context for consideration of the rights of Aboriginal peoples in Victoria.

The Charter contains specific references to the rights of Aboriginal peoples, including the preamble which acknowledges that “human rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia’s first people, with their diverse spiritual, social, cultural and economic relationship with their traditional lands and waters.”

Section 19 of the Charter recognises that Aboriginal peoples have “distinct cultural rights and must not be denied the right, with other members of their community:

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

Currently, the Charter falls far short of the conceptualisation of Indigenous rights contained within the UNDRIP, particularly in affirming the existence of collective rights. In international law, including UNDRIP, Indigenous rights are recognised as collective rights that are derived from the unique legal status of Indigenous peoples as distinct communities.<sup>5</sup> However, as it currently stands, the Charter is weighted toward a western liberal framework of individual rights. This has served as a barrier to the recognition of the collective rights of Indigenous peoples, including the right to self-determination, within the Charter.

Indeed, the Victorian Government’s rationale for omitting the right to self-determination from the Charter was because it is a collective rather an individual right and there is no consensus on what the right to self-determination comprises,<sup>6</sup> and yet the government actively promotes its commitment to Aboriginal self-determination<sup>7</sup>, and has developed a Self-Determination Reform Framework.

Aboriginal communities have long advocated for the right to self-determination to be included within the Charter, including at its four- and eight-year reviews. At both reviews, there was

<sup>5</sup> Newman, D.G. (2006). Theorizing collective Indigenous rights. *American Indian Law Review*, 31(2), 273-289.

<sup>6</sup> Victorian Government. (2006). *Charter of Human Rights and Responsibilities Bill Explanatory Memorandum*. Retrieved from: [https://content.legislation.vic.gov.au/sites/default/files/19148fb1-3c53-3923-b78e-4b023778435a\\_551406exa1.pdf](https://content.legislation.vic.gov.au/sites/default/files/19148fb1-3c53-3923-b78e-4b023778435a_551406exa1.pdf)

<sup>7</sup> <https://www.firstpeoplesrelations.vic.gov.au/governments-commitment-self-determination>

significant advocacy work by Aboriginal communities in Victoria to articulate how the right to self-determination might be included.<sup>8</sup> The review processes have recognised the symbolic and practical importance of including the right to self-determination. For example, Michael Brett Young, who led the eight-year review, highlighted that inclusion of self-determination in the Charter would “help facilitate the realisation of this right by requiring public authorities to consider self-determination of Aboriginal Victorians when developing laws and policies, delivering services, and making other decisions that affect Aboriginal people.”<sup>9</sup>

The ongoing lack of recognition of the right to self-determination, and collective rights more broadly, within Victoria’s primary human rights framework is a significant gap in the state government’s adherence to the principles of the UNDRIP. As a priority, the Victorian Government must commit to amending the Charter to ensure it recognises the collective right of Indigenous peoples to self-determination, in alignment with the UNDRIP.

**Recommendation 2: That the Yoorrook Justice Commission call on the Victorian Government to amend the Charter of Human Rights and Responsibilities Act 2006 to recognise the right of Aboriginal peoples to self-determination.**

Self-determination in design, decision-making and implementation of law, policies and programs affecting First Peoples’ children and families

As documented throughout this submission, despite some advancements in child and family welfare legislation, policy and practice, Aboriginal children and young people continue to experience serious disadvantage and discrimination within Victorian society, including breaches to their rights by state authorities. Stronger adherence to the principle of self-determination within Victoria’s legislative and policy framework would be an important commitment toward improving outcomes for Aboriginal children and young people. Furthermore, creating a legislative environment which recognises the inherent right of Aboriginal peoples to care for and raise their children is essential for preventing another generation of Aboriginal peoples from experiencing the harms caused by forcible removal. The legacy of which continues for the Stolen Generations, their families, and communities.

Firstly, we wish to acknowledge that to address the overrepresentation of Aboriginal children in out-of-home care, successive Victorian governments have committed to significant reforms that

<sup>8</sup> Victorian Equal Opportunity and Human Rights Commission. (2010). *Occasional paper: Indigenous self-determination and the Charter of Human Rights and Responsibilities – A framework for discussion*. Retrieved from:

[https://www.humanrights.vic.gov.au/static/29936c72f45448d138baa59d29fcea7a/Resource-Report-Indigenous\\_self\\_determinaton-Mar\\_2010.pdf](https://www.humanrights.vic.gov.au/static/29936c72f45448d138baa59d29fcea7a/Resource-Report-Indigenous_self_determinaton-Mar_2010.pdf)

<sup>9</sup> Young, M.B. (2015). *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, p. 214. Retrieved from: [https://files.justice.vic.gov.au/2021-06/report\\_final\\_charter\\_review\\_2015.pdf?mK\\_WPBNwC3HIsZilADhtYs\\_v\\_2hkZggK=](https://files.justice.vic.gov.au/2021-06/report_final_charter_review_2015.pdf?mK_WPBNwC3HIsZilADhtYs_v_2hkZggK=)

seek to increase the involvement of ACCOs in the design and delivery of child and family services and to implement the right to self-determination. A key aspect of this was establishment of a broad recognition of the right to self-determination within child protection service delivery under section 12 of the CYFA 2005. At the time, however, it did not clarify what self-determination would look like practically. Significant advocacy by Aboriginal organisations and communities resulted in the development of a practice approach for implementing section 12, and later through the development of the Aboriginal Children in Aboriginal Care program, which is authorised under s18, discussed in more detail in a later part of this submission.

In many respects, self-determination reforms in the child and family welfare space in Victoria are significantly ahead of other jurisdictions, but challenges and areas for improvement remain. For instance, as we document in the attached 'Part C' section of our submission focused on Aboriginal-led early help, reforms have been largely focused on the out-of-home care sector, and there is an ongoing failure to embed the Victorian Government's commitment to self-determination across other sectors that affect child and family wellbeing, particularly in the family support services sector. Further opportunities for reform to CYFA 2005 include: embedding Aboriginal Family-Led Decision Making (AFLDM) as a mandatory process when working with Aboriginal families, addressing the disproportionate impact of permanent care orders on Aboriginal families by removing the two-year timeframe for reunification to occur (this is discussed in more detail later on in the [child protection section](#) of the submission), and including a definition of the *Best Interests principle* that is reflective of the unique cultural needs and rights of Aboriginal children.

We also wish to highlight the stalled passage of the *Children, Youth and Families Amendment Act (Child Protection) Bill 2021*, followed by the *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022* ahead of the November 2022 Victorian state election, as a key example of where self-determination reforms remain unfinished. VACCA, the Victorian Aboriginal Children and Young People's Alliance, and the Bendigo & District Aboriginal Corporation, devoted considerable time and resources to participate in consultation processes related to the drafting of these pieces of proposed legislation. The Bill includes a Statement of Recognition which seeks to strengthen recognition of the rights of Aboriginal children and families by acknowledging the "distinct cultural rights of Aboriginal people and the right to self-determination" (section 7A(7)). Development of the statement took over 18 months. Following a motion to include an amendment in the original bill that would raise the age of criminal responsibility from 10 to 14, the government shelved this bill and instead introduced the *Children and Health Legislation Amendment (Statement of Recognition and Other Matters) Bill 2022* to avoid a debate on raising the age. However, Victoria lost a parliamentary sitting week to mourn the death of Queen Elizabeth II and no further sitting dates were scheduled ahead of the election to pass this Bill.

VACCA notes that both iterations of the proposed legislation contained vital reforms for strengthening the right to self-determination in Aboriginal child and family welfare, including the significant delay to the launch of VACCA's Aboriginal-led approach to child protection reports, Community Protecting Boorais. As a matter of priority following the election, the new Victorian Government must take immediate action to pass the proposed legislation.

**Recommendation 3: That the Yoorrook Justice Commission call on the Victorian Government to pass the *Children and Health Legislation Amendment (Statement of Recognition and other Matters) Bill 2022*, as an urgent priority.**

### Bringing Them Home - Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families

The *Bringing Them Home Report* tells the stories of many members of the Stolen Generations, and their experiences of disconnection from family, community, culture and Country. Those stories and various evidence provided to the Inquiry spoke of the impacts of forcible removal and institutionalisation. This report was released over 25 years ago. The inquiry process and report made the truth of the Stolen Generations inescapable, that colonising powers sought to diminish and destroy Australia's First Peoples through policies and practices that constituted cultural genocide.

Surveys by the Australian Bureau of Statistics (ABS) suggest that between 8 per cent to 10 per cent of First Nations people had experienced removal and separation from their families (ABS, National Aboriginal and Torres Strait Islander Survey 1994, 2002, 2008). The ABS study in 2008 examined the health and wellbeing status of Stolen Generations people including their descendants. The study found that Stolen Generations people and their descendants were:

*around 50 per cent more likely to have been charged by police, 30 per cent less likely to report being in good health, 15 per cent more likely to consume alcohol at risky levels and 10 per cent less likely to be employed.*

According to the *Bringing Them Home Report* and other subsequent studies the impact of the policies that led to the creation of Stolen Generations include;

- the disruption of family and community connections
- impaired parenting abilities from multiple generations raised in institutions
- unresolved grief and trauma
- behavioural issues linked with trauma and victimisation, including violence
- self-medication with alcohol and other drugs to cope with symptoms of trauma

- depression and other forms of mental illness resulting from trauma.<sup>10</sup>

The power of the inquiry was in the truth it brought into the public domain. The truth of the resilience and survival of Australia's First Peoples. From the moment the *Bringing Them Home* report was tabled in Federal Parliament, the representatives of the colonial state could no longer say they didn't know of the organised violence, cruelty and trauma inflicted upon First Nations communities, families and children; of the cultural genocide.

The release of the report came at a moment when the nation was on a faltering path to 'Reconciliation'. Rather than fully grasp the opportunity for healing and reform that *Bringing Them Home* created the nation has continued to falter.

Through the ongoing advocacy of Stolen Generations, and organisations such as SNAICC, some progress has been made in acknowledging the truth of the Stolen Generations and providing restorative measures. In relation to contemporary child protection systems, which the inquiry also explored, there have been modest reforms to enable greater Aboriginal community control in child welfare. However, the confronting truth is that the full opportunity for inter-generational change has not been grasped and the separation of First Nations children from their families has escalated at an astonishing rate since 1997. VACCA and many others are still calling for full implementation of the report's 54 recommendations including an intergenerational healing strategy in response to intergenerational trauma; and true self-determination in relation to health, wellbeing, care and protection of Aboriginal and Torres Strait Islander children.

As the *Bringing Them Home* Report noted in its introduction:

*"In no sense has the Inquiry been 'raking over the past' for its own sake. The truth is that the past is very much with us today, in the continuing devastation of the lives of Indigenous Australians. That devastation cannot be addressed unless the whole community listens with an open heart and mind to the stories of what has happened in the past and, having listened and understood, commits itself to reconciliation"*<sup>11</sup>

Nowhere does that devastation continue on such a widespread scale as in Victoria.

<sup>10</sup> Further examples in Atkinson, Nelson, Brooks, Atkinson & Ryan, 2014, "Addressing individual and community transgenerational trauma" in P. Dudgeon, H. Milroy and R. Walker (Eds.), *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*, 2nd edition (pp.373-382). Commonwealth of Australia.; Human Rights and Equal Opportunity Commission, *Bringing Them Home Report*, 1997:154-98

<sup>11</sup> *Bringing Them Home – Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Human Rights and Equal Opportunity Commission (HREOC), Commonwealth of Australia, April 1997. Page 4.



The report focused on the forcible removal of children and included in scope their contemporary removal through statutory State and Territory child protection systems. The report examined in detail the over representation of First Nations children in child protection and out-of-home care.

*Bringing Them Home* reported that nationally Aboriginal and Torres Strait Islander children were seven times more likely than their non-Aboriginal peers to be placed in out-of-home care; and that Victoria had the highest removal rate for Aboriginal children. In 1997 Victoria's out-of-home care rate for Aboriginal children was 30.5 children per 1000, almost twice the rate for Aboriginal children nationally of 16.3 per 1000, and over eleven times the national rate for all children nationally of 2.7 children per 1000.

Twenty-five years later Victoria still has the highest removal rate for Aboriginal children. Victoria's out-of-home care rate for Aboriginal children at June 30 2021 was 103 children per 1000, almost twice the national rate for Aboriginal children of 57.6 per 1,000; and 22 times the rate for non-Aboriginal children in Victoria of 4.7 children per 1000.<sup>12</sup>

### **Current Status of Bringing Them Home Recommendations**

*Bringing Them Home* provided 54 recommendations intended to redress the intergenerational harm inflicted upon Aboriginal and Torres Strait Islander communities, families, and children. Harm that was planned, resourced, institutionalised, and constituted cultural genocide. The inquiry illuminated the connection between the stripping away of Aboriginal family and community capacity to raise their own children, in their own culture, and the prevailing over representation of Aboriginal children in contemporary child protection systems.

It is beyond the capacity of VACCA to provide a full analysis of the implementation status of every recommendation in the *Bringing Them Home* report within the scope of time provided by Yoorrook. What we can do is to provide some advice on specific recommendations where urgent and sustained action is required if we are to systematically address the over representation of Aboriginal children in Victoria's child protection system.

In addition to the advice VACCA is able to provide we highlight several recent reports that can further assist the Yoorrook Justice Commission in its work. VACCA commends the work of The Healing Foundation, the National Sorry Day Committee and the advice prepared by the Stolen Generations Reparations Steering Committee, of which VACCA was involved, for the Victorian Government on the establishment of Victoria's Stolen Generations Redress Scheme.

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<sup>12</sup> Productivity Commission. (2022). *Closing the Gap Information Repository, Table CtG12A.1*. Retrieved from: <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>

- *Stolen Generations Reparations Victoria*; Stolen Generations Reparations Steering Committee, July 2021 <https://www.vic.gov.au/stolen-generations-reparations-steering-committee-report>
- *Bringing Them Home 20 years on: an action plan for healing*; Aboriginal and Torres Strait Islander Healing Foundation <https://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf>
- *Make Healing Happen – It’s Time to Act*; Aboriginal and Torres Strait Islander Healing Foundation <https://healingfoundation.org.au/make-healing-happen/>

In 2015 the National Sorry Day Committee published an implementation scorecard that provides a summary of the implementation status of each of the 54 recommendations in *Bringing Them Home*.<sup>13</sup> The scorecard provides a succinct overview of the status of recommendations. We acknowledge the work of the National Sorry Day Committee in making transparent the significant gaps in implementation.

The Stolen Generations Reparations Steering Committee report provides an analysis of the implementation of *Bringing Them Home* in Victoria under the five reparations components outlined in *Bringing Them Home*; acknowledgement and apology, guarantees against repetition, measures of restitution, measures of rehabilitation and monetary compensation. Outstanding actions highlighted include:

- an apology to Stolen Generations from Victoria Police,
- the absence of statewide markers to commemorate Stolen Generations,
- lack of an overarching strategy for healing intergenerational trauma and reducing contemporary removals,
- adequate resourcing for Return to Country reunions and culture and language revitalisation programs,
- ensuring ready access to records including those held by state and non-state entities
- funding for Stolen Generations aged care programs, and
- access to priority housing and financial compensation.

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<sup>13</sup> Rule, John & Rice, Elizabeth. (2015). *Bringing Them Home: scorecard report 2015*. Commissioned by the National Sorry Day Committee. 10.13140/RG.2.2.34358.50242. [https://www.researchgate.net/publication/310998125\\_Bringing\\_Them\\_home\\_scorecard\\_report\\_2015\\_Commissioned\\_by\\_the\\_National\\_Sorry\\_Day\\_Committee](https://www.researchgate.net/publication/310998125_Bringing_Them_home_scorecard_report_2015_Commissioned_by_the_National_Sorry_Day_Committee)

The report also highlights the escalating numbers of Aboriginal children in care in Victoria and an increase in the number of Aboriginal children being adopted to non-Indigenous people with no consultation with VACCA in the adoption decision-making process.<sup>14</sup>

*Bringing Them Home 20 years on* outlines three high level actions calling for a comprehensive response to the holistic needs of Stolen Generations through dedicated needs based funding and financial redress; an intergenerational healing strategy and creating a policy environment responsive to the rights and needs of Stolen Generations and the broader Aboriginal and Torres Strait Islander community.<sup>15</sup>

Building on those high-level actions *Make Healing Happen* provides quantitative data on the population of Stolen Generations survivors and their descendants. The report provides extensive quantitative and qualitative data on the contemporary experiences and circumstances of Stolen Generations including prevailing levels of social and economic disadvantage and health and well-being needs. *Make Healing Happen* provides detail that governments could and should utilise to co-design and fund the programs and supports envisaged in the *Bringing Them Home* Report. Actions outlined in *Make Healing Happen* to meet the needs of Stolen Generations include:

- Wrap-around support, such as case management, to assist Stolen Generations navigate service systems
- Additional resources to Link-Up services to expand geographical reach and number of people assisted
- Flexible funding agreements with Aboriginal agencies that enable resources to be used as required to meet the particular needs and circumstances of Stolen Generations
- Incentives to ensure services will (and can) address the more complex needs of Stolen Generations
- Government funding reform to recognise that standardised program provisions are not fit for purpose for clients with high long-term needs
- Investing to develop, resource and test models of non-institutionalised aged care for Stolen Generations<sup>16</sup>

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<sup>14</sup> *Stolen Generations Reparations Victoria*; Stolen Generations Reparations Steering Committee, July 2021 (page 33) <https://www.vic.gov.au/stolen-generations-reparations-steering-committee-report>

<sup>15</sup> *Bringing Them Home 20 years on: an action plan for healing*; Aboriginal and Torres Strait Islander Healing Foundation. (page 26) accessed at: <https://healingfoundation.org.au/app/uploads/2017/05/Bringing-Them-Home-20-years-on-FINAL-SCREEN-1.pdf>

<sup>16</sup> *Make Healing Happen – It's Time to Act*; Aboriginal and Torres Strait Islander Healing Foundation. (page 74) accessed at <https://healingfoundation.org.au/make-healing-happen/>

***“Australia breached its’ own commitment to the Genocide Convention and had committed gross breaches of human rights by removing Aboriginal children. Bringing Them Home is not just a report. It is the testimony of hundreds of Stolen Generations, many of whom had never spoken of their grief and suffering before. It has stayed alive as a record of their stories, because we have a connection to them and the grief and suffering they endured. It is part of every Aboriginal person and their family. Part of ensuring justice is to pursue the implementation of all the recommendations of the inquiry”***

VACCA CEO Adjunct Professor Muriel Bamblett AO.

Bringing Them Home implementation priorities

Respecting and building on the analysis of the Stolen Generations Reparations Steering Committee, of which VACCA was a member, National Sorry Day Committee and The Healing Foundation VACCA offers the following observations on *Bringing Them Home* report recommendations that remain only partially implemented or not implemented at all.

In providing this advice VACCA is mindful that as *Bringing Them Home* report recommendations were formulated 25 years ago, the context has changed and developments since 1997 need to be taken into account to achieve the intent of recommendations.

VACCA highlights the following recommendations for implementation action.

Genocide Convention

*The National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families* consistently approached its work and recommendations with a focus on the elements of reparations including acknowledgement and apology, guarantees against repetition, measures of restitution and rehabilitation and monetary compensation.

In 1948 Australia became the second country to ratify the *Convention on the Prevention and Punishment of the Crime of Genocide* (Genocide Convention). However, the *Genocide Act 1949* (Cth) did not incorporate all the conventions provisions into Australian law, limiting its focus to the overseas activity of armed Australian services personnel.<sup>17</sup>

This limited application of the Genocide Convention was expanded with the passage of the *International Criminal Court (Consequential Amendments) Bill* in 2002. The legislation amended the *Criminal Code Act (1995)* to create offences in Australian law equivalent to the crimes of

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<sup>17</sup> Genocide in Australia – A submission to the Senate Legal and Constitutional References Committee, Inquiry into the Anti-Genocide Bill 1999. Human Rights and Equal Opportunity Commission. February 2000. as accessed at <https://humanrights.gov.au/sites/default/files/document/page/Anti-Genocide%20Bill%20submission.doc>

genocide, crimes against humanity and war crimes as established under the jurisdiction of the International Criminal Court.

While the above legislative initiatives are important and give technical effect to the Genocide Convention they do not provide for full domestic effect. The current legislative arrangements relate only to the prosecution of genocide but include no measures focused on the prevention of genocide, or elements of reparations as set out in the *Bringing Them Home* report. The national inquiry and *Bringing Them Home* report considered full domestic effect to include actions to prevent cultural genocide from re-occurring and measures of reparations and restitution.

The National Sorry Day committee in their 2015 report card assessed Australia's implementation of the Genocide Code as not providing full domestic effect.

VACCA would support and calls for a broader legislative, policy and programmatic response at the Commonwealth and State and Territory levels to implement the Genocide Convention with full domestic effect.

***Recommendation 4: That the Yoorrook Justice Commission pursue the implementation of the Genocide Convention with full domestic effect including assessing the necessity to pursue legislative reform at the Commonwealth and State levels.***

Language, culture and history centres

*Bringing Them Home* Recommendations 12 states:

*12a. That the Commonwealth expand the funding of Indigenous language, culture and history centres to ensure national coverage at regional level;*

*12b. That where the Indigenous community so determines, the regional language, culture and history centre be funded to record and maintain local Indigenous languages and to teach those languages, especially to people whose forcible removal deprived them of opportunities to learn and maintain their language and to their descendants.*

VACCA considers that the Victorian Government holds a shared responsibility with the Commonwealth Government to resource Aboriginal languages, culture and history centres. Since the *Bringing Them Home* report was tabled there have been no Language, Culture and History Centres established in Victoria focused specifically on language revitalisation.

While VACCA acknowledges the work of the Koorie Heritage Trust including its work from the mid 1980's responding to the need for greater awareness, understanding and appreciation of Koorie culture throughout the community; there is an immediate need for Koorie cultural heritage

material to be controlled, managed and curated by Koorie people free of charge. The work of the Trust's must be sustained and includes:

- addressing a need in the community for the collection and preservation of Koorie oral histories for future generations
- a family history service that connects members of the Stolen Generations and their descendants to family, culture and community
- expanding the collection of Koorie art and artefacts that reflect the historical and contemporary artistic practices of south-eastern Australia
- exhibition programs with a particular focus on showcasing new and emerging artists; cultural education programs and activities.

The work of the Koorie Heritage Trust aligns well with recommendation 12 of the *Bringing Them Home* report, however the work of the Trust cannot be taken to satisfy what was envisaged in the *Bringing Them Home* report. Successive governments in Victoria have failed to invest in the establishment of language, culture and history centres at a local community level as recommended in *Bringing Them Home*.

VACCA highlights that the National Agreement on Closing the Gap includes, for the first time, an Outcome and Target relating to cultures and languages. *Target 16: By 2031, there is a sustained increase in number and strength of Aboriginal and Torres Strait Islander languages being spoken.*<sup>18</sup>

Victoria's Closing the Gap Implementation Plan 2021-23 sets out existing and new strategies and commitments made by the State Government in relation to each outcome and target. The Victorian implementation plan makes no additional or specific commitments to support the development of First Nations language, culture, and history centres.

The plan lists existing commitments relating to Aboriginal languages. These commitments are limited to supporting kindergarten and schools delivering Aboriginal languages programs to ensure they are culturally safe; and continuing the Aboriginal languages training initiative to support licensing of a Certificate II and Certificate III in Learning an Aboriginal Language. The plan indicates that up to 20 students per year will have access to this certificate level training.

VACCA is cognisant that the Certificate III in Learning an Endangered Aboriginal Language was developed through the leadership of VAEAI and the Victorian Aboriginal Corporation for

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<sup>18</sup> Victorian Closing the Gap Implementation Plan 2021-23. Victorian Department of Premier and Cabinet. Page 116. As accessed at [https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2021-08/The%20Victorian%20Closing%20the%20Gap%20Implementation%20Plan%202021-2023\\_0.pdf](https://www.firstpeoplesrelations.vic.gov.au/sites/default/files/2021-08/The%20Victorian%20Closing%20the%20Gap%20Implementation%20Plan%202021-2023_0.pdf)

Languages (VACL).<sup>19</sup> The training provides support for Aboriginal people to build up knowledge of their own traditional languages by engaging with their community, whilst also incorporating early wordlists and grammar found in historical records. While commending this initiative it is not a sufficient response from the State Government to the recommendations in the *Bringing Them Home* Report.

The implementation plan at page 116 includes “*continue exploration of an Aboriginal language and culture revitalisation program*” but allocates no funding to this activity and has no detail on what this exploration entails.

Across all Victorian Government Departments, the total funding commitment to Aboriginal languages and Closing the Gap Target 16 is \$2.7M over four years. All of this funding relates to the existing languages training initiative. No additional funding was provided in Victoria’s Closing the Gap implementation plan to support the revitalisation of Aboriginal languages. And it is important to note that none of the existing State Government Aboriginal language initiatives in Victoria focus on supporting Stolen Generations or their descendants to learn their Aboriginal language(s), to contribute to their healing and telling of their history or to be immersed in and connected to their culture.

VACCA considers that the commitment of the Victorian State Government to supporting the revitalisation of Aboriginal languages is woefully inadequate. There is little or no investment in revitalisation of languages and while current kindergarten and school-based initiatives have merit, the primary task is revitalisation of local Aboriginal languages.

Investment in Aboriginal language, history and cultural centres would also strengthen the capacity of VACCA and other Aboriginal agencies providing out of home care services to support Aboriginal children in care to learn and revitalise their language, strengthening their identity and culture.

*Bringing Them Home* highlighted that forced child removals and associated practices deliberately sought to eliminate Aboriginal cultures, traditions and languages, practices that constituted cultural genocide. Victoria’s response to this cultural genocide is seriously deficient.

***Recommendation 5: That the Yoorrook Justice Commission support and advocate for significant, sustained State Government investment in Victorian Aboriginal Language, Culture and History centres to drive the revitalisation of Victorian First Nations languages.***

<sup>19</sup> See information on VAEAI website: <https://www.vaeai.org.au/reclamation-of-aboriginal-languages/>

## Records

The *Bringing Them Home* report made several recommendations relating to records preservation, access and repatriation however this was not actioned. In the lead up to the *Royal Commission into Historical sexual abuse* in institutional settings, we heard many stories of records being destroyed or hidden by mainstream providers and religious institutions to protect the authorities they perpetrated against Aboriginal children in their care.

This could have possibly been avoided if the following recommendations were implemented in a timely manner and are implemented now:

- 21. That no records relating to Indigenous individuals, families or communities or to any children, Indigenous or otherwise, removed from their families for any reason, whether held by government or non-government agencies, be destroyed
- 22a. (summarised) - That record holding agencies be funded to preserve and index records
- 23 (summarised) - That the Commonwealth and State and Territory Governments, establish and fund a records taskforce including representatives of Indigenous services, mainstream record holders and governments to among other things; develop access guidelines to individual, family and community records, advise on assistance to preserve records, management of inter-State inquiries and potential transfer of records inter-State and consider what legislative and regulatory reforms may be required to in relation to records and minimum access standards.

There is still considerable work to do on records access and repatriation and this has been the subject of recent discussions between VACCA and the National Archives Australia and Births Deaths and Marriages. Link-up Victoria has operated as a program of VACCA for 20 years and has strongly advocated for Aboriginal community control of Stolen Generations records including repatriation of records held by NAA.

In the March 2000 a Memorandum of Understanding was established between National Archives Australia (NAA) and VACCA to give effect to the records access elements of the *Bringing Them Home* recommendations. NAA's advice is that NAA holds records of the Victorian Board for the protection of Aborigines and Aborigines Welfare Board. Further, NAA advise that these records represent most records concerning policy affecting Aboriginal people in Victoria from 1860 to 1970s.

The MoU acknowledges the VACCA Link-up service as the gateway to access records held by the NAA. A *Victorian Aboriginal Advisory Group*, established under the MoU has included VACCA and three other Victorian Aboriginal agencies. The advisory group has not been convened by NAA since April 2003.



The provisions of the MoU include some details on the nature of records held and the processes for persons to whom records relate gaining access. The MoU also contains a section on repatriation of records that states; *“The Archives will respond sympathetically and cooperatively to request for copies of Aboriginal related material of specific relevance to an Aboriginal community for their use and retention.”*<sup>20</sup>

VACCA notes that the repatriation clause does not envisage actual repatriation such that the custody of records transfers to an Aboriginal community agency, rather it allows for a copy of a set of records to be provided to an Aboriginal community agency.

VACCA and the NAA have recently commenced some discussions to review the MoU including the membership and support for the Victorian Aboriginal Advisory Group and VACCA has raised the issue of repatriation of records.

NAA have advised that all records held by the National Archives are Commonwealth records and subject to the *Archives Act 1983*. They have further advised that, *“Archives legislation does not address issues such as repatriation. Under the Act, National Archives options are limited to providing copies of records and copies are provided in digital form.”*

VACCA considers that the provisions of the *Archives Act 1983* are inconsistent with the recommendations of the *Bringing Them Home* report in relation to return of records and Indigenous repositories (BTH recommendation 29) and the Act should be reviewed. Specifically, provisions should be made in the Act that would enable the repatriation of records to Aboriginal Community Controlled Organisations.

In relation to non-State entities that were involved in the removal, care, placement or adoption of First Nation’s children VACCA is concerned that they may not be acting consistently with the *Bringing Them Home* Report recommendations that deal with the (non) destruction of records, record preservation and record access.

VACCA is concerned that mainstream child welfare agencies, including church-based agencies, may not be sufficiently transparent in relation to the records and cultural materials they may hold. Further, they may not have optimal arrangements in place to provide Stolen Generations, their descendants and communities with culturally safe access to those records and materials. We don’t contend that any particular agency has been wilfully acting inconsistently with the *Bringing Them Home* report recommendations. Rather our concern is that there has been insufficient attention to

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<sup>20</sup> Memorandum of Understanding between the National Archives of Australia and VACCA for access to Commonwealth records by Aboriginal people. March 9<sup>th</sup> 2000 (copy available upon request from VACCA)

the practices in these agencies and an absence of regulatory measures to ensure appropriate practice.

VACCA considers that a set of minimum standards should apply to all record holders in relation to records management, culturally safe access and repatriation. Neither the Department of Families, Fairness and Housing, Human Services Standards, nor the Victorian Child Safe Standards make any reference to records held relating to past or current clients. If Aboriginal peoples' records are not safe Aboriginal people are not safe. These regulatory frameworks could be amended to establish mandatory standards in relation to client records management.

Stolen Generations and their descendants must be able to safely and readily access their personal records and information no matter what service or institution currently has custody of their records. They have a right to presume that their records have been safely preserved and managed; and that any cultural and family history materials held by agencies can be returned to families and communities.

***Recommendation 6: That the Yoorrook Justice Commission convene hearings with non-Aboriginal child and family welfare agencies that may hold records or materials of Stolen Generations or their descendants, to gather testimony on their involvement as non-State entities in forcible child removal policies and practices; and assess and review current practices in relation to care, custody and access to those records and materials.***

***Recommendation 7: That the Yoorrook Justice Commission support and advocate for the following in relation to records preservation, access and repatriation:***

- ***amendments to the (Commonwealth) Archives Act 1983 to enable the repatriation of records relating to First Nations communities and people to First Nations,***
- ***regulatory reforms in Victoria to Human Services Standards and/or Child Safe Standards to establish mandatory practice standards in relation records management, access and repatriation.***

Indigenous Well-Being Model, Parenting & Family Well-Being Programs

Here too the *Bringing Them Home* report made recommendations that are remain relevant today (BTH recommendations 33 & 36):

- 33a. That all services and programs provided for survivors of forcible removal emphasise local Indigenous healing and well-being perspectives
- 33.b That government funding for Indigenous preventative and primary mental health (well-being) services be directed exclusively to Indigenous community-based services including Aboriginal and Islander health services, child care agencies and substance abuse services

- 36. That the Council of Australian Governments ensure the provision of adequate funding to relevant Indigenous organisations in each region to establish parenting and family well-being programs

*Bringing Them Home* made recommendations focused on healing for Stolen Generations and responding to the over-representation of First Nations children in contemporary child protection systems. Recommended actions included funding to local ACCOs to develop and provide social and emotional wellbeing (mental health) programs and parenting and family wellbeing programs for First Nations families.

These recommendations sought the well-planned and properly resourced development of an Aboriginal community-based service system. A system comprised of local Aboriginal agencies funded to support First Nations families to heal from intergenerational trauma and support all families with their children's development, parenting and family wellbeing.

Victoria has a well-established Aboriginal Community Controlled sector delivering some elements of the family wellbeing supports the *Bringing Them Home* report envisaged. However, funding from the State Government in the child and family services sector is directed pre-dominantly to mainstream child and family welfare services. There has been no sustained effort or investment to develop the ACCO based family support service system envisaged by the *Bringing Them Home* Report.

At present Aboriginal children in Victoria are 22 times *more* likely than non-Aboriginal children to be placed in out-of-home care, but once in care are two and a half times *less* likely to be provided with access to Intensive Family Support Services (IFSS). Family support services are the primary support made available by the State to prevent or minimise the involvement of families with the child protection system.

As reported in the Victorian Government Aboriginal Affairs Report (VGAAR) in 2020-21 Aboriginal children comprised 27.5 per cent of Victoria's out-of-home care population and yet they and their families were allocated only 10.6 per cent of family support service cases. In that year there were 2572 Aboriginal children in care in Victoria and only 1017 family support cases were allocated to those children. In contrast there were 6645 non-Aboriginal children in care who between them were allocated 11,276 family support cases<sup>21</sup>.

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<sup>21</sup> 2021 Victorian Government Aboriginal Affairs Report – Data Dashboard Measure 2.1.2 Number of families engaged with family support and intensive family services. Victorian Department of Premier and Cabinet; as accessed at <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-data-dashboard/children-family-and-home-data/goal-2#children-in-out-of-home-care-who-are-engaged-with-intensive-family-support-services>

Rather than developing an ACCO based suite of services to support First Nations families Victoria's has developed a system of family support services where funding goes predominantly to mainstream agencies. As noted above, Aboriginal families have relatively low access to this service system.

***Recommendation 8: That the Yoorrook Justice Commission support and advocate for the development and funding an Aboriginal community based Early Help and Family Support System as a preventative response to the over representation of Aboriginal families and children in Victoria's child protection system.***

Adoption a last resort  
(BTH Recommendation 52 - Standard 7)

That the national standards legislation provide that an order for adoption of an Indigenous child is not to be made unless adoption is in the best interests of the child, and that adoption of an Indigenous child be an open adoption unless the court or other decision maker is satisfied that an open adoption would not be in the best interests of the child. The terms of an open adoption order should remain reviewable at any time at the instance of any party.

*Bringing Them Home* dealt with the issue of adoption law reform through its recommendations on National Standards Legislation that proposed the establishment a set of mandatory Indigenous child welfare standards to apply across all jurisdictions and apply to all agencies, including Aboriginal community based agencies, exercising jurisdiction over Indigenous child welfare matters.

Through the proposed national standards *Bringing Them Home* sought to ensure that adoption legislation in all States and Territories included provisions that;

- adoption of Aboriginal children was a last resort (standard 7),
- the Aboriginal and Torres Strait Islander Child Placement Principle is to be applied consistently in child welfare and adoption legislation (standard 6), and
- the appropriate accredited Aboriginal Agency is consulted thoroughly and in good faith in every matter concerning an Aboriginal child (standard 4).

In 2015 the Victorian Law Reform Commission (VLRC), at the direction of the Victorian Attorney General, conducted an independent review of the Victorian Adoption Act (1984). The terms of reference noted that it was timely to modernise the Act and ensure consistency with contemporary laws in relation to children and families.

VACCA and a number of other Aboriginal agencies made submissions to the review seeking implementation of the *Bringing Them Home* report recommendations relating to the adoption of Aboriginal children.

The VLRC released their final report in February 2017 and recommended that adoption legislation in Victoria be updated to reflect recommendations from the *Bringing Them Home* Report and give effect to the Aboriginal Child Placement Principle. They noted that other jurisdictions including WA, SA, QLD, NSW and the Northern Territory have implemented legislative reforms to indicate that adoption is a last resort.

*The Adoption Act should implement the recommendation in Bringing Them Home that statutory adoption be a last resort for Aboriginal and Torres Strait Islander children and that culturally appropriate alternatives should be preferred. This recommendation has been implemented in other jurisdictions.<sup>22</sup>*

The VLRC report recommendations in relation to the adoption of Aboriginal children included that the Victorian Adoption Act should:

- state that if a child proposed for adoption is identified as an Aboriginal child an Aboriginal Agency be involved in all aspects of the adoption process
- include a statement that statutory adoption is not part of Aboriginal culture
- include the Aboriginal and Torres Strait Islander Child Placement Principle and decision making principles, and that these should be expressed consistently with the *Victoria Children, Youth and Families Act 2005*
- specify that an Aboriginal or Torres Strait Islander child cannot be placed for adoption and the court cannot make an order for adoption unless:
  - the Secretary or principal officer has received a report from the Aboriginal Agency recommending that the child be placed for adoption; and a cultural support plan has been prepared.

VACCA is deeply concerned that almost six years since the release of the VLRC review the Victorian Government has done nothing to bring the Adoption Act into alignment with the *Bringing Them Home* report. The Adoption Act 1984 remains in urgent need of updating as recommended by the VLRC in 2017.

The 2020 SNAICC Family Matters Report reported that in the year ending June 2019 Victoria had the highest number of Aboriginal children adopted in Australia, with 12 Aboriginal children

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<sup>22</sup> Victorian Law Reform Commission, Review of the Adoption Act (1984). February 2017. Page 135 see <https://www.lawreform.vic.gov.au/publication/review-of-the-adoption-act-1984-report/>

adopted; all to non-Indigenous people. In the same year there were 7 Aboriginal children adopted in NSW and none in any other State or Territory.<sup>23</sup> In the 2022 SNAICC Family Matters Report it details that there were five adoptions of Aboriginal and Torres Strait Islander children, all but one to non-Indigenous parents. Victoria was identified as having responsibility for one of these adoptions<sup>24</sup>, it is unclear whether this decline was due to COVID-19 or other issues. VACCA is not aware of the involvement of any Aboriginal agency in the adoption of the 12 Aboriginal children in Victoria.

VACCA's understanding is that these 13 Aboriginal children were placed for adoption by the Secretary of the Department of Families, Fairness and Housing using powers conferred on the Secretary under Section 173 of the Children, Youth and Families Act 2005, see below.

### **CYF Act 2005 Section 173 Placement of children**

(1) This section applies in relation to a child—

- (a) for whom the Secretary has parental responsibility under this Act; or
- (b) of whom the Secretary is the guardian under the **Adoption Act 1984**; or
- (c) in respect of whom the Secretary has authority under the **Adoption Act 1984** to exercise any rights of custody.

(2) The Secretary may deal with the child in any of the following ways—

- (a) place him or her in an out of home care service;
- (b) place him or her in a secure welfare service for a period not exceeding 21 days (and, in exceptional circumstances, for one further period not exceeding 21 days) if the Secretary is satisfied that there is a substantial and immediate risk of harm to the child;
- (c) place him or her for adoption under the Adoption Act 1984 if the Secretary has sole parental responsibility for the child and the child is available for adoption;**
- (d) place him or her in any other suitable situation as circumstances require.

VACCA is also concerned that the adoption of Aboriginal children in Victoria is continuing with a lack of transparency and oversight that the VLRC recommendations would have provided.

We note that the annual report prepared by the Australian Institute of Health and Welfare (AIHW), Adoptions Australia, does not include disaggregated adoptions data by Indigenous status and State/Territory<sup>25</sup>. It is also important to note that the AIHW adoptions data collection is of *finalised Court approved adoptions*; this data does not include *children placed for adoption* by the Departmental Secretary under Section 173(2)(c). Once placed by DFFH for adoption it is up to the

<sup>23</sup> SNAICC – the Family Matters Report 2020. Page 18 Report Card. SNAICC National Voice for Our Children. [https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020\\_LR.pdf](https://www.familymatters.org.au/wp-content/uploads/2020/11/FamilyMattersReport2020_LR.pdf)

<sup>24</sup> SNAICC – the Family Matters Report 2022. P37

<sup>25</sup> See <https://www.aihw.gov.au/reports/adoptions/adoptions-australia-2020-21/summary>

adoptive parents to make an application to the County Court for the adoption to be finalised; hence children can be 'adopted' indefinitely with no approval from the Court.

In thinking about forced adoptions and Adoption policies we want the Yoorrook Justice Commission to develop a critical understanding of three core themes: Healing, Justice and Connection to culture and what can be done to create change:

Healing for Aboriginal people in Victoria who were affected by forced adoptions to non-Aboriginal families need to be included in the same range of culturally safe, healing supports that are available to all Stolen Generations and their descendants. VACCA believes that all Aboriginal people removed from their families should have access to Aboriginal specific services that help them reclaim connections, heritage and culture regardless of how or when they were removed. These services need to be sustainably funded and nurtured and are essential for addressing transgenerational trauma and healing.

Justice for those who were forcibly removed deserve reparations are needed, and the announcement of the Stolen Generations Reparations Scheme is a step in that direction.

Connection to Culture – is not a one off, or a tick box approach. I have heard of circumstances where foster parents have promised in the court of law, to take a child to the museum to learn about their culture. The First Peoples of this land and the oldest continuing culture in the world, that is not static, or stuck in time like the pharaohs. Their heroes should be their Elders and ancestors, who fought in the Frontier Wars like Pemulwuy, heartbreaking love letters written by mothers and fathers pleading for their children to be returned, for as the Statement of the Heart contends "Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them."

What VACCA offers children in out of home care is connection, of knowing who they are, who their mob is, learning their cultural practices, songs and stories. Connection to their family, community, culture and Country is integral. For Aboriginal people, the best interests of the child cannot be separated from the best interests of the community. We need a commitment from the Victorian government that it will adhere to the full intent of the Aboriginal Child Placement Principle if we're to make any difference to preventing ongoing removal, separation and intergenerational trauma of our children, young people and their families.

Connection to culture and community is fundamental for our children and young people's wellbeing, being strong in their identity and knowing who their mob and who their family are...these are fundamental basic human right but we are here today advocating for the same thing as VACCA's founder, Aunty Mollie Dyer did over 40 years ago.

The Aboriginal and Torres Strait Islander Child Placement Principle and the 'best interests' principle, including child safety, are not mutually exclusive. What do we do about contemporary removals and understanding the needs of kids leaving care wanting to find their families? The reality is we still have disproportionate number of kids placed outside Aboriginal community even though the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) was legislated in 1989:

- The principle attempts to ensure government do not repeat the atrocities and ongoing impacts of the Stolen Generations. Current permanent care legislation is at odds with the ATSICPP in two key areas: disallowing reunification after a fixed time-period; and privileging adoption in the hierarchy of placement options.
- Permanent Care orders, like adoptions need to be the last resort.
- Mainstream or private providers of child and family welfare don't have to comply with ATSICPP
- Courts should be asking how placement decisions have complied with the full intention of the ATSICPP without this it only furthers the disconnection and is an injustice to our young people and an indictment on our nation.

Permanent Care Orders (PCO) while premised on providing stability, in effect cut off children from their families, community, Country and culture. With the emphasis on placement stability rather than wellbeing the system is flawed. Achieving wellbeing should be the ultimate priority; as a focus on wellbeing will lead to increased stability, given the strong link between poor psychosocial wellbeing and placement instability. The concepts underpinning permanency; stability, connection and identity are all integral to a child's wellbeing – but there is some concern when one element is given primacy above others.

From a Permanent Care review we did a number a years ago we know that Aboriginal children referred for PCO are vulnerable. This vulnerability comes from disability, developmental or global delay and social and emotional concerns. Vulnerability also comes from the absence of connection to family and community that strengthen a child's sense of identity and belonging. Such vulnerability is unlikely to be addressed through placement stability.

**I remember speaking with a women at a survival day event a number of years ago. She introduced herself as a foster carer of one of our kids. She reflected, "I never would have accepted the idea of a permanent care order for our foster child if I'd**



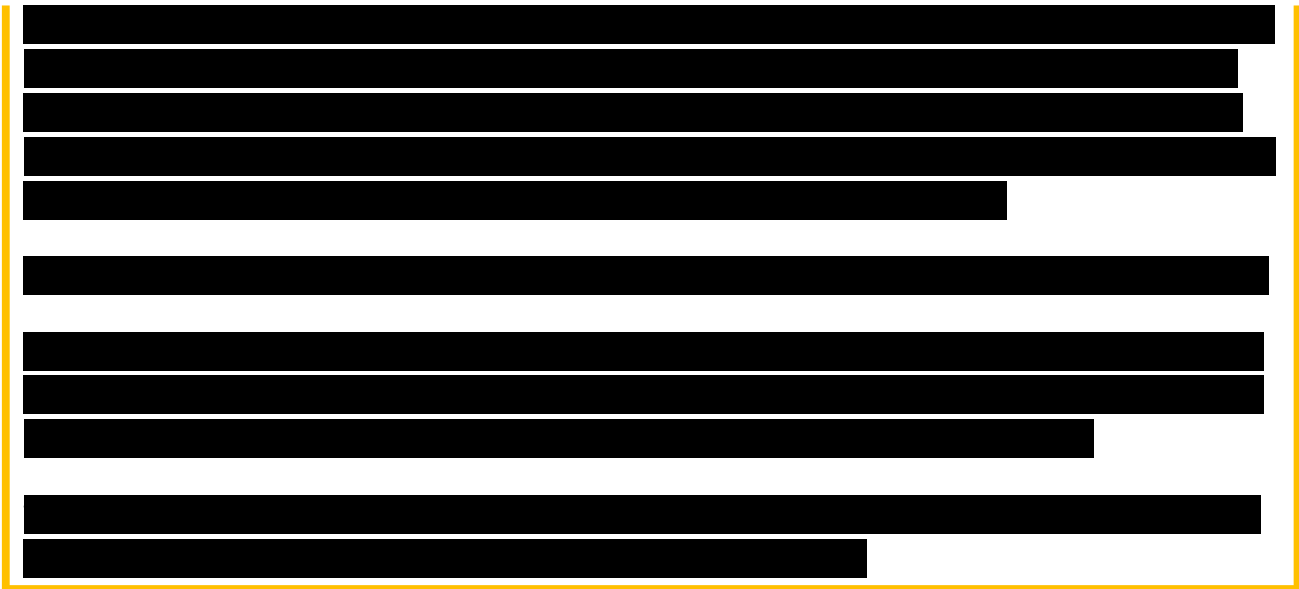
**known that meant we would lose contact with our VACCA family”. Permanent Care orders disrupt the support and engagement we can offer families through cultural activities, camps etc. – Muriel Bamblett, CEO VACCA**

Kenn Richard identifies that cultural immersion is a vehicle for ‘acculturation’, but for Aboriginal children and young people who are placed with non-Indigenous families, and aren’t in a position to participate with and connect to their community and culture they will acculturate to a foreign cultural context which will exasperate identity problems, rather than build resilience and a sense of belonging. We have to be able to improve practice and know we’ve done everything to find a child’s family and comply with the full intention of the ACPP.

We know what we are doing better, where, through our commitment to from learning from Stolen Generations. VACCA has paved a way through system that was made to break families and communities to building systems that are working towards self-determination. We need laws to keep up with change and a rights framework and policy and advocacy approach; current laws don’t take into consideration new policy, new ways of working, a commitment to self-determination. Government and legislation need to be transformative, to truly honour the best interests of Aboriginal children, where they are safe, connected to their family, community and culture and their cultural rights are honoured and adhered to.

**CASE STUDY - Matilda**

[Redacted text block containing the details of the Matilda case study]



***Recommendation 9: That the Yoorrook Justice Commission call on government to***

- **amend the *Children, Youth and Families Act 2005* to require that DFFH receive the resourced approval of an ACCO authorised under s18, and the relevant Traditional Owners Corporation(s) for the child prior to placing an Aboriginal child for adoption or a permanent care order;**
- **Amend the Victorian adoptions Act 1984 to include a statute of limitation of sealed records for adoptions;**
- ***advocate for the reform of the Victorian Adoptions Act 1984 consistent with the advice of the Victorian Law Reform Commission; and***
- ***as a matter of urgency inquire into the placement of Aboriginal children for adoption by the Secretary of DFFH under Section 173(2) of the Children, Youth and Families Act (2005)***

Social Justice Package

VACCA does not propose to outline in this submission the detailed elements of a social justice package to address the social and economic disadvantage impacting the health and wellbeing of First Peoples' communities, families and children.

Through our work supporting Aboriginal families that have had contact with the child protection system, we know that issues of poverty and insecure employment, housing stress and homelessness, experiences of racism, including systemic racism, isolation and cultural disconnection, intergenerational trauma and poor social and emotional wellbeing erode the capacity of families to provide all that their children need.

VACCA considers that too often the main response of the State to the inter-generational impoverishment of Aboriginal families is a punitive child protection system that is orientated towards the removal of children rather than the resourcing of families.

A main focus of family support initiatives and programs in the child welfare field is family functioning and parenting; modifying the behaviours present in those families subject to statutory interventions. These interventions have an important role to play in securing child and family wellbeing. However, short-term behaviour focused interventions that do not address underlying causes have limitations. Long term child safety and wellbeing is best secured by providing families with the additional resources to meet children's needs; resources such as secure affordable housing, access to childcare and holistic maternal and child health care and brokered access to a range of support services.

*Bringing Them Home* recommended that a social justice package be developed by ATSIC, the Council for Aboriginal Reconciliation, the Aboriginal Social Justice Commissioner and Aboriginal agencies working in the child and family welfare field.

VACCA is mindful that the role of the Yoorrook Justice Commission is to prepare the way for Treaty by ensuring that treaty negotiations are informed by historical and prevailing injustices. The Treaty Negotiation Framework includes at *Section 25.2 Subject matters for negotiation - general*, matters that a First Peoples' Negotiating Party and the State may agree to discuss, including, welfare, including child and family services.<sup>26</sup>

It will be important for the Commission to recommend a way to progress the development of the social justice package as a matter of some urgency while acknowledging that a longer-term social justice package may become part of Treaty negotiations.

**Recommendation 10: That the Yoorrook Justice Commission develop advice for governments, Commonwealth and State, on the scope and resourcing of a Social Justice Package as envisaged by the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families**

#### National Framework Legislation

The Bringing them Home report recommended that national framework legislation be developed to give effect to the right of Indigenous Peoples to self-determination in relation to the well-being of Indigenous children and young people. The proposed framework and associated national

<sup>26</sup> Treaty Negotiation Framework – First Peoples' Assembly of Victoria and the State of Victoria. Page 41. As accessed at: <https://www.firstpeoplesvic.org/reports-resources/treaty-negotiation-framework/>

standards laid out a process and blueprint for advancing Aboriginal community control in Aboriginal child welfare and juvenile justice.

The framework and standards sought to protect the rights and best interests of Aboriginal and Torres Strait Islander children across all jurisdictions while empowering Aboriginal community agencies to negotiate the managed transfer of statutory responsibilities to Aboriginal community control.

Since the release of the Bringing them Home report there have been some advances in self-determination reforms in Aboriginal child welfare. These have included:

- legislating the Aboriginal and Torres Strait Islander Child Placement Principle in State and Territory child welfare legislation; albeit in limited forms
- increased investment in Aboriginal Community Controlled Agencies in the provision of out-of-home care services and case management
- legislating to enable the delegation of some statutory child protection functions to an Aboriginal agency (Victoria and Queensland)
- more formalised use of Aboriginal family-led decision making

Achieving further child welfare and protection legislative reforms that embed self-determination are unlikely to be achieved through the mechanism of National legislation. Securing agreement to comprehensive and consistent Aboriginal child welfare legislative reform across all jurisdictions is not the best reform strategy.

Unquestionably Victoria has been at the forefront in collaboratively securing self-determination reforms in child welfare legislation, policy, programs and practice - including reforms that enable the delegation of statutory powers to an Aboriginal agency.

The vision of Bringing them Home was for the development of Aboriginal community designed and led child welfare and protection systems, based on Aboriginal cultures, child-rearing practices and family and kinship systems. Bringing them Home, as noted earlier, recommended legislated minimum standards for Aboriginal led child welfare (recommendation 45) with Aboriginal agencies able to negotiate shared jurisdiction with Courts and Departments.

An advantage of the Bringing them Home reform approach is it sets out the core components of an Aboriginal community based child welfare and protection system to be developed over the long term. Bringing them Home did not recommend the transfer of western child protection and welfare models to Aboriginal community control, instead it recommended the design and development of *Aboriginal* child welfare systems based on Aboriginal ways of being and doing to replace mainstream models.

Bringing them Home sought to empower Aboriginal communities to articulate and negotiate their own models for child welfare and protection. This contrasts with the delegation approach to reform that is being driven, at least in part, by child protection system pressures arising from high turnover in the child protection workforce.

The design and negotiated phased establishment of First Nations systems for care and protection of children would be transparent and empower communities and families to exercise authority in the care of their children. Further, the development of a 'system vision' would enable a long-term approach to the planned development of ACCO sector infrastructure and workforce capacity.

Recent major reforms to the Victorian Children, Youth and Families Act 2005 have tended to pit the views and interests of Aboriginal community stakeholders against the views and interests of the broader mainstream community sector. Aboriginal stakeholders are positioned as minority stakeholders and minority rights holders in these reform processes.

The 2014 legislated permanency reforms in Victoria are a good example. Under these reforms the Children, Youth and Families Act 2005 was amended at *Section 167 Permanency Objective* to set an order of preference for every child's case plan objective. This amendment set adoption of children as the second highest preference for a case plan. VACCA vigorously opposed this legislative amendment as it is at odds with Aboriginal child rearing practices and family kinship systems. But the majority of mainstream agencies including their State peak body supported the amendments and the majority view prevailed, again to the detriment of Aboriginal children. This scenario plays out repeatedly in child and family welfare legislative reform process.

Yet we know that, as explained by Turnbull-Roberts et al., that adoption, and permanent care with non-Indigenous carers is akin to a rupture in an Aboriginal child's development, it is not part of Aboriginal customary culture<sup>27</sup>.

VACCA's proposal for a distinct Aboriginal Children, Youth and Families Act in Victoria aligns with the UN Declaration on the Rights of Indigenous Peoples that positions Indigenous Peoples as having distinct and particular rights to self-determination. We need distinct and particular legislation for Aboriginal child welfare and protection.

VACCA advocates for the Aboriginal led design of a Victorian Aboriginal child and family support system to be enshrined in an Aboriginal Children, Youth and Families Act. This will no doubt be part of the state-wide treaty agreement making process, however this standalone Act should be negotiated now and Treaty not be used as an excuse to create meaningful change.

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<sup>27</sup> SNAICC, Family Matters Report 2022. P37

A distinct act would allow for a different set of child orders for the care and protection of Aboriginal children, orders with stronger emphasis on family preservation, reunification and a different approach to permanency. Such a system could embed Aboriginal family-led decision making to exercise certain statutory powers. Such a system would not displace the role of the Children's Court in making child protection orders, but it might provide the Court with a different set of options in relation the orders it can make to secure the best interests of Aboriginal children. Such a system could enable shared jurisdiction between the Children's Court and registered Aboriginal agencies, as *Bringing Them Home* envisaged.

**Recommendation 11: That the Yoorrook Justice Commission call on the Victorian government to support the development of a distinct Aboriginal Children, Youth and Families Act.**

#### Implementation Planning, Monitoring and Review

The *Bringing Them Home* Report proposed that implementation arrangements be established under the auspices of the Council of Australian Governments (COAG). Victoria needs to establish implementation monitoring arrangements that align with the advice contained in *Bringing them Home* but fit the current policy and operating context.

The report recommended the establishment of implementation planning, monitoring, audit and review mechanisms to drive transparency and accountability for progress. Key features of the approach recommended by *Bringing the Home* included:

- Implementation governance arrangements comprised of relevant Aboriginal peak agencies and government officials,
- Resourcing Aboriginal community controlled peak agencies to provide independent advice on implementation priorities and progress,
- Periodic monitoring of progress and the annual production and publication of an independent audit of progress.

No such mechanisms have been developed and sustained over the 25 years since the *Bringing Them Home* Report was released. VACCA recommends that Victorian Government in partnership with Stolen Generations advocacy groups and the Aboriginal Community Controlled Sector establish implementation planning and monitoring arrangements that align with the arrangements proposed in the *Bringing Them Home* Report. In relation to the annual audit of progress to be prepared and published VACCA considers that the Victorian Aboriginal Children's Commissioner would be enshrined in legislation and be resourced to take on this audit function.

**Recommendation 13: That the Yoorrook Justice Commission recommend that the Victorian Government convene and resource participation in a *Bringing Them Home* implementation governance group with implementation arrangements to include annual audits of progress prepared by the Victorian Aboriginal Children’s Commissioner who is enshrined in legislation.**

It would be naive to take the view that the passage of time has rendered the *Bringing the Home* Report and its recommendations irrelevant to the current challenges that face Victorian Stolen Generations and First Nations children and families exposed to the contemporary child protection. As we have demonstrated, there is only limited implementation of the report’s recommendations and they are still relevant today.

The report, based as it is on the truth telling of Stolen Generations and their descendants, outlines clear directions on how to respond to and prevent cultural genocide, and how to establish Aboriginal community controlled child welfare systems that respect the rights of First Nations children to safety while restoring family capacity. Full implementation of the intent of the *Bringing Them Home* Report’s recommendations remains as important as ever.

### The history of systemic injustice in both the child protection and justice systems Invasion

Before invasion, First Nations peoples in what is now called Victoria were organised into over 300 clan groups which were consolidated into over 36 Traditional Owner language groups. It is estimated that they numbered something in the order of 60,000 people (Richard Broome, 2005, *Aboriginal Victorians: a History since 1800*, Crows Nest, NSW, p. xxi).

Before invasion, the First Nations peoples, in what is now called Victoria, had, for at least over 40 thousand years, thrived as complex cultures due to highly developed systems of lore/law, governance, social cohesion and norms grounded in a spirituality that connected each person and community to the land, skies and waters and each other as kin and community. Each group had cultural agency and cultural authority. Each person had clear roles within family and within community.

The invasion of what is now called Australia, like Canada, New Zealand, and the United States, was a process of colonialism, in which invaders, in this case the British Empire, arrived with the intent of staying and seizing control of the land and its resources. While the settler narrative is often also applied with colonisation, settler infers that colonisation was peaceful and falsely reinforces the notion of terra nullius. VACCA does not recognise the term settler as it relates to invasion and the resulting colonisation.

To accomplish this, the British utilised assimilatory strategies in an attempt to eliminate Indigenous sovereignty and weaken the kinship, economic, and territorial ties that sustained strong Aboriginal nations. In Australia, like other colonies, these strategies included the violent expropriation of land from its Traditional Owners, the removal of Aboriginal children from their families, economic deprivation, massacres, and forced religious conversion. This process, developed and refined as the British Crown sought to expand its empire, was built into the legislative and policy framework of successive Victorian governments. It is due to the sustained and systemic nature of the settler-colonial process that historian Patrick Wolfe refers to invasion as “a structure not an event.”<sup>28</sup>

### The Structure of Invasion

The invaders first made their presence felt in First Nations societies through the introduction of disease which, it has been suggested, decimated half the population even before the invaders set foot on Victorian soil<sup>29</sup>. Once they had arrived, it is suggested that the population was halved once again by disease<sup>30</sup>.

The next, more direct, stage came in the 1830s when the frontier wars began as the invaders sought possession and control over the traditional lands and waters of the First Nations. Battles, massacres and murders occurred, and lands were transformed into farms, stock runs, mines, factories and places of commercial trade throughout the 19<sup>th</sup> Century. As a mechanism of colonial power and control, Aboriginal peoples were forcibly moved onto missions and reserves across the state, mixing traditional owner groups and enforcing Christian religious practices, controlling movement, marriages and employment, whilst also banning traditional cultural practices.

The structure of invasion is set in place by the various stages of colonisation that then embed intergenerational and collective trauma in First Nations communities. As First Nations trauma expert, Judy Atkinson, notes in her ground-breaking *Trauma Trails, Recreating Song Lines (2002)*, these stages are:

- physical violence (invasion, disease, death and destruction),
- structural violence (enforced dependency, legislation, reserves and child removals) and
- psycho-social dominance (cultural and spiritual genocide).

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<sup>28</sup> Wolfe, P. (2006). Settler colonialism and the elimination of the native. *Journal of Genocide Research*, 8(4), 387-409.

<sup>29</sup> Noel Butlin, 1983, *Our Original Aggression*, Allen and Unwin, London

<sup>30</sup> Ibid



The structure of invasion remains to this day and continues to impact First Nations people. However, it is critical to note that all stages also involve their resistance and resilience to the imposed structure of invader society. First Nations peoples fought wars, sought to keep connected as communities within and outside of the reserves, secretly spoke language and practiced culture when possible, protested within the reserves and made delegations to parliament and, in 1938, even petitioned the King.

### **Understanding The History: Separation and ‘Protection’ Under the Acts**

The *Bringing Them Home Report* outlines the history of the processes that led to the Stolen Generations. As noted in the timeline in the [Appendix](#) there were initially several attempts to persuade First Nations people to live the ways of the invaders. Missions and schools were established, mostly unsuccessfully; missionaries and appointed protectors ‘adopted’ First Nations ‘orphans’.

The Victorian colonial parliament released a report in 1858 that recommended a system of reserves be established to ‘protect’ Aboriginal people. Later in 1860 a ‘Central Board Appointed to Watch over the Interests of Aborigines’ was established as first of its kind in Australia. The Board oversaw the establishing of the reserves and by 1867 was managing reserves at Framlingham and Coranderrk and indirectly controlling a number of other reserves/missions.

It is at Coranderrk where the practice begins of creating schools and dormitories for the children and separating them from their families; a practice replicated throughout Victoria. Additionally, the *Bringing Them Home Report* notes that the manager of Coranderrk would travel around First Nations communities often removing children he deemed ‘neglected’.

In 1869 the Victorian colonial parliament passed the *Aborigines Protection Act* which officially established the *Aborigines Protection Board*. From that point on First Nations peoples began to ‘live under the act’ where their lives were controlled, and any form of self-determination or cultural agency was denied. The Act gave the Board powers to make regulations (hence less parliamentary and public scrutiny) for First Nations peoples including “the care, custody and education of the children of aborigines”.

In 1871 the Act was amended allow for authorities to “order the removal of any Aboriginal child neglected by its parents or left unprotected, to any of the places of residence specified ... or to an industrial or reformatory school”. Another amendment provided that,

*Every Aboriginal male under 14 years of age, and also all unmarried aboriginal females under the age of 18 years, shall, when so required by the person in charge of any station in*

*connection with or under the control of the [Board], reside, and take their meals, and sleep in any building set apart for such purposes.*

These provisions expanded the practice at Coranderrk, where Aboriginal children were housed separately from their parents in dormitories, to Lake Hindmarsh, Ramahyuck, Lake Tyers and Lake Condah reserves.

In 1877, Christian Ogilvie, the General Inspector of the Board, expressly stated that the aim of the Act, and its subsequent amendments, was the “*absorption of the whole race into the general community*” although he stopped at advocating coercion (Broome 2005 p. 188).

Later, in the early 1880s Aborigines’ Protection Board, in response to a lack of resources decided to focus on ‘full bloods’ and ‘merge’ those of mixed heritage into the non-Indigenous community leaving them to their own devices to survive.

As a consequence, the *Aborigines Protection Act 1886* extended the powers of the Board and provided that at the age of 13 years mixed heritage boys were to be apprenticed or sent to work on farms and girls were to work as servants. They would then require permission to visit their families. ‘Orphaned’ children were to be transferred to the care of the *Department for Neglected Children* or an institution for neglected children. Mixed heritage First Nations people aged 34 and younger were to leave the reserves, and therefore their families. However, under the acts, they remained under the control of the Board until 1893. The *Bringing Them Home Report* notes that the colonial government at this time estimated that there were about 833 Indigenous people remaining in Victoria, of whom 233 were classed as ‘half-castes’, 160 of those being children.

Another Act in 1890, amended in 1899, extended the Board’s powers over the lives of First Nations peoples including to allow it to send children of mixed descent, whether orphaned or not, to the *Department for Neglected Children* or the *Department of Reformatory Schools* for their so-called ‘better care and custody’. Families disputing these actions were given the option of leaving the reserves and losing access to rations. As an act of resistance many continued to live near the reserves and, secretly, visited their relatives. In 1890, as a result of the increased powers, the Board reported that they had placed 28 girls with families for domestic service, several boys to apprenticeships and 6 to Orphanages and Industrial schools (Board Report 4 October 1890).

Other Acts controlling the lives of First Nations people included the 1910 Act giving the Board powers of mixed descent persons, the 1915 Act regulating employment and residency and the 1928 Act regulating custody, maintenance and education of the children. During this period, the number of reserves declined from 6 to 1, forcing any First Nations person who wished to receive rations and housing to be moved to Lake Tyers.

Life at Lake Tyers meant inspection of homes, permission required to leave the reserve and the possibility of expulsion for either misconduct or if it was felt they could earn a living outside the reserve. While non-Indigenous people could receive various forms of welfare assistance, most First Nations people were denied this right.

Despite constant discrimination and criminalisation, First Nations communities formed outside invader society throughout Victoria at former reserves, near country towns and even in areas of Melbourne where work was available. They were communities of resilience and resistance in the face of dispossession, racism and imposed poverty. From the 1920s onward, Aboriginal organisations were established to promote the rights and aspirations of First Nation peoples. This included the desire to have the state no longer control the lives of First Nations children as examples in the 1838 Manifesto which accompanied the Day of Mourning Protests in Sydney and Melbourne. Despite this, and particularly after the Second World War, the police and the welfare often took upon themselves the right to remove children from the communities under the racially constructed notion of ‘best interests’.

Rather than seeking to understand the lives and aspirations of First Nations peoples and communities or give acknowledgement to their status and rights as First Nations peoples, in the 1950s the Victorian government decided to double down on promoting assimilation. The McLean Report in 1955 ignored the advice of the *Aboriginal Advancement League* which advocated for self-government and instead recommended the “helpful but firm policy of assimilation”, as adopted nationally by other states and territories. McLean viewed the conditions of some communities as squalid as they did not confirm to a Eurocentric notion of ‘clean’ housing and paid no regard to the strong networks of kinship, nurturing and support within First Nations communities.

*Shortly after my visit ... , twenty-four of the younger children were, at the instance of the police, taken from these ‘homes’ and committed to the care of the Children’s Welfare Department by the Children’s Court (McLean 1957 pp. 6f).*

McLean’s Report recommended the establishment of an *Aborigines Welfare Board* with an assimilationist objective and left the issue of child welfare to the provisions of the *Child Welfare Act 1954*. The Victorian Government’s submission to the *Bringing Them Home* Inquiry found that in 1957 there were 150 First Nations children in institutions, one out of ten of all First Nations children.

*During 1956 and 1957 more than one hundred and fifty children (more than 10 per cent of the children in the Aboriginal population of Victoria at that time) were living in State children’s institutions. The great majority had been seized by police and charged in the*

*Children's Court with 'being in need of care and protection'. Many policemen act from genuine concern for the 'best interests' of Aboriginal children, but some are over-eager to enter Aboriginal homes and bully parents with threats to remove their children. Few Aboriginal families are aware of their legal rights, and accept police intrusion at any hour of the day or night without question. This ignorance of legal procedure has also prevented parents from reclaiming children committed as Wards of State when their living standard has improved<sup>31</sup>. (Elisabeth Barwick 1964, "The Self-conscious People of Melbourne" in Marie Reay ed. *Aboriginals Now*, Sydney, Angus and Robertson, as quoted in *Bringing them Home* p. 54)*

The subsequent *Aborigines Act 1957* established the *Aborigines Welfare Board* "to promote the moral, intellectual and physical welfare of aborigines ... with a view to their assimilation in the general community" but no specific powers in relation to children other than the ability to notify police if there was concern regarding particular children. It was primarily under the *Child Welfare Act 1954* that children were removed, the police taking more action from the time of McLean's inquiry visits on. Debate leading up to the passing of the Act reveals the attitude of many that separating First Nation children from their families and communities was desirable and in their best interests. First Nations families and communities were labelled 'degenerate' and inferior.

Regulations concerning the provision of housing to First Nations people increased the risk of child removal for example through the limits placed on visitors and family members in the home. There was a clear increase in First Nations children being declared wards of the state from this time on. A status which gave them a police record. In addition to the various non-government welfare agencies, the Victorian government opened up 6 institutions to deal with the increasing number of child removals by 1961.

The *Aborigines Welfare Board*, while it did not itself remove children, did pay maintenance fees to institutions and foster parents and did visit institutions indicating a level of oversight, including First Nations children from the Northern Territory and Queensland who were placed in Victoria. In 1959 the Board noted that 90 First Nations children were in institutions, 72 as wards of the state. The Board worked closely with the Save the Children fund, Apex Clubs and the Country Women's Association. In 1966 the Board reported that about 100 were wards of the state. In 1966 the Board was also approved as a private adoption agency. During this time the Board was also involved in interstate placements from the Northern Territory and Queensland.

The Board was abolished in 1967 under the Aboriginal Affairs Act which established a Ministry for Aboriginal Affairs in Victoria. It wasn't until 1969 that the Act was amended so that the Ministry would be informed whenever an Aboriginal child was brought before a Children's Court.

In 1968 the Ministry's first Annual Report noted its concern over the 'unauthorised fostering arrangements of Aboriginal children' and stated that about 300 First Nations children were known to have been informally separated from their parents, with possibly many more unknown. At that time the Aboriginal population in Victoria was about 5,000. Despite these concerns and the desire to keep children in their communities the number of First Nations children forcibly removed continued to increase, rising from 220 in 1973 to 350 in 1976.

As noted previously, throughout this time, First Nations leaders were calling for the recognition of their rights and especially their rights to keep children with their families and communities. In the 1970s the Victorian Aboriginal Legal Service and later from 1976, the Victorian Aboriginal Child Care Agency sought to keep Aboriginal children with their families and develop self-management of child and family welfare. Through the efforts of First Nations community controlled organisations by 1979 there was a reduction of 40% in the numbers of First Nations children in welfare institutions. However, 270 juveniles remained wards of the state. From that time on, as well as calls from First Nations organisations to have oversight of child and family welfare, there were growing calls to seek justice for the Stolen Generations.

### **Role of non-government welfare**

Clearly the role of the colonial and state government was to control the lives of First Nations peoples under the guise of welfare and being concerned about 'best interests'. While others may still contend this position was held with the "best intentions", it is VACCA's contention that these same attitudes inform the continued structural racism and systemic discrimination experienced by Aboriginal peoples.

These ideals, and in turn legislative powers actively functioned to disempower, impoverish and dilute Aboriginal governance and authority structures so that Aboriginal peoples would become dependent on the state. Throughout Australian's colonial history, we see the idea of 'welfare' used all the time as an ideological device to weaken the self-determination of Aboriginal peoples and bring them under the control of the state. A clear contemporary example of this is the Northern Territory Emergency Response, wherein the problematisation of Aboriginal family life,

which positioned Aboriginal communities as being “exceptionally in need of state help”, was used to “authorise the extension of state jurisdiction and intervention.”<sup>32</sup>

The government did not act alone. Between 1887 and 1954 church-based and private welfare agencies and individuals were given the authority to remove children they labelled as ‘neglected’, assume guardianship rights and house them in institutions or private homes (these agencies still exist today). Those removed by police and made wards of the state were also placed in these institutions. According to the *Bringing them Home Report*, in 1957 there were at least 68 institutions managed by 44 different church-based or private welfare agencies. Standards governing these agencies weren’t established until the *Child Welfare Act 1954*.

Many First Nations children were ‘privately placed’ and therefore the circumstances and location of where they came from difficult to trace. In addition, adoption laws, such as the *Adoption Act 1928*, were premised on the need for ‘secrecy, safety and stability’ and non-government agencies were commonly the facilitator of these processes. First Nations children from outside Victoria were also removed to foster homes or adopted by Victorians. Some came on respite or holiday arrangements, such as to the ‘*Harold Blair Aboriginal Children’s Holiday Project*, and some of those did not return home.

As seen from [the list below](#), there is a clear question as to what First Nations people, and particularly members of the Stolen Generations, are owed as a form of redress from the collaboration of non-indigenous charities with the process of First Nations child removals. As part of this truth seeking process, Yoorrook Justice Commission must call witness the contemporary manifestations of those institutions responsible for removal, and hold them accountable for their historic and current practices.

#### Collective Harm, Reparations and Truth Seeking

The intergenerational traumatic impacts of physical and structural violence for all Aboriginal peoples living in Victoria, including the Stolen Generations, is added the impact of psycho-social cultural dominance and disconnection from family, community, country and culture. While awareness of our shared history in the non-Indigenous community has been improved somewhat since the release of the *Bringing Them Home Report*, alongside apologies from governments and non-government organisations to the Stolen Generations (but not from the Federal Government until 2008), and redress schemes established, these actions do not recompense for the level of the harm done to Stolen Generations people, their descendants and their communities.

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<sup>32</sup> Strakosch, E. (2018). The technical is political: Settler colonialism and the Australian Indigenous policy system. *Australian Journal of Political Science*, DOI: 10.1080/10361146.2018.1555230

The *Bringing Them Home Report* contended that the laws and policies of First Nations child removals constituted a crime against humanity and that, since the International Convention on Genocide (1945), were clearly genocidal in impact and intent. In Canada there is the Common Experience Payment, for all First Nations, Metis, and Inuit who were students at Indian Residential schools.<sup>33</sup> This acknowledges the collective pain and suffering all First Nations, Metis and Inuit children and young people suffered simply because they were removed, without having to prove they were abused in addition to their forcible removal, Victoria's Stolen Generations Reparations Scheme is a similar approach.

In Australia the memorials of invasion and for the Stolen Generations are minimal, particularly in Victoria. The broader community is still only dimly aware of non-Indigenous Victoria's cruel past. VACCA advocated strongly in the development of the Stolen Generations Reparations Scheme for the need to build on the Stolen Generations Marker project that Link-Up Victoria has led. Memorials are not the appropriate model, instead, markers are a meaningful model for Stolen Generations who are living as well as for those who have passed. This project engages with Local Government Areas (LGAs) to develop a Stolen Generations Marker. Link-Up engages intensively with the LGA to ensure that they have a started the cultural groundwork necessary, this includes having an established relationship with the local community, a Reconciliation Action Plan and a proper public acknowledgement of Traditional Owners. So far there are markers in City of Darebin, City of Yarra, and Hume City Council and City of Melbourne are in development. VACCA welcomes the announcement that the War Memorial in Canberra has committed to include a greater focus on the frontier wars, recognising that "recognition and reflection on frontier conflict was a responsibility for all our cultural institutions."<sup>34</sup>

The Yoorrook Justice Commission is in a position of influencing the Victorian government to undertake a similar project in Victoria, and we note that there is international precedence for states to publicly recognise the ongoing harms of colonialism, as well as to celebrate the resiliency and survival of First Peoples. For example, the Indian Residential School Settlement Agreement in Canada, included a \$20 million dollar commemoration fund to support Indigenous communities in honouring the experiences of former students and their families. Though this fund, all former students, their families, and communities were eligible to submit a proposal for a commemoration project, which was then distributed to deliver 144 projects based on recommendations by the Truth and Reconciliation Commission.

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<sup>33</sup> Government of Canada, Common Experience Payment webpage. Accessed on 24/11/22: <https://www.rcaanc-cirnac.gc.ca/eng/1100100015594/1571582431348>

<sup>34</sup> Henry Reynolds, 'War Memorial pressured into recognition of Frontier Wars' (Pearls and Irritations, Oct 5, 2022) accessed 24/11/22 via: <https://johnmenadue.com/frontier-wars-at-the-war-memorial/>

**Recommendation 13: That the Yoorrook Justice Commission call on the Victorian Government to fund Link-Up Victoria so they can continue to roll out the Stolen Generations Marker Project.**

**Recommendation 14: That the Yoorrook Justice Commission consider recommending a Victorian frontier wars memorial.**

VACCA encourages the Commission to adopt ‘truth seeking’ principles as part of a transitional justice approach, as detailed by the work of International Centre for Transitional Justice (ICTJ). VACCA consider ICTJ to have relevant expertise in pursuing truth seeking and reparations for collective harm as they work “to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies”<sup>35</sup>. ICTJ’s approach is informed by the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. It is VACCA’s contention that Yoorrook’s considerations regarding reparations should include ‘collective harm’ for all Aboriginal peoples in Victoria.

Truth telling, or truth seeking is not just for community, ACCOs and the state to navigate, there is a very important aspect which includes holding non-government organisations and faith-based groups to account for their role in the forced removal of Aboriginal children and young people. This, alongside transparency around their commitment and responsibility in achieving the targets and priority reform areas as outlined in the National Agreement on Closing the Gap, and more specifically the commitment to transfer responsibility of Aboriginal children and young people of care and protection orders to ACCOs.

It is VACCA’s understanding that no time has been allocated for mainstream community service organisations to be part of a public hearing. VACCA is deeply concerned by this omission for their part in both the contemporary and historical injustice experienced by Aboriginal peoples in the child protection and criminal justice systems. Apologies and Reconciliation Action Plans are not enough, community service organisations should be held financially accountable for the atrocities they were part of.

**Recommendation 15: That the Yoorrook Justice Commission reconsider their decision not to engage with mainstream community service organisations and instead use their Royal Commission powers to call them to provide evidence.**

<sup>35</sup> ICTJ: Decision in Mau Mau Case Strengthens the Right to Reparations of All Victims of Torture <https://www.ictj.org/news/decision-mau-mau-case-strengthens-right-reparations-all-victims-torture>



**Recommendation 16: That the Yoorrook Justice Commission call on the Victorian Government to establish a reparations scheme for Aboriginal communities impacted by Stolen Generations, not just individuals for the collective harm suffered.**

### Stolen Wages

As a direct result of invasion, the traditional economies of First Nations peoples in Victoria were disrupted and demolished by the invaders. Over time, the invaders stole the traditional lands and waters of the First Nations and imposed foreign farming practices on the lands and waters, replacing traditional means of hunting, gathering, farming and trade. Economic freedoms were denied as culturally shaped social norms and practices concerning connection and relationship to the land were disfigured. In some areas traditional villages were deconstructed and in all areas traditional ways were denied. It is difficult to estimate a Eurocentric dollar value on the process of colonisation but invasion's devastation is far-reaching given the totality of its effect on First Nation economies.

Andrew Gunstone and Sadie Heckenberg have written an account of the history of stolen wages in Victoria, assisted by the Wampan Wages Working Group. Much of the information below is a summary of their research.<sup>36</sup>

It is documented through 'Protector' reports how, from 1837, First Nations people were growingly employed as shepherds, farmers, timber cutters, stock keepers, bullock drivers, guides and domestics and in most, if not all cases, provided only with food and clothing. Occasionally a pittance was offered<sup>37</sup>. Native Police were provided with rations rather than wages.

The 1869 *Aborigines Protection Act* allowed for earnings to go to trust rather than to First Nations workers. Most children removed from the reserves to farms also worked for rations and clothing rather than wages. It is clear that the inadequacies of record keeping and poor administration on reserves makes an assessment on the level of stolen wages difficult to measure. This was noted by the Victorian Auditor-General in 1904 particularly in relation to the financial administration records of the Lake Condah, Lake Tyers and Lake Wellington reserves. Official-level criticisms of reserve finance records continue up until the 1930s including the level of funds on trust accounts.

The reserves were not alone in being recalcitrant in providing clear financial records in relation to state 'management' of First Nations peoples. The Aborigines Protection Board rarely produced annual reports to state parliament from 1912 on until its demise. Particularly after the closure of

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<sup>36</sup> Andrew Gunstone and Sadie Heckenberg, 'The government owes a lot of money to our people : a history of Indigenous stolen wages in Victoria' (Australian Scholarly Publishing, 2009)

<sup>37</sup> Richard Broome, 1994 'Aboriginal Workers on south-eastern frontiers' *Australian Historical Studies*, 26, 1994, p.212

all reserves, except Lake Tyers, ensured a lack of scrutiny including regarding the working lives and outputs of First Nations peoples residing on the reserves. While from 1910, due to the *Aborigines Act 1910*, the Board did have responsibility for all First Nations people in Victoria, the Board only acted in relation to those living on the reserves.

Economic control over First Nations peoples was granted to the Board with the implementation of the *Aborigines Act Regulations 1916* which enforced strict controls over First Nations peoples living on reserves, including over their employment and wages. The powers, many of which were already in place, included:

- enforcing employment contracts and certificates;
- enabling the selling of goods and services made on reserves,
- determining the wages to be paid to workers who produced those goods;
- enabling the reserve manager to force residents to work and decide their employment and wages;
- controlling access to the reserve, which was critical in enabling residents to work off the reserve; and
- empowering the BPA to hold one-half of the wages paid apprentices until the end of their apprenticeship<sup>38</sup>.

The *Aborigines Act 1928* maintained these controls and enabled, through regulations, power over the employment and wages of First Nations people. First Nations people who were forced off the reserves were required to “assimilate into townships”. Most experienced employment discrimination and were ineligible for government support as well as their enforced isolation from their families and communities.

For those living at Lake Tyers rations were poor, wages (if any) were minimal, housing was sub-standard; all leading to poorer health and wellbeing outcomes. Those who left the reserve without permission were barred from rations and even fined. These conditions lasted until 1966.

Impoverishment of Lake Tyers residents was a direct consequence of policy. The 1925 *Report on the Lake Tyers Aboriginal Station*, recommended, in relation to Lake Tyers residents, that as “there are few people actually working” because “the Aborigines can make money too easy elsewhere [such as selling goods, like boomerangs, to tourists]”, that “tourists be requested to buy nothing direct from the Aborigines” and instead could purchase goods from the reserve and that “inmates of the Station be prevented from working elsewhere when required for this work [farming] on the

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<sup>38</sup> *Aborigines Act Regulations 1916*, pp. 3547–8, 3550, 3552

Station”, be “paid piecework at the ruling rate for the district (less cost of rations etc)” and “the crop be sold and placed to the credit of the Station”<sup>39</sup>.

During this time, First Nations people who lived outside the reserve were subject to irregular and underpaid work, constant discrimination by employers, no welfare support and, deliberately, no support from the Board despite its clear, legal responsibility.

The wages of children generally were controlled by firstly the *Neglected Children’s Act 1915* then by the *Children’s Welfare Act 1928* and finally the *Child Welfare Act 1954*. The latter enabling “the collection and investment and deposit of any earnings of any ward of the Children’s Welfare Department”. Again, because of poor financial record keeping, it is difficult to ascertain the amount of funds that were denied First Nations people who were subject to these Acts.

There are records concerning the profits made by the Aborigines Board Produce Fund. £398 3s 4d in 1931–35, £2208 19s 5d in the period 1935–40, £2966 7s 1d in 1940–45 and £477 13s in 1945–50. (BPA 1860–1956:53). Soldier settlement, from which returning First Nations soldiers were excluded saw the fund losing income reserves when these areas were granted to returned non-Indigenous soldiers (BPA 1860–1956:55). As a result, the fund incurred a loss of £4112 6s 6d between 1950 and 1955 (BPA 1860–1956:53). Despite this, the fund was £3684 5s 10d in credit at the end of 1955 (BPA 1860–1956:53, 1929–63:67); for amounts up to 1957, (BPA 1879–1957). The fund was abolished in 1957, with £3485 11s 11d in credit transferred to a newly established trust fund: the Aborigines Welfare Fund under the control of the Aboriginal Welfare Board. No moneys were ever transferred to First Nations peoples.<sup>40</sup>

Additionally, to these restrictions and barriers placed on fair wages, First Peoples have been largely barred from receiving commonwealth endowments and access to pensions until 1959. The following state and federal acts excluded First Nations people in a variety of ways from welfare benefits:

- The *Old-age Pensions Act (Victoria) 1901*
- The *Invalid and Old-age Pensions Act 1908*
- The *Maternity Allowance Act 1912*
- The *Child Endowment Act 1941 and 42*
- The *Invalid and Old-age Pensions Act 1942*
- The *Maternity Allowance Act 1942*
- The *Widows Pension Act 1942*

<sup>39</sup> Aborigines Protection Board, 1925:25

<sup>40</sup> Andrew Gunstone, “Indigenous Peoples and Stolen Wages in Victoria, 1869–1957”, in Edited Natasha Fijn, Ian Keen, Christopher Lloyd, Michael Pickering, (eds) *Indigenous Participation in Australian Economies II*, Canberra, ANU, 2010

- *Unemployment and Sickness Benefits Act 1944*
- *The Social Services Consolidation Act 1947*
- *The Social Services Act 1959*

Victoria, despite undergoing a review of the history of stolen wages which only looked at matters after 1918, has not implemented any forms of restitution. In 2008, then Victorian Government Minister Wynne in 2008 contended that “there is no evidence of systemic withholding of earnings and wages of Aboriginal people in Victoria”<sup>41</sup>.

It is also worth noting that thousands of Aboriginal peoples have fought in international conflict as part of the Australian Army, it is well documented that while many soldiers served on ‘equal terms upon return to Australia they faced the same if not harsher discrimination as when they left’<sup>42</sup>. This was compounded by not being able to attend RSLs nor being allocated land as part of the soldier settlement scheme<sup>43</sup>. It is VACCA’s contention that this was in effect another iteration of stolen wages, as this land would have supported the economic livelihoods of many families.

It is a significant undertaking to attempt to measure what is owed to First Nations people as a result of stolen economies, stolen wages and exclusion from benefits based on race. The economic disenfranchisement of First Nations communities, families and individuals continues to have profound and compounding impact that must be acknowledged and compensated.

As the Gunstone and Heckenberg report title suggests, “the government owes a lot of money to our people”. VACCA recommends that the Commission seek to ascertain what would be fair compensation and restitution for nearly two centuries of enforced and entrenched intergenerational poverty.

**Recommendation 17: That the Yoorrook Justice Commission recommend that financial reparations are made to First Nations communities in Victoria for all stolen wages, commensurate to the living wage today.**

**Recommendation 18: That the Yoorrook Justice Commission call on the Victorian government to apologise for the policies that led to the economic disempowerment, discrimination and oppression of First Nations communities.**

<sup>41</sup> Dick Wynne, Statement to Victorian Parliament, Legislative Council (13 October 2009)

<sup>42</sup> Australian War Memorial, Indigenous Defence Service, accessed on 24/11/22 via <https://www.awm.gov.au/articles/encyclopedia/indigenous>

<sup>43</sup> Australian War Memorial, Indigenous Defence Service, accessed on 24/11/22 via <https://www.awm.gov.au/articles/encyclopedia/indigenous>

## Spent Convictions

As a consequence of past First Nations child removal, many Stolen Generations people were victims of discrimination due to being criminalised under the law due to becoming wards of the state. This early criminalisation and stigmatisation of Aboriginal peoples has had profound and intergenerational impacts. The criminalisation of Aboriginal children, young people, individuals has been a mechanism of containing and controlling, as part of the structure of invasion for generations. The premise for Spent Convictions, for Aboriginal peoples in Victoria, largely rests on an acknowledgment that many of the charges received by Aboriginal children and young people were false, discriminatory and rooted in racist attitudes. This has had lifelong impacts on these children into their adulthoods and flowed onto their families, and have been profoundly detailed in the late Uncle Jack Charles testimony to this commission.

One of the ironies when it comes to truth telling in relation to the criminal justice system is that the authority and actions of police and the justice system in general is derived from a process of illegal occupation. No consent was given, and no treaties made when the lands, waters and sky of what we now call Victoria was invaded. The subsequent criminalisation of many First Nations people was often based on racist assumptions and intent on peoples who largely, until the 1960s, had limited, if any, legal rights and little means to enable an equal representation in the criminal justice system. After invasion First Nations were criminalised in environments where speaking language and practising culture were prohibited, lives were confined to reserves, participation in the general community made illegal or, at best, made difficult and a legal system that had been in place for over 40,000 years was unrecognised. Traditional ways of knowing, being and doing were inhibited, access to and maintenance of traditional land and waterways including trade routes were compromised.

As colonial enforcers of foreign laws, the police were part of a system of oppression and at the front line of contact between First Nations peoples and the general non-Indigenous community. Even today, First Nations people are more likely to be in contact with police, lawyers and judges than the general community. Young First Nations people are more likely to have interactions with police and more likely for those interactions to “lead to a criminal record and less likely than non-Aboriginal offenders to be offered cautions or other diversionary options.”<sup>44</sup> First Nations people in general are more likely to have a record due to negative interactions with police and even be incarcerated on remand either without bail or due to being unable to pay bail, often for minor, non-violent, offences.

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<sup>44</sup> Woor-dungin Partnership, Criminal Record Discrimination Project Submission to Aboriginal Justice Forum 49 Swan Hill, December 2017

Access to the general economy including; employment, appointment to Boards and Committees, volunteering, becoming a foster and kinship carer, increasingly is determined by criminal history checks. In Victoria, before the *Spent Convictions Act 2021*, Victoria Police oversaw the release of criminal history based on the ‘exercise of a broad and ill-defined discretion’ rather than legislated practice<sup>45</sup>, and leaving the interpretation of criminal records in the hands of employers or support organisations who are ill equipped to this complex approach to risk assessment, and in VACCA’s opinion has further entrenched racial bias. This meant that in practice generations of First Nations people in Victoria had difficulties accessing and engaging with any of the aforementioned general economic endeavours, and others were, therefore, deterred from even applying.

It has been estimated that thousands of First Nations people who were made wards of the state were given criminal records. Woor-Dungin’s research findings pertaining to children becoming wards of the state, the Children’s Court did not differentiate between children who were removed for criminal behaviour or removed for ‘protection’. As such many wards of the state were given criminal records. This was particularly impactful for members of the Stolen Generations whose lives remained under the gaze of the police and the criminal justice system and who suffered from discrimination on the basis of having a criminal record, as well as for being a First Nations person. Such injustice, as well as a desire to enable those with minor offences – often during their youth - to not have their lives tarnished by their past led to advocacy for a Spent Convictions Act in Victoria.

Until 2021, Victoria was the only state or territory not to have a legislated spent convictions scheme. Before then there was no means to protect individuals against discrimination on the basis of a past minor criminal offence. For First Nations people in Victoria, and particularly for Stolen Generations people who were wards of the state, the lack of a spent convictions scheme, severely limited their social and economic opportunities.

While the introduction of the *Working with Children Act 2005* was a positive move for the protection of children in Victoria, one of the unintended consequences was that some First Nations persons who were either criminalised due to being past wards of the state or who had a criminal record for committing an unrelated minor criminal offence, were excluded from areas of employment working with children or even being kinship or foster carers. In terms of kinship care, this was mostly through self-exclusion, as an irrelevant criminal record alone did not prevent them for caring for kin. However, the process itself became a deterrent.

The *Victims and Other Legislation Amendment Act 2018* included a Statement of Recognition acknowledging the considerable harm and distress caused by historical recording practices that

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<sup>45</sup> Woor-Dungin, (2017) ‘Criminal Record Discrimination Project’ – Submission to Aboriginal Justice Forum 49, 9.

criminalising children and young people who were wards of the state and acknowledged the disproportionate effect these practices had on First Nations people. At the time of the Bill's introduction the Hon. Martin Pakula MP noted that

*The Government recognises that these recording practices are likely to have had a disproportionate impact on the Koori community given past policies of taking Aboriginal children away from their families and into state care.*

Consequently, the *Spent Convictions Act 2021* was passed to further address this injustice.

However, the impact of the past policies continue to have their effect on those whose lives have been subject to discrimination suffered before the Act was passed. We would advocate for further consideration of what forms of support and compensation could be granted to those First Nations people who have been affected.

**Recommendation 19: That the Yoorrook Justice Commission includes a metric of economic loss due to spent convictions in how it builds an assessment for redress as part of the truth-telling process.**

### Discriminatory Funding Models and Workforce Issues

This section reflects on the systemic injustice ACCOs are faced with relating to the funding required to deliver holistic, trauma informed programs and services. VACCA contends that the Victorian government has many decades, knowingly allocated disproportionate funding to ACCOs for the provision of services compared to government and mainstream, and this is akin to the government failing their duty of care to Aboriginal children and families.

VACCA's 1988 Annual Report details that there were 1800 open files and with 9.5 EFT for service delivery staff across the regions. VACCA received \$373,000 funding in 1987 for the provision of services to Aboriginal children and families, which equates to just over \$200 per child or family supported.

In 1994 VACCA's Annual Report detailed that "the Caseworkers average caseload is around 200 cases each compared to H&CS workers [DFFH] who average 25 cases...VACCA would have in excess of 2500 cases." VACCA received \$662,493 funding in 1994 for the provision of services to Aboriginal children and families, which equates to just over \$260 per child or family supported.

VACCA's 2001 Annual Report detailed that in the previous funding year (1999), "VACCA supported more than double the funded amount of placements".

As detailed in the early help section of this submission, currently there is a significant discrepancy in the proportional expenditure on early help funding including family support and intensive family support delivered to Aboriginal families by ACCOs, which sits at two percent of the state's total expenditure on early help in 2020-2021. The recently released Family Matters report details this as well, as does the most recent ACF data, which cannot be released publicly.<sup>46</sup>

As detailed in the 2022 Family Matters Report,

“To enable Aboriginal and Torres Strait Islander people to exercise the collective right to self-determination, governments should support upscaling the ACCO sector, including through increased funding, and support the transfer of control and power from government agencies and non-Indigenous organisations to Aboriginal and Torres Strait Islander peoples, communities and ACCOs.”<sup>47</sup>

This is in line with all levels of government's agreement to the National Agreement on Closing the Gap, and yet the transfer of resources and proportional funding isn't progressing, which only further disadvantages Aboriginal children, young people and their families.

As of September 2022, of the 51 mainstream CSOs that DFFH funds, 43 per cent of them received more than 80 per cent of their funding as ongoing funding, and 70 per cent received more than 60 per cent of their funding as ongoing funding<sup>48</sup>. The picture for ACCOs however is vastly different, where 50 per cent of funding from DFFH is fixed term<sup>49</sup>. It is an impossible, and discriminatory in effect, expectation for ACCOs to be able to maintain consistency and excellence in service to the Aboriginal community when half of their funding is limited, fixed term funding. This is further compounded by a lack of benchmarking across the sector so ACCOs are having to compete for staff against government and mainstream CSO salaries which are \$20-30K higher on average, whilst also ensuring we meet qualification standards.

VACCA calls on Yoorrook to use their investigatory powers to review the systemic and discriminatory funding of ACCOs in comparison to mainstream CSOs and child protection, as well as compared to non-Indigenous children for the past 45 years.

In Canada we have seen a successful class action against the Canadian federal government on behalf of First Nations peoples, finding that the federal government had “wilfully and recklessly” discriminated against First Nations children living on reserves by failing to adequately fund First

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<sup>46</sup>SNAICC (2022) Family Matters Report; Department of Families, Fairness and Housing, Aboriginal Children's Forum Data Pack, October 2022

<sup>47</sup>SNAICC, (2022) Family Matters Report, p 15

<sup>48</sup>DFFH, Fair Jobs Code, CSO Working Group meeting, Presentation on 16 September 2022.

<sup>49</sup>DFFH, Fair Jobs Code, CSO Working Group meeting, Presentation on 16 September 2022.



Nations child and family services<sup>50</sup>. C\$40,000 was awarded to every child removed from their home. The Canadian government has continued to challenge the 2016 decision at the Canadian Human Rights Tribunal, where they ruled against the government on all occasions.<sup>51</sup> Yoorrook has the opportunity to highlight discriminatory funding practices of the state and to hold them to account.

**Recommendation 20: That the Yoorrook Justice Commission use its investigatory powers and call for evidence on the historical and contemporary funding models for mainstream, government and Aboriginal child and family service providers and youth justice providers and compare the rates of funding from early intervention and prevention, family services and child protection and investigations programs in child and family services and then for youth justice, early intervention, prevention and diversion programs for both Aboriginal and non-Indigenous children and families within 12 months of Yoorrook’s final report being released.**

**Recommendation 21. That the Yoorrook Justice Commission call on the Victorian Government to backpay ACCOs for underpayment of services delivery, including proportionate early help funding for the last 10 years.**

**Recommendation 22: That the Yoorrook Justice Commission call on the Victorian Government to commit to developing a sustainable 10 year ACCO workforce strategy that supports the growth of an Aboriginal workforce within ACCOs across all government portfolios.**

### Data Sovereignty and building and Aboriginal evidence base

Data sovereignty has been characterised as an emerging driver to addressing many systemic and deep-rooted issues affecting Aboriginal peoples’ and organisations’ capacity and capability to generate, collect and store data. Whilst data sovereignty has been repeatedly raised as being fundamental to progressing self-determination, what it looks like in Victoria and more specifically within the ACCO sector remains unclear. Although the Victorian government has made a range of commitments to progressing Aboriginal data sovereignty, including in the Victorian Closing the Gap Implementation Plan, the Victorian Aboriginal Affairs Framework, Korin Korin Balit Djak, Dhelk Dja: Safe our Way, Burra Lotjpa Dunguludja and in Mana-na worn-tyeen maar-takoort, little to no progress has been made.

<sup>50</sup> Leyland Cecco, Indigenous children set to receive billions after judge rejects Trudeau challenges’ (The Guardian, 30 September, 2021). Accessed on 25/11/22 via Canada’s underfunding of child and family services caused egregious harms, such as unnecessary removals, separations and harms to First Nations children

<sup>51</sup> First Nations Child and Family Caring Society, ‘First Nations Child and Family Caring Society Statement in response to Canada’s Judicial Review of the Canadian Human Rights Tribunal decision on compensation’ (November 2022) via website: <https://fncaringsociety.com/knowledge-portal/publications-database>

[Priority Four of the new National Agreement on Closing the Gap](#) includes ‘shared access to data information at a regional level’ and clearly identifies the need for ACCOs to have equal access to data so there is an Aboriginal evidence base that can be utilised in designing, implementing and evaluating policies and programs. Transparent data will allow for greater accountability across sectors, assisting with monitoring and reporting on outcomes. Aboriginal peoples and ACCOs must have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, to progress priority reforms and to build their own evidence base.

Aboriginal peoples are one of the most studied populations, with almost all research and data unavailable to the communities they pertain to.<sup>52</sup> Often portrayed negatively, or with a deficit lens, institutional racism remains a significant barrier to social inclusion. Beginning in settler-colonial anthropological research and subsequently leading to Western researchers aiming to scientifically prove white superiority over Aboriginal people.<sup>53</sup> Contemporarily, it occurs in research and policy making in sectors including child and family welfare, family violence, health, housing and justice.<sup>54</sup> Particularly evident in narratives used within child protection as to apportion blame on the individual or family, rather than the system; how the overrepresentation of Aboriginal children in out-of-home-care is used to portray a narrative of Aboriginal parents as deficient or abusive. However, when you actually look at the data, Aboriginal children are more likely to receive substantiations for neglect (i.e. poverty) or emotional abuse (caused by experiencing family violence), rather than physical or sexual abuse which are actually more prevalent in non-Aboriginal child protection cases<sup>55</sup>. And what this data also fails to capture are the families who are doing well, or are able to reunify after addressing protective concerns. It is often ACCOs who are able to tell these stories because they have more sustained interaction and stronger relationships with families, we are in a position to humanise and contextualise the individual stories, and often systemic failures, sitting behind these statistics. If government continues to withhold control over what information is collected, how it is stored and where it is used, it contravenes their commitment to Aboriginal self-determination.

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<sup>52</sup> Victorian State Government (2021). *Victorian Family Violence Data Collection Framework*. Retrieved from <https://content.vic.gov.au/sites/default/files/2019-11/Family-Violence-Data-Collection-Framework-October-2019.PDF>

<sup>53</sup> Francis, M. (1996) Social Darwinism and the construction of institutionalised racism in Australia. 90-105, DOI: 10.1080/14443059609387281

<sup>54</sup> Lovett, R., et al. (2019) *Good data practices for Indigenous data sovereignty and governance*. Retrieved from <https://researchcommons.waikato.ac.nz/bitstream/handle/10289/12919/data%20practices.pdf?sequence=5&isAllowed=y>

<sup>55</sup> AIHW Child Protection Report 2020-2021. <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/notifications-investigations-and-substantiations/characteristics-of-children-with-substantiated-abuse-or-neglect>

This is exemplified by the fact that while VACCA has the opportunity to view highly valuable data about Aboriginal children and families from the Aboriginal Children’s Forum (ACF), yet this data is restricted to only being shared internally for ACF members, nor does the ownership sit with the member ACCOs, which is inconsistent with the intentions of Aboriginal data sovereignty. Similarly, we have had to operate with minimal access to other data across the relevant sectors, including family violence and education.

In relation to Indigenous Cultural and Intellectual Property (ICIP) and Intellectual Property (IP), VACCA also has concerns relating to the exploitation of the ICIP of Aboriginal peoples and communities. VACCA has worked to renegotiate contracts and funding agreements to build in better protections for IP and ICIP, but this takes considerable time and effort. Currently our Service Agreements still state that the government should own some or all of the project IP, and this is guided by the Victorian Government’s *Whole of Victorian Government Intellectual Property Policy*<sup>56</sup> which makes no mention of Indigenous Knowledge or ICIP. Current agreements also stipulate that IP may be released ‘for the benefit of the Victorian public’.

VACCA contends that all levels of government must include in their IP policies an acknowledgment of ICIP rights and a statement of adherence to ICIP principles and protocols, and that this is adopted across all ACCO Heads of Agreement.

Aboriginal peoples have cultivated and owned their own stories and histories for generations. Passing down knowledge systems about Aboriginal culture to preserve language, history, law, art and stories from the Dreaming. This reflects traditional concepts of Aboriginal data sovereignty where cultural protocols were adhered to. Reinstating and emphasising the ownership of data back into Aboriginal communities serves as a much-needed effort towards Aboriginal self-determination. Giving Aboriginal peoples the power make decisions about what data is used, control over how they represent themselves and the ability to choose how research is conducted.

**Recommendation 23: That the Yoorrook Justice Commission call on the Victorian Government to commit to publicly review current service agreements and the *Whole of Victorian Government Intellectual Property Policy* and make recommendations about how to better protect IP and ICIP rights.**

<sup>56</sup> State of Victoria, Department of Treasury and Finance, (2012) *Whole of Victorian Government Intellectual Property Policy: Intent and Principles*.

## Part A – Systemic Injustice in Child Protection

### The criminalisation of Aboriginal children in out-of-home care

There is a well-established narrative to the link between child protection involvement and youth justice supervision, with many Aboriginal children and young people involved with youth justice having had experiences in out-of-home care.<sup>57</sup> For example, at 31 December 2019, 64% of Aboriginal children and young people subject to youth justice supervision had a history of child protection involvement, compared with 37% of non-Aboriginal children and young people involved in youth justice.<sup>58</sup>

The term ‘crossover kid’ is often used to describe children with involvement in both child protection and youth justice systems. Whilst this term acknowledges the relationship between both systems, the concept of care-criminalisation emphasises the role that the child protection system has in creating the conditions under which a child or young person comes into contact with the youth justice system.<sup>59</sup>

VACCA notes however that while both sectors have disproportionate rates of Aboriginal children and young people involved, the actual numbers of children and young people in the criminal justice system are very small. This speaks to the successful work of ACCOs including VACCA in supporting children and young people in out-of-home care so they do not end up in the criminal justice system, for if they did, the numbers would be significantly higher.

Commonly, explanations of youth justice involvement amongst children in out-of-home care have focused on the young person’s behaviour and experiences of trauma.<sup>60</sup> Many Aboriginal children and young people involved in both systems come from families with multiple and complex needs, including experiences of homelessness and housing insecurity, high unemployment, family

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<sup>57</sup> Commission for Children and Young People. (2021). *Our youth, our way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*. Melbourne, VIC: Author. Retrieved from: <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>

<sup>58</sup> Department of Justice and Community Safety. (2019). *Young people involved with youth justice in 2019*. Author: Melbourne, Vic.

<sup>59</sup> Colvin, E., Gerard, A., & McGrath, A. (2020). Children in care: The criminalisation of children. In P. Birch & L. Sicard (Eds.), *Prisons and community corrections: Critical issues and emerging controversies* (pp. 103 – 115). Routledge Press.

<sup>60</sup> Malvaso, C., Delfabbro, P. (2015). Offending behaviour among young people with complex needs in the Australian out-of-home care system. *Journal of Child and Family Studies*, 24(12), 3561 – 3569.

Malvaso, C., Delfabbro, P., & Day, A. (2017). The child protection and juvenile justice nexus in Australia: A longitudinal examination of the relationship between maltreatment and offending. *Child Abuse & Neglect*, 64, 32-46.

violence and histories of intergenerational trauma.<sup>61</sup> However, these experiences on their own are not enough to explain the correlation between child protection and youth justice involvement.

VACCA stresses that the conditions children face within child protection systems, particularly in out-of-home care and residential care, can make them susceptible to contact with the youth justice system, but it is not an experience of the majority. Evidence demonstrates that for the majority of children with involvement across both systems, child protection involvement preceded contact with youth justice.

A 2020 study by the Sentencing Advisory Council found that 94 per cent of children committed their first offence after the first child protection report and that even amongst children who were first reported to child protection above the age of criminal responsibility, half did not offend until placement in out-of-home care. Furthermore, amongst children who experienced residential care, 55 per cent did not receive their first sentence or diversion until after their first residential care placement.<sup>62</sup> Research has shown that children in residential care are particularly susceptible to criminalisation because of the ways in which behaviours are managed and responded to within these environments. According to McFarlane et al., (2019), “*pre-care trauma will be exacerbated if children’s behaviour is viewed by carers or staff as challenging, and is responded to with police involvement. An over-reliance by poorly trained staff on police invariably results in the escalation of behavioural matters or minor offending that did not warrant this level of response*”.<sup>63</sup>

The Commission for Children and Young People has repeatedly highlighted similar issues within Victoria’s child protection system, and VACCA urges the Commission to look closely at the findings of these reports. For instance, a 2021 inquiry into children who were absent or missing from residential care found that children in these environments are treated differently from other children.<sup>64</sup> Children who go missing or are absent from residential care face serious risks of sexual exploitation, physical violence, self-harm, and drug and alcohol misuse. The Commission notes that when a child suffers harm as a result of going missing from care, it “constitutes a failure of the

<sup>61</sup> Commission for Children and Young People. (2021). *Our youth, our way: Inquiry into the overrepresentation of Aboriginal children and young people in the Victorian youth justice system*. Melbourne, VIC: Author. Retrieved from: <https://ccyp.vic.gov.au/assets/Publications-inquiries/CCYP-OYOW-Final-090621.pdf>

<sup>62</sup> Sentencing Advisory Council. (2020). ‘*Crossover Kids*’: *Vulnerable children in the youth justice system report 2: Children at the intersection of child protection and youth justice across Victoria*. Retrieved from: [https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-03/Crossover\\_Kids\\_Report\\_2.pdf](https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-03/Crossover_Kids_Report_2.pdf)

<sup>63</sup> McFarlane, K., Colvin, E., McGrath, A., & Gerard, A. (2019). ‘Just another policy document?’ Can a protocol end the criminalisation of kids in care? *Alternative Law Journal*, 44(1), 37-42, p. 37-38.

<sup>64</sup> Commission for Children and Young People. (2021). *Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care*. Retrieved from: <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/out-of-sight-systemic-inquiry-into-children-and-young-people-who-are-absent-or-missing-from-residential-care/>

system to protect some of the most vulnerable children and young people in the state.”<sup>65</sup> The presumption commonly held is that children who are living in out-of-home care, including residential care, are safer than in their home environments. However, we know that this is not the case and that children in residential care do not always receive a quality of care that is necessary to keep them safe from abuse, nor is it sufficient to support their cultural, educational, or socio-emotional wellbeing needs.<sup>66</sup> Furthermore, in residential care, behaviours that would not normally be treated as a criminal offence within the home, such as going missing or being absent, are often met with a police intervention.<sup>67</sup>

To live in residential care often means to live with a significant police presence in a number of ways. For example, the police are embedded in care teams for many of the young people VACCA works with, and whilst this can help with proactive planning, it also means that young people are actively being profiled and surveyed. Furthermore, DFFH requires that a missing persons report be lodged with Victoria Police each time a young person is missing from their placement, such risk-averse safety planning means that young people can typically incur numerous warrants per week and need to attend a police station in every instance to have it lifted. The *Framework to Reduce Criminalisation of Young People in Residential Care*, which was developed through a partnership by government departments, community service organisations including VACCA and Victoria Police, is meant to address some of the issues which lead to increased contact with the youth justice system. However, in practice, VACCA practitioners report there is limited compliance with the framework. Whilst the framework includes a “scale up/scale down” approach to police intervention, in VACCA’s experience, once police are activated, they very rarely pull back on their responses. Furthermore, the involvement of police often leads to an escalation in behaviours that then result in more charges.

VACCA is also concerned by the treatment Aboriginal children and young people in residential care experience when in contact with Victoria Police. We find that in many cases responses are disproportionate and extremely punitive. For example, one VACCA practitioner reported cases in which young people are transported to the station for an interview in handcuffs and in a divvy van despite being calm and the carers offering to transport the young person themselves. Young people also regularly present with bruises after being arrested for petty crimes such as shoplifting and have indicated that this because of police abuse. The mistreatment of Aboriginal young

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<sup>65</sup> Ibid, p. 281.

<sup>66</sup> Victorian Auditor General’s Office. (2014). *Residential care services for children*. Retrieved from: <https://www.audit.vic.gov.au/report/residential-care-services-children?section=31171--2-outcomes-for-children>

<sup>67</sup> Commission for Children and Young People. (2021). *Out of sight: Systemic inquiry into children and young people who are absent or missing from residential care*. Retrieved from: <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/out-of-sight-systemic-inquiry-into-children-and-young-people-who-are-absent-or-missing-from-residential-care/>

people by police is exacerbated by a lack of available legal representation, as most of the young people VACCA works with are not represented at the time of arrest/interview and have inconsistent representation at court for many matters.

The government has a sanctioned responsibility for all children and young people entering the youth justice system from out-of-home care and have failed their duty in protecting these children, instead institutionalising them. Aboriginal children and young people are treated as perpetrators, rather than vulnerable individuals who have the same needs for belonging, connection, and stability that children experience within home environments. Further recommendations that relate to diverting Aboriginal children from involvement with the youth justice system are detailed in the section of this submission focused on [criminal justice](#).

**Recommendation 24: That the Yoorrook Justice Commission convene hearings with the signatories of the *Framework to Reduce Criminalisation of Young People in Residential Care* to gather testimony on the treatment of Aboriginal children and young people in residential care who are in contact with Victoria Police, and their compliance with the directives in the framework.**

#### Disconnection from community and culture for First Peoples' children on child protection orders

VACCA is deeply concerned that Aboriginal children involved with child protection continue to experience significant disconnection from community and culture. International law, including the Convention on the Rights of the Child and the United Nations Declaration on the Rights of Indigenous Peoples, recognise that consideration of the collective cultural rights of the child is part of determining a child's best interests.<sup>68</sup> For Aboriginal children, their sense of identity and lifelong social and emotional wellbeing is connected to a "broader communal sense of belonging; ...where they are from and their place in relation to mob, community, land and culture."<sup>69</sup> Culture is an important protective factor for Aboriginal children and young people, and the potential for placement in out-of-home care to sever these connections is thus a significant risk for their immediate and long-term wellbeing.<sup>70</sup>

<sup>68</sup> Committee on the Rights of the Child. (2009). Committee on the Rights of the Child General Comment No. 11 (2009) Indigenous children and their rights under the Convention. Available at [https://www.un.org/esa/socdev/unpfii/documents/GC\\_11\\_indigenous.pdf](https://www.un.org/esa/socdev/unpfii/documents/GC_11_indigenous.pdf)

<sup>69</sup> SNAICC – National Voice for our Children. (2016). Achieving stability for Aboriginal and Torres Strait Islander children in out-of-home care, p. 7. Available at [https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICCAchieving\\_stability-1.pdf](https://www.snaicc.org.au/wp-content/uploads/2016/07/SNAICCAchieving_stability-1.pdf)

<sup>70</sup> 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. Available at <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>

The best way to address the problem of disconnection from community and culture for Aboriginal children on child protection orders is by preventing children from entering out-of-home care in the first instance, through the provision of early help supports. VACCA's specific proposals for improving access to early help supports for Aboriginal families are discussed in the attached Part C - 'Developing an Aboriginal Community Based Early Help, Family Support and Early Intervention System' submission.

The Victorian Government's policy aim is to end this overrepresentation, however despite this commitment, the number of Aboriginal children in out-of-home care continues to grow year on year. At 30 June 2021, Aboriginal children in Victoria were 22 times more likely to be in out-of-home care than non-Aboriginal children.<sup>71</sup> This is the highest rate of overrepresentation in the country. In addition to preventing children from entering out-of-home care, addressing the risk of cultural and familial disconnection requires the Victorian Government to enact legislation, policy and practice that supports reunification of children who are currently in out-of-home care with their families; enables the placement of Aboriginal children with their kin and family; and enhances the involvement of ACCOs in supporting children in out-of-home care to maintain their cultural and familial connections.

All Australian jurisdictions, including Victoria, have committed to full implementation of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).<sup>72</sup> Consisting of five elements, the *Connection* element is meant to guide legislation, policy, and practice as it pertains to strengthening cultural connection for Aboriginal children in out-of-home care. Key strategies for supporting connection include reunification, the development of timely, quality cultural support plans, safeguards in relation to the use of permanent care, and provisions for the delegation of case management, custody, and guardianship to ACCOs. Victoria has made significant strides in implementing the Connection element of the ATSICPP, particularly through its investment in Aboriginal self-determination in Aboriginal child and family welfare. Specific commitments include the expansion of the *Aboriginal Family Preservation and Reunification Response*, ACCO-led cultural planning model, and the transfer of the care and custody of Aboriginal children and young people to ACCOs.

At 30 June 2021, Victoria had the second highest proportion of Aboriginal children reunified in the country, with 32% on short-term orders reunified. This is a slight increase from 2019-20 when

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<sup>71</sup> Productivity Commission. (2022). *Chapter 16: Child Protection, Table 16.A2*. Available at: <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>

<sup>72</sup> Commonwealth of Australia. (2021). *Safe and supported: The National framework for protecting Australia's children 2021 – 2031*. Available at: [https://www.dss.gov.au/sites/default/files/documents/12\\_2021/dess5016-national-framework-protecting-childrenaccessible.pdf](https://www.dss.gov.au/sites/default/files/documents/12_2021/dess5016-national-framework-protecting-childrenaccessible.pdf)



31% if Aboriginal children were reunified.<sup>73</sup> VACCA notes that in the 2020-21 Victorian State Budget, the government announced that the Aboriginal Family Preservation and Reunification Response would be expanded to reach more children and families across the state. We are hopeful that further resourcing to these programs will enable more Aboriginal children to be reunified, thus reducing the number of children on child protection orders who face ongoing, permanent risk of disconnection from community and culture.

Given the serious overrepresentation of Aboriginal children in Victoria's child protection system, it is clear that much more needs to be done to reunify children with their families and to address the trajectory of increasing child removals. VACCA has continually raised concerns about the two year timeframes for reunifications, (currently two and a half years due to the extension of the *COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020*, but this is due to revert in early 2023). Two years for reunification is an arbitrary time period, and we support Victorian Legal Aid's determination that the rigid timeframes may actually prevent family reunifications which is contrary to the intent of the legislation, and more importantly the best interests of children and young people<sup>74</sup>. Given the well established wait times and significant barriers to accessing public housing and rental affordability, AOD support, counselling and so on, the ability of parents to be able to address protective concerns within two years is unreasonable and unjust given the impact this has on reconnection.

VACCA's Aboriginal Children in Aboriginal Care (ACAC) program *Nugel* is a good example of building a service response that supports cultural connection for Aboriginal children involved in the child protection system. *Nugel* is a Wurundjeri word meaning 'belong'. Since launching in 2017, *Nugel* has enabled Aboriginal organisations to take responsibility for Aboriginal and Torres Strait Islander children and young people on Children's Court orders.

*Nugel* aims to create self-determining families, children and young people, and empower Aboriginal and Torres Strait Islander people to oversee and support our kids in care. We advocate for the importance of keeping our children and young people connected to community, culture and family. We aim to keep siblings connected; commit to finding family and community networks; pursue family reunifications where possible; and involve families in decision making. In May 2022, we successfully expanded the *Nugel* program to Gippsland, where we have been authorised for 4 clients. This year we worked with 118 children, including case closures and new

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<sup>73</sup> Australian Institute of Health and Welfare. (2022). *The Aboriginal and Torres Strait Islander Child Placement Principle indicators, Table S2.3b*. Retrieved from: <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data>

<sup>74</sup> Victorian Legal Aid, 'Achieving safe and certain homes for children Recommendations to improve the permanency amendments to the *Children, Youth and Families Act 2005* based on the experience of our clients' October 2020.

authorisations, across the North and Gippsland regions. In this time, statutory involvement has ended for 16 children previously authorised to VACCA Nugal. 11 of these children no longer have statutory involvement and 5 were permanent care orders. Three children have returned to the care of their parents.

ACCOs have the cultural and kinship expertise to support the most vulnerable children and families in ways that are reflective of Aboriginal child rearing practices and customs. This is reflected in the success ACCOs, including VACCA, have had in enabling connection to culture, family and community for children and young people through the ACAC program. An evaluation by Inside Policy conducted in 2019 of *Nugal* reported that “based on the actual reunification rates from 2017-2019, from an indicative sample of 100 children, the reunification rate was higher for VACCA (22%) than for [DFFH] (5%).” The evaluation also revealed a significant number of children and young people had increased contact with their parents and the majority saw an increase in their connection to culture and community.

### Nugal Case Study

[Redacted content]

Through the ACAC program and the case management of Aboriginal children in care, ACCOs are supporting increased connection to family, community, culture and Country. *Wungurilwil Gaggapduir* committed the Victorian Government and mainstream community service organisations to 100% of Aboriginal children in out-of-home care being under the care of an ACCO by July 2021. This commitment continues to progress, albeit slowly. As at 31 July 2022, 48% of Aboriginal children on a contractible order were case managed by an ACCO – this figure has remained constant over the 12 months to July 2022. There were 229 Aboriginal children authorised, or in pre-authorisation phase, to an ACCO under the ACAC program at 31 July 2022.

Victoria's rigid two-year timeframe for reunifying children with their families, which was passed through the *Children, Youth and Families (Permanent Care and Other Matters) Act 2014 (Vic)*, continues to be a concern for VACCA. The purpose of these amendments is to promote the use of permanent care orders for children in out-of-home care, and we do not support the current operation of these orders because they are in form and function akin to adoption – it permanently transfers guardianship of a child to a nominated person until the child turns 18. The overrepresentation of Aboriginal children in out-of-home care means they disproportionately bear the impacts of permanency planning trends. At 30 June 2021, Victoria had the highest rate of Aboriginal children on permanent care orders, at 16.5 per 1,000 children, which is 13 times the rate of non-Aboriginal children.<sup>75</sup> Furthermore, as we discussed in the section on implementation of the [Bringing Them Home report](#), Aboriginal children in Victoria continue to be placed for adoption by the Secretary of DFFH without any oversight or involvement of ACCOs, Traditional Owners, or other parties with the appropriate cultural authority for the child. VACCA is extremely concerned by this practice.

The ATSI CPP stipulates that permanent care orders, like adoptions, should be a last resort. This is to ensure that the atrocities and ongoing impacts of the Stolen Generations are not repeated, yet there are generally few safeguards to protect a child's cultural rights. Permanent care orders while premised on providing stability, in effect cut off children from their families, community, culture and Country, present a serious risk to children's wellbeing. This is because they promote a narrow construct of attachment theory, which pursues a singular attachment for a child to their carer and does not recognise the importance of kinship relationships and cultural identity to a child's lifelong social and emotional wellbeing. In November 2020, Victorian Legal Aid (VLA) released its review into the impact of the permanency amendments on its clients. The VLA review found that, rather than enabling stability for children, rigid timeframes are hindering efforts at reunification and "may be unfairly penalising parents for circumstances outside their control." Additionally, the review raised concerns that the reduced level of judicial oversight arising from the amendments

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<sup>75</sup> Australian Institute of Health and Welfare. (2022). *Child Protection Australia 2020-21, Table T3*. Available at: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

may lead to ‘outcomes that are not always in the best interests of the child and inadvertently prolonging court proceedings’.<sup>76</sup> Victorian Legal Aid recommended that reunification timeframes be amended to allow the Children’s Court to make decisions in the best interests of the child and that court oversight be increased, including to allow the court to make conditions on any protection orders and name a placement on an order.<sup>77</sup>

Cultural support planning is another integral strategy for ensuring Aboriginal children in out-of-home care remain connected to their culture, family, community, and Country. Whilst the CYFA 2005 legislates that Aboriginal children in out-of-home care must have a cultural support plan, reviews have found there is minimal compliance with these directives. According to DFFH data, at 31 July 2022, only 64% of Aboriginal children had a cultural plan. Of the children placed under ACAC, 88% of children had a cultural plan. Amongst children who have a plan, quality remains an issue because there is often a lack of resourcing to implement the activities within the plan. One example of this is VACCA’s *Return to Country* program which facilitates Aboriginal children in care in Victoria to visit their traditional Country. This enables the young person to full immerse into culture and learn about their ancestral connections. Unfortunately, this program does not receive departmental funding and is required to seek out philanthropic funding.

VACCA notes that the Victorian Government has worked in partnership with ACCOs to address challenges in development and implementation of quality cultural support plans for Aboriginal children. Beginning in early 2021, the Department established a trial for cultural planning at VACCA, Goolum, and Wathaurong to enable ACCO cultural planning senior advisers to develop the cultural components of cultural plans. Additionally, a concurrent trial - the One Cultural Plan - was underway in the Wimmera Southwest Area. Whilst an important step, proportionate resourcing is needed to support children’s participation in programs and activities that strengthen their connections to family, culture and community. In addition, the *Placement* element seeks to ensure that Aboriginal children in out-of-home care maintain the strongest connection possible to their family, community, culture and Country. The ATSI CPP placement hierarchy is legislated under section 13 of CYFA 2005, and requires placement of an Aboriginal children to be prioritised in the following order and in consultation with an Aboriginal agency:

- 1) With Aboriginal extended family or relatives, and where this is not possible other extended family or relatives

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<sup>76</sup> Victorian Legal Aid (2020) *Achieving safe and certain homes for children: Recommendations to improve the permanency amendments to the Children, Youth and Families Act 2005 based on the experience of our clients*, p. 3.

Available

at: [www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla\\_report\\_child\\_protection\\_permanency\\_report\\_pdf.pdf](http://www.legalaid.vic.gov.au/sites/www.legalaid.vic.gov.au/files/vla_report_child_protection_permanency_report_pdf.pdf)

<sup>77</sup> Ibid.

- 2) With an Aboriginal family from the local community and in close proximity to child's natural family
- 3) An Aboriginal family from another Aboriginal community
- 4) As a last resort, a non-Aboriginal family living in close proximity to the child's natural family

At 30 June 2021, 39.6% of Aboriginal children in care were living with their Aboriginal kin and family, whilst 39.3% were placed with non-Indigenous relatives or kin, and a further 1.4% were living with other Indigenous caregivers.<sup>78</sup> Whilst, the placement of Aboriginal children with their Aboriginal kin and family is on an upward trajectory, VACCA notes that there are still significant barriers to enabling kinship placements. A 2022 report by the Victorian Auditor General's Office (VAGO) found that kinship care is under resourced, and placements are not being actively assessed to ensure the needs of children and young people are met. According to the report, 96% of kinship carers received the lowest level of care allowance compared to 32% of foster carers.<sup>79</sup> Similarly, a survey conducted by VACCA with its carers in 2021 found one in ten had accessed emergency relief. Furthermore, the target of assessing what supports carers required to provide a safe, secure and nurturing home for a child within 6 weeks of placement was only met in 2.2% of cases reviewed by the VAGO.<sup>80</sup>

In relation to placement, VACCA also believes that there needs to be more emphasis on keeping sibling groups together. According to DFFH data at 31 July 2022, 57% of Aboriginal children were placed with all siblings, 17% were placed with some, and 27% were placed with none of their siblings who are in care. This is an improvement from 2016, when the CCYP found that over 40% of Aboriginal children in care were separated from their siblings, however the number remains too high.<sup>81</sup> There needs to be stronger practical and therapeutic supports for carers, particularly kinship carers, to keep large sibling groups together, as well as recognition within child protection practice of the importance that sibling placements have for supporting children to maintain their kinship ties.

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<sup>78</sup> Australian Institute of Health and Welfare. (2022). *The Aboriginal and Torres Strait Islander Child Placement Principle indicators, Table S1.1*. Retrieved from: <https://www.aihw.gov.au/reports/child-protection/atsicpp-indicators/data>

<sup>79</sup> Victorian Auditor-General's Office. (2022). *Kinship care June 2022 Independent assurance report to Parliament 2021-22*, p. 1. Available at: [https://www.audit.vic.gov.au/sites/default/files/2022-10/20220622\\_Kinship-Care.pdf](https://www.audit.vic.gov.au/sites/default/files/2022-10/20220622_Kinship-Care.pdf)

<sup>80</sup> Ibid.

<sup>81</sup> Commission for Children and Young People. (2016). *Always was, always will be Koori children: Systemic inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria*. Available at:

**Recommendation 25:** That the Yoorrook Justice Commission advocate for the Victorian Government to amend the *Children, Youth and Families Act 2005* to require that DFFH receive the approval of an Aboriginal agency, and the relevant Traditional Owners Corporation(s), or another entity with cultural authority for the child prior to placing an Aboriginal child for adoption.

**Recommendation 26:** That the Yoorrook Justice Commission call on the government to increase the Kinship Carer allowance to match the Foster Carer allowance; and that both allowances are increased in line with the true cost of providing a safe and nurturing environment to raise children and young people.

**Recommendation 27:** That the Yoorrook Justice Commission call on the Victorian Government to improve funding and resourcing for cultural support plans, including directly to ACCOs to implement the activities within the plans.

**Recommendation 28:** That the Yoorrook Justice Commission call on DFFH for greater priority is given to keeping sibling groups together, both in decision-making about placements and in the allocation of resources.

### Impact of family violence, homelessness and housing insecurity of caregivers as drivers for involvement with systems and rates of child removal

As detailed earlier in our discussion on the historical injustices, a central strategy of settler-colonialism was to actively disrupt and break-up Aboriginal families in an effort to eradicate Aboriginal peoples and their inherent sovereignty. Despite systemic attempts to rid the continent of Aboriginal peoples, their cultures, and connections to Country, we know that Aboriginal communities have maintained these linkages and that majority of children and families are doing well and thriving. However, the processes of invasion, displacement from traditional lands, separation from family and cultural genocide all have a continuing impact, and interact with present-day injustices in the form of significant systemic and social disadvantage and discrimination.

The overrepresentation of Aboriginal children across the child protection system is the result of these structural injustices experienced by Aboriginal families within Victorian society. For some, these structural injustices manifest in experiences of poor social and emotional wellbeing, misuse

of AOD, family violence and high rates of homelessness, all of which are identified as risk factors for child protection involvement.<sup>82</sup>

Successive government policies around health, child and family welfare, justice, and housing have systematically failed to improve the wellbeing and outcomes for Aboriginal peoples, and contribute to Victoria's ongoing escalation in Aboriginal children and young people being removed from their families.

### Family violence

Aboriginal peoples and communities continue to be impacted disproportionately by family violence. It is difficult to accurately determine the prevalence of family violence across society due to underreporting, culturally inappropriate assessment tools, the poor identification of Aboriginal status at the point of police involvement including misidentification of the affected family member, as well as a fear of involving state authorities, such as criminal justice and child protection systems.<sup>83</sup> Due to these factors, some studies have estimated that family violence against Aboriginal women is underreported by as much as 90%.<sup>84</sup>

The Victorian Health Population Survey found that in 2017, Aboriginal women were 2.5 times more likely to report experiencing family violence than their non-Aboriginal peers.<sup>85</sup> It is important to note, however, that Aboriginal respondents were twice as likely than non-Aboriginal participants to refuse to answer questions about family violence, indicating a potential underreporting in these figures as well. In 2021, there were 4,036 Aboriginal women and children who were identified as an 'affected family member' during family incidents attended by the Victorian Police.<sup>86</sup> Specifically Aboriginal women are 25 times more likely to be injured or killed as a result of family violence than non-Aboriginal women.<sup>87</sup> This leads Aboriginal children to be

<sup>82</sup> O'Donnell, M., Maclean, M., Sims, S., Brownell, M., Ekuma, O., & Gilbert, R., (2016). Entering out-of-home care during childhood: Cumulative incidence study in Canada and Australia. *Child Abuse and Neglect*, 59, 78-87.

<sup>83</sup> Australian Institute of Family Studies. (2016). *Family violence prevention programs in Indigenous communities*. Available at: <https://www.aihw.gov.au/getmedia/c0e5bdde-e9c4-4a1f-808e-256191835cde/ctgc-rs37.Download%20PDF.aspx>

<sup>84</sup> Willis, M. (2011). *Non-disclosure of family violence in Australian Indigenous communities*. Canberra, ACT: Australian Institute of Criminology. Available at: <https://www.aic.gov.au/publications/tandi/tandi405>

<sup>85</sup> Victorian Agency for Health Information. (2020). *Family violence in Victoria: Findings from the Victorian Population Health Survey*. Melbourne, VIC: Author.

<sup>86</sup> Crime Statistics Agency. (2021). *Family incidents by Aboriginal and Torres Strait Islander status*. Available at: <https://www.crimestatistics.vic.gov.au/crime-statistics/latest-aboriginal-crime-data/family-incidents-by-aboriginal-and-torres-strait>

<sup>87</sup> State of Victoria. (2017). *Balit Marrup: Aboriginal social and emotional wellbeing framework 2017-2027*. Available at: <https://www.dhhs.vic.gov.au/sites/default/files/documents/201710/Balit-Murrup-Aboriginal-social-and-emotional-wellbeing-framework-2017-2027.pdf>

vulnerable to the indirect and direct impacts of family violence, including the risk of child protection involvement and potential removal.

A 2016 inquiry by the Commission for Children and Young People *'Always was, Always will be Aboriginal children'* involved a case file review of the almost 1,000 Aboriginal children in care at that time. The inquiry found that family violence was an identified drive of child protection involvement and entry into out-of-home care for 89% of children.<sup>88</sup> From VACCA's experience, police responses to family violence indicate a level of misunderstanding about what family violence looks like for Aboriginal women and their children and often we are seeing Aboriginal women labelled as perpetrators than affected family member. We believe this directly attributes to the number of Aboriginal children in out-of-home care because high numbers of Aboriginal women are in Victorian prisons, where the majority are separated from their children, rather than receiving the material and therapeutic supports that victim-survivors have a right to.

In addition, we know that the child protection system often penalises women who are found to have been in contact with their partner who uses violence, by suggesting that women have failed to keep their children safe. However, this places the onus of responsibility on the victim-survivor rather than the person using violence, and ignores the challenges women face in fleeing, including the lack of accommodation, culturally-safe supports, and the potential for isolation from family and community.<sup>89</sup>

Access to Aboriginal-specific, culturally appropriate, and wrap-around responses are essential to support Aboriginal women and children to come forward and prevent child removal because ACCO-led services have a strong understanding of the dynamics of family violence in the Aboriginal community. We operate from a trauma informed understanding that recognises the ongoing consequences of colonisation, associated trauma for Aboriginal people and understanding that the intersection of Aboriginality and gender creates additional risks of family violence for women and children.

As the largest provider of Aboriginal family violence services in the state, we cover all of metropolitan Melbourne, Inner Gippsland and Ovens Murray. Our family violence support services

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<sup>88</sup> Commission for Children and Young People. (2016). *Always was, always will be Koori children: Investigations into the circumstance of Aboriginal children and young people in out-of-home care in Victoria*. Available at: <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/always-was-always-will-be-koori-children/#:~:text=Always%20was%20always%20will%20be%20Koori%20children%20is%20the%20report,of%2Dhome%20care%20in%20Victoria>.

<sup>89</sup> Langton, M., Smith, K., Eastman, T., O'Neill, L., Cheesman, E., & Rose, M. (2020). *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women (ANROWS research report, 25/2020)*. Available at: <https://www.anrows.org.au/publication/improving-family-violence-legal-and-support-services-for-aboriginal-and-torres-strait-islander-women/>



help Aboriginal, men, women, adolescents, and children to heal and move forward with their lives, as well as advocate for change through a trauma informed, therapeutic approach that is culturally safe.

Part of VACCA's approach to therapeutic supports is life story work through art therapy. We work with the family as a whole in a holistic, trauma informed and therapeutic models with developmentally appropriate supports and interventions for children and young people affected by family violence. The pictures below reflect some of the children's reflections as part of these sessions and show the emotional regulation work developed through art therapy.

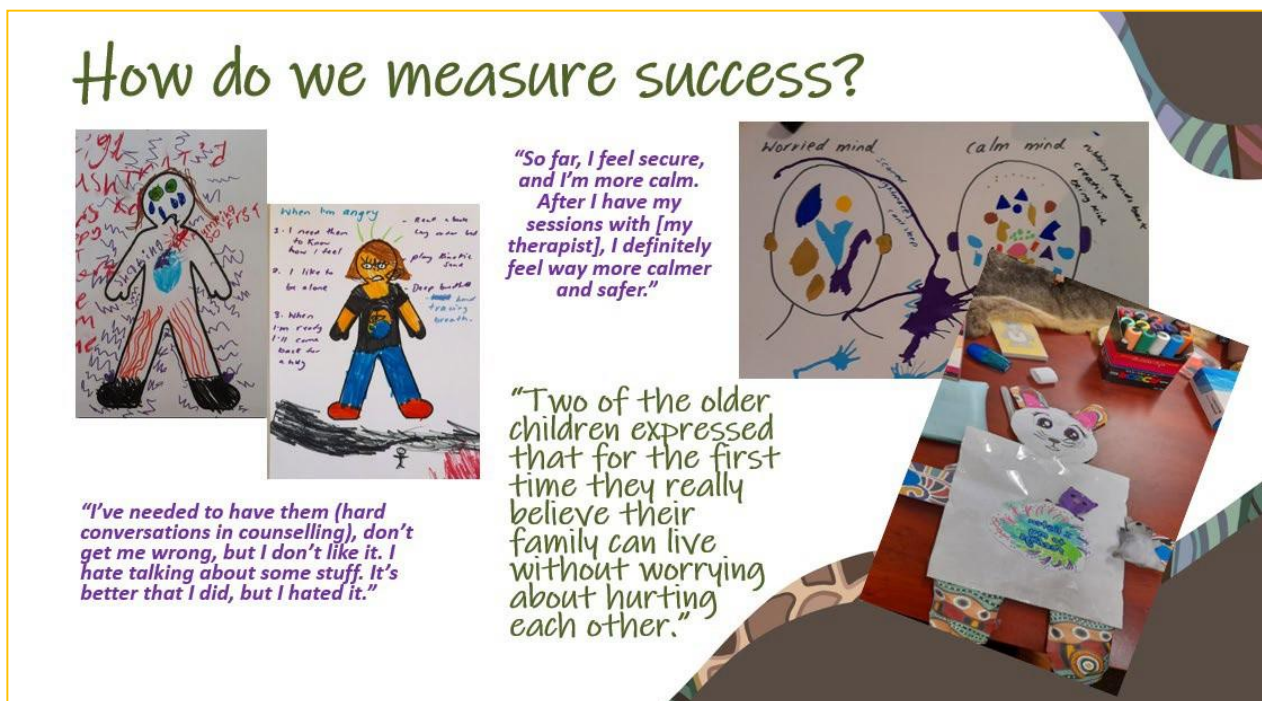


Figure 1: VACCA Presentation at Dhelk Dja Forum October 2022

Disclosure of family violence remains particularly challenging for Aboriginal women as many are hesitant of utilising mainstream services due to a well-founded fear that their children may be removed. The families VACCA works with have also reported poor experiences in mainstream crisis accommodation suggesting the need for more culturally safe programs and refuges such as our Orana Gunyah program.

When families are unable to access the supports they need to address immediate safety concerns, promote accountability and behaviour change amongst men who use violence, and enable healing, there are significant risks that violence will escalate and result in the removal of children. In many cases VACCA believes these removals could be prevented if women and children had access to the supports they needed.

Despite the significant level of need for family violence services within the Aboriginal community in Victoria, under resourcing and a lack of ongoing investment in infrastructure and service delivery is a chronic and structural problem. This under resourcing can be directly linked to the process of settler-colonialism wherein mainstream CSOs accrued unparalleled access to infrastructure, whether it be a bequeath from a church or a benefactor, through the dispossession of land from Aboriginal peoples. This has resulted in systemic advantage amongst mainstream CSOs across all sectors and is an injustice which must be acknowledged and substantively addressed by governments and CSOs through the transfer of resources.

Furthermore, this under resourcing of the ACCO sector occurs despite the fact that the Aboriginal population is growing at a significantly faster rate than the non-Aboriginal population. Social Ventures Australia (SVA) was contracted to prepare a report on demand across the ACCO sector which found that the Aboriginal population is projected to rise by 48% by 2028.<sup>90</sup> Demand for family violence services is projected to increase significantly over the next decade, at current growth rates, we anticipate that over 6,300 Aboriginal people (mainly women) will require family violence supports by 2028.<sup>91</sup>

***“Too long have we accepted that it’s ‘normal’ for others to dictate what’s right for Aboriginal families, women and children- as unfortunately it has been less. Less funding, less resources, less government action. ACCOs have been leading community change for decades, and its investment in this knowledge and expertise that is needed if we are going to make long lasting, generational change”-***

VACCA CEO Adjunct Professor Muriel Bamblett AO.

The effects of this were clearly demonstrated during the COVID-19 pandemic when an increased demand on VACCA’s family violence services created new and unprecedented challenges. Although VACCA is one of the largest Aboriginal specific family violence providers in Victoria, we faced a significant increase in demand and complexity of client needs and our resources were stretched. VACCA was successful in various First Round Dhelk Dja Funds, many of which were prevention and early intervention programs, however these were all short term funding, and anticipated to end in mid-2023, which will have a significant impact on addressing family violence in a sustainable and enduring way. From our experience, there is an ongoing lack of understanding of the ACCO service sector role, capacity and value in responding to and working with Aboriginal families who are at-risk of experiencing family violence.

<sup>90</sup> SVA. (2019). *Demand for services for Aboriginal and Torres Strait Islander peoples in Victoria*. Unpublished report prepared for the Aboriginal Executive Council.

<sup>91</sup> Ibid.

## Homelessness and housing insecurity

Homelessness and housing insecurity amongst Aboriginal families is an issue which leads to child protection involvement. It can lead to the removal of child from their families. Homelessness and housing insecurity are also a barrier for Aboriginal kin and family who are looking to take on the care of children who have been removed. Research has shown that homelessness and housing insecurity can play direct and indirect roles in increasing the risk of child protection involvement – substandard housing conditions are sometimes seen to pose a risk to a child’s safety, the stress associated with precarious shelter can compromise the capacity of parents to care for their children, and families in the temporary accommodation system are often subject to increased surveillance and scrutiny.<sup>92</sup> As we discussed in the section above, Aboriginal women and children experiencing family violence are particularly at risk of experiencing homelessness and its impacts.

Aboriginal people are 13 times more likely than non-Aboriginal people to access homelessness services.<sup>93</sup> In 2020-21, 17% of Aboriginal people in Victoria sought homelessness support, a figure which is unchanged from the previous year. In addition, as illustrated in the *Mana-na worn-tyeen maar-takoort: the Victorian Aboriginal Housing and Homelessness Framework’s* annual report card, this “data clearly indicates that the service systems are not adequately supporting the Victorian Aboriginal community and that access to appropriate housing with integrated support options is a priority.”<sup>94</sup> It must be noted that these figures likely under-represent the actual number of people experiencing homelessness as it does not include those staying with kin, transient or who are sleeping rough but did not access homeless services.

Risk factors, such as leaving care, substance misuse, incarceration, use of crisis accommodation and family all contribute to rates of homelessness. Whilst these are often identified as individual risk factors, they are in fact reflective of systematic attempts to create a cycle of disadvantage and poverty amongst Aboriginal peoples since invasion. Governmental legislation and policy deliberately excluded Aboriginal people from the economy, took land, and forcibly relocated communities – all of these structural factors have contributed to current homelessness and housing insecurity.<sup>95</sup> Adequate housing is a human right, as detailed in Article 11 of the International Covenant on Economic, Social and Cultural Rights, and the overrepresentation of

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<sup>92</sup> Dworsky, A. (2014). *Families at the nexus of housing and child welfare*. Available at: <http://www.childwelfaresparc.org/wp-content/uploads/2014/12/Families-at-the-Nexus-of-Housing-and-Child-Welfare.pdf>

<sup>93</sup> Victorian Aboriginal Housing and Homelessness Framework. (2022). 2022 Annual Report Card, p. 13. Available at: [https://ahvic.org.au/cms\\_uploads/docs/vahhf-annual-report-card-2022-final.pdf](https://ahvic.org.au/cms_uploads/docs/vahhf-annual-report-card-2022-final.pdf)

<sup>94</sup> *Ibid*, p. 26

<sup>95</sup> Dodson, M. (2010). The dispossession of Indigenous people: And its consequences. *Parity*, 23(9), 6-7.

Aboriginal peoples in rates of homelessness mean they are missing out on this right more than any other group in Victoria.

Poverty, in particular, plays a detrimental role in the high rates of homelessness amongst Aboriginal families as well as in the removal of young people into out-of-home care. Research has found several circumstances associated with poverty are directly correlated with homelessness.<sup>96</sup> Circumstances such as limited opportunities for education, disability, financial stress, debt, reliance on public housing, social exclusion and living in sub-standard accommodation all make sustaining stable housing extremely difficult. These experiences flow through generations of family, creating an intergenerational impact and a cycle of homelessness amongst Aboriginal families and communities.<sup>97</sup>

Although family poverty does not immediately warrant involvement from child protection or the removal of children, studies have identified poverty to be a key indicator for involvement from child protection.<sup>98</sup> Whilst living in poverty contributes to the likelihood of young people experiencing adverse events such as family violence, maternal distress and reduced parental responsiveness, a child's access to learning opportunities and their quality of care are all factors correlated with poverty and could be reduced through support to overcome disadvantage.<sup>99</sup> This is extremely problematic, as after being removed from their families and placed in out-of-home care, young people become highly vulnerable to homelessness when leaving care. Without provision of affordable housing for vulnerable Aboriginal families this damaging cycle will continue.

**Recommendation 29: That the Yoorrook Justice Commission call upon the Victorian Government to prioritise proportional investment in ACCOs to deliver and expand Aboriginal-led, delivered and evaluated early intervention, prevention, and family preservation and reunification programs to address the risk factors that contribute to the involvement of Aboriginal families with the child protection system.**

<sup>96</sup> McCaughey, J. (1992). *Where now? Homeless families in the 1990's* (Policy Background Paper No. 8). Australian Institute of Family Studies. Melbourne; Homelessness Australia. (2016). *Homelessness and poverty*. Homelessness Australia

<sup>97</sup> Tilbury, C. (2015). Aboriginal and Torres Strait Islander families in Australia: Poverty and child welfare involvement. In *Theoretical and empirical insights into child and family poverty* (pp. 273-284). Springer, Cham.

Walter, M. (2016). Social exclusion/inclusion for urban Aboriginal and Torres Strait Islander people. *Social Inclusion*, 4(1), 68-76.

<sup>98</sup> Fong, K. (2017). Child welfare involvement and contexts of poverty: The role of parental adversities, social networks, and social services. *Children and Youth Services Review*, 72, 5-13.

<sup>99</sup> Blackstock, C., & Trocmé, N. (2005). Community based child welfare for Aboriginal children. *Handbook for working with children and youth: Pathways to resilience across cultures and contexts*, 105-120.

**Recommendation 30: That the Yoorrook Justice Commission call upon the Victorian Government to expand the availability of Aboriginal led transitional and crisis accommodation and support services for Aboriginal women and children experiencing family violence, including facilities that can support Aboriginal women presenting with AOD issues.**

### Redress and Restorative Practices for Aboriginal community members who have suffered abuse while in care

VACCA is committed to providing redress to anyone who experienced abuse as a child whilst in VACCA's care. We believe that all children have a right to feel and be safe and to live in an environment that is free from abuse, neglect and violence. We also believe that any abuse suffered by children while in the care of VACCA is totally unacceptable. We acknowledge the harm done to people who have experienced institutional child sexual abuse. VACCA has a responsibility to respond to all claims in a way that is trauma and culturally informed, with the intent of promoting healing for individual, family and community impacted.

We have been working to build restorative practices into our approaches to claims made under both the National Redress Scheme and any civil litigation claims. Unfortunately, we are finding that despite our intent, the systems within which we must respond are inadequate, traumatising, time consuming, and limited in their capacity to provide opportunities for healing. The civil litigation process can be retraumatising, even when abuse is recognised, as the defendants seek to minimise liability by heavily relying on racially biased predictions on an individual's capacity to engage in society, with limited understanding of trauma and abuse. This is all at the expense of individuals who were powerless as children experiencing abuse. We are committed to improving the redress we can offer, but also to ensuring that we as an organisation learn from the past and use these experiences to prevent any future abuse.

VACCA also seeks to raise to the Commission's attention the impact of language and low expectations, all detailed in departmental files that speak to a systemic issue of racial bias and discrimination that permeates and is insidious in its impact on Aboriginal children and young people receiving the support and justice they deserve.

We also note that there was a lack of professional understanding on the impact of trauma and abuse. VACCA's files speak to this as well: behaviours of the children in our care are not identified as resulting from past trauma and abuse, rather to them being difficult or challenging, which meant that we weren't able to support safe and nurturing placements.

### Redress case study 1 - 'Casey'

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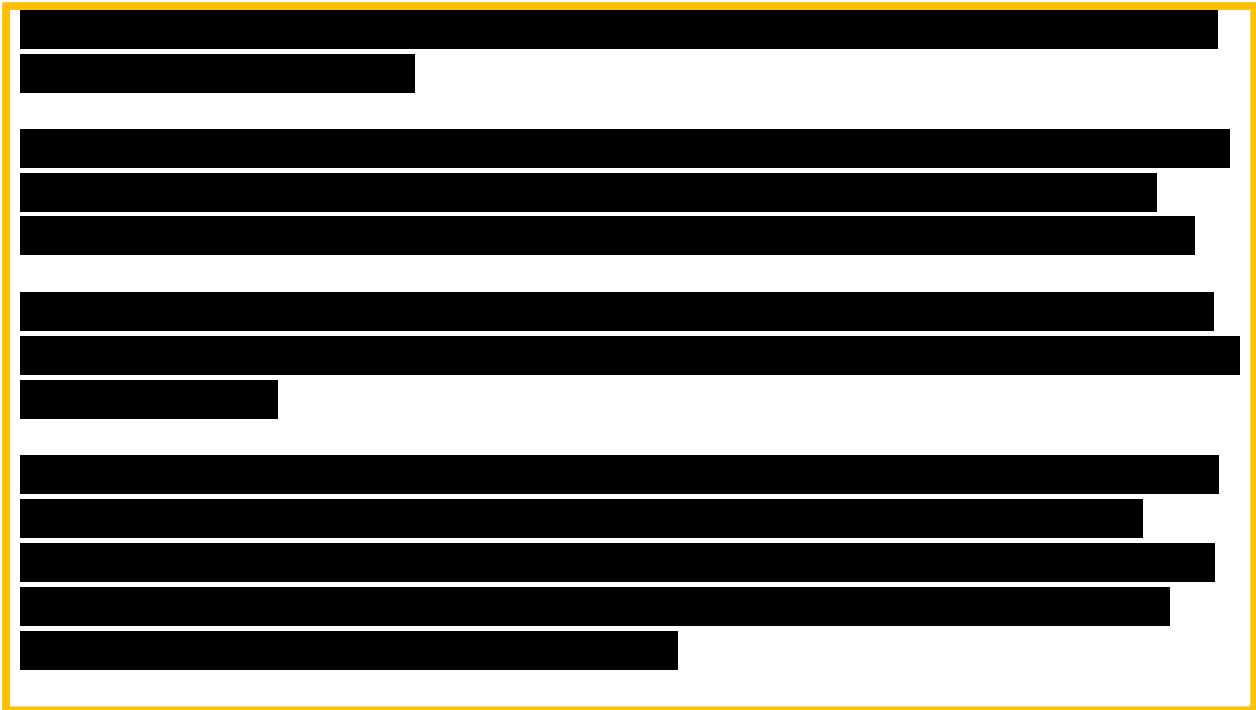
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**Redress case study 2 – Alicia**  
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Both these case studies highlight a disruptive, traumatic, burdensome and lengthy process to receive redress through civil litigation.

Whilst VACCA is also a participating institution in the National Redress Scheme we have had very limited applications, and no successful claims have sought to receive an apology or acknowledgment from VACCA, as part of a restorative process. The data we have received from the National Redress Scheme speaks to Aboriginal survivors of institutional abuse having experienced the most significant forms of sexual abuse, and yet the majority do not take up the offer of an apology. This speaks to a scheme that is not meeting its intent given the Direct Personal Response as a means for “meaningful recognition of the institution’s responsibility by way of a statement of apology, acknowledgement or regret”.<sup>100</sup>

Victoria has seen two new redress schemes announced in the past two years, and while we welcome this, we note that there is significant complexity around eligibility, application processes and evidence thresholds that we would like the opportunity to raise with the Commission about this when they are considering restorative approaches to redress as part of the Commissions intent.

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<sup>100</sup> National Redress Scheme for Institutional Child Sexual Abuse Act 2018 (Vic), s56(1).

We understand that the Commission will be considering through this truth telling process how redress can be sought. We are interested to contribute to a discussion on how the current redress systems available at both a state and federal level are functioning, their limitations, complexity and need for case management support to engage with and our concerns around access and limited restorative applications, so as to inform an understand about potential redress options available.

VACCA provides support to Stolen Generations through Link-Up Victoria, as well as survivors of institutional sexual abuse, through our Redress Support Service Ngarra Jarra Noun, which unfortunately we have been defunded for as of the end of this year. We therefore feel well placed to help inform a restorative approach to Yoorrook's intent and would welcome the opportunity to meet with the Commission in this regard.

**Recommendation 31: That the Yoorrook Justice Commission call on the Victorian Government to fund ACCOs to engage in consultation process around redress and reparations and support survivors and Aboriginal Victorians to apply for these schemes.**

**Recommendation 32: That the Yoorrook Justice Commission call on the Victorian Government to implement mandatory and ongoing training for all child protection staff to identify and respond to trauma, abuse and sexualised behaviours to minimise future harm to children.**

## Early Help

### Defining Early Help

The vision of VACCA's approach to early help encompasses the spectrum from prevention (primary and secondary prevention) to early intervention. Our aim aligns broadly with DFFH's Roadmap to Reform and it's Reform Implementation Management Advisory Group (RIMAG) Early help working group definition however we do have caveats that we will outline in this report.

The RIMAG Early Help Working Group definition states that:

Early Help is described as providing the right services, 'early in need.' Early Help with Aboriginal children and families is self determined and safe. It recognises the ongoing impacts of colonisation on the needs of Aboriginal children and families. Aboriginal led Early Help can facilitate resilience and healing through connection to culture and community.

[More broadly], Early Help with children, young people and families in cohorts identified as 'at risk' may offer targeted assistance at key times, developmental milestones, or life transitions when problems might emerge or increase, without the right support for specific needs. It can help to prevent or disrupt cycles of life long or intergenerational

disadvantage by supporting foundations for wellbeing and resilience. This can relate to knowledge, skills, practical assistance, relief, therapeutic care, and social and community connections.

Early Help can also address critical 'early in life' needs of infants, children and families during pregnancy and early years through health promotive and early remedial care. Early Help does not exclude people with previous contact with statutory or acute services. Early Help tailors to the unique perspectives and circumstances of children, young people, adults, and families needing support.

We believe that it is important to define the prevention component of early help more clearly. We also believe the early intervention part to be more self-explanatory.

While the definition used by Government is broadly used, for the purpose of this submission, the definition is essential as it determines funding, or in the case of ACCOs the lack of funding.

VACCA adapt the above definition to the context of what works specifically for Aboriginal children, parents, carers and families with;

- a focus on cultural safety and cultural strengthening,
- healing, holistic approaches,
- flexible and long-term funding,
- Aboriginal-led design, implementation,
- governance that focuses on self-determination and voice, and
- Aboriginal ways of knowing, being and doing building an Aboriginal evidence base.

It is important to point out that the definition of early help often is confused for help in the early years as is evidenced by funding streams focussing solely on parenting supports and playgroup type services; and sector understanding of where funding is allocated. VACCA contends that this must be expanded to include early help across the lifespan; and the definition strengthened to ensure that early help is available for all ages and stages cohorts and known transition periods and stressors that place families at greater risk of family breakdown and contact with statutory systems.

For VACCA, prevention includes stopping children from coming into contact with statutory systems (primary prevention) and to strengthen families at risk of child removal (secondary prevention and early intervention elements). It also requires a social and cultural determinants of health lens with a focus on improving the health, development and social and emotional wellbeing of Aboriginal children and young people and their parents/carers and families. We also take a life course approach that we will also expand later in this report.

There cannot be a one size fits all approach to early help. Aboriginal people are different, which is evidenced by our enduring history of dispossession, denial of culture and Country, entrenched systemic racism in universal services and statutory systems, chronic and deliberate underfunding in early help for more than a decade, and the lack of Aboriginal

shared decision and agreement making.

DFFH are currently working with the sector including Aboriginal partners to design a new Early help response and definition. VACCA has argued that drafters must be cognisant of and respectful to the full complement of Aboriginal knowledge, skills and experience and our culturally embedded approach to practice for all children, young people and families, regardless of where they find themselves on the early help continuum.

We also argue that any continuation of the prioritisation of the dominant discourse of the Euro-Western child and family welfare early help models by government means that government accepts that they are willingly complicit in continued marginalisation of Aboriginal people in Victoria. We unpack the deficits of the so called “evidence based programs” and how these programs are not suitable in future parts of this report.

While funding has been designed to limit Aboriginal led solutions and outcomes, our approach to early help does not.

#### Cultural support Plans

In 199 VACCA started writing basic cultural support plans for children we cared for. Then in 2002 VACCA worked with the then Child protection and Juvenile Justice Branch to start the process of formalising measures to promote and strengthen the connectedness of Aboriginal children in Out of Home Care. Formal Cultural Support Plans for Aboriginal children in care were created.

In the 2005 Child Youth and Families Act, cultural support plans for each Aboriginal child placed in out-of-home care subject to a guardianship order was legislated. Specifically in Sections 10, 176, 283, 287 & 323. Compliance, content and quality was not consistent across the State and a review of the CSP processes and documentation was undertaken in 2008.

The Commission for Children and Young People in 2015 recommended that cultural support plans must at a minimum include:

- The child’s family genogram;
- A plan for the child’s Return to Country;
- Identify a suitable mentor who will enable the child’s access to culture and lead to real experiences and cultural connections; and
- Opportunities to participate in cultural programs.

As a result in that year (2015) further amendments to the CYFA (Child, youth & families act) were passed to strengthen permanency of care for children. These amendments included changes to case planning and cultural planning for Aboriginal children. A new model of cultural planning was commissioned to and included:

- Senior Advisors-Aboriginal Cultural Planning working within 14 ACCO’s to assist in the development, implementation and review of cultural plans
- A state-wide coordinator

- The development of a cultural online information portal – VACCA’s Deadly story
- A .5 portal administrator
- Brokerage funding and
- A new template

While we now have Statewide metrics and reporting guidelines the purpose and content of cultural support plans are the same as when they were created back in 1999. BUT the number of Aboriginal Children in Out of Home care continues to increase in Victoria and your support plans are more important than ever. There are also some evolving challenges

Over the 2020-2022 period VACCA’s CEO signed off on over 1000 cultural support plans for Aboriginal children in the metropolitan Melbourne area alone. This does not include the plans that are developed by our staff in the Ovens Murray and Inner Gippsland. Due to a funding anomaly, VACCA must seek approval from a competing ACCO to endorse their children’s plans which creates significant double handling and unnecessary time lags to the development and approval process.

Cultural support plans and their impact will be presented in future submissions and discussions with the Commission.

### Genograms

Genograms can be easy or they can be very hard to unpack the truth for that child. In the past when we did a child’s genogram we usually only needed Facebook or 3 generations to be able to establish concrete Aboriginal connections. What we are seeing now is a requirement to go back further to 5 or 6 generations. This is because we are still bringing Stolen Generations home and sealed adoptions usually where a grandparent is deceased. We also have difficulties knowing so many records were destroyed by church’s and religious institutions in the lead up to the Royal Commission into historical institutional sexual abuse.

As VACCA is the contracted family finding service for Aboriginal children in Victoria we do have access to NAA, State records, Koorie Heritage Trust and Ancestry tools. We also have a MoU with Births Deaths and Marriages in Victoria which is very helpful. However with the explosion of ancestry tools available on the market, we have seen some white washing of records, of families we know are Aboriginal but as family members upload their own “research” and documents.

### Confirmation of Aboriginality

Historically and currently, so many Aboriginal children in out of home care and in VACCA’s care have Aboriginal ancestry from interstate. As we know from the historical removals we have many children in care that are the descendants of Stolen Generations who were stolen from the Northern Territory, Queensland and NSW. We know of the stories of Drummond Street and others who offered children to go on camp interstate only to never return home.

More recently we have seen more children in out of home care with Tasmanian Aboriginal ancestry. While we know many people from Tasmania migrate to Victoria for more education and

employment opportunities, in recent years the majority of children from interstate that we write Cultural Support plans for Tasmanian. This provides additional challenges as records and documentation of Aboriginal lineage in Tasmania is difficult to access and navigate.

Of the 1000 plans our CEO has reviewed in the last 3 years only 37% have Victorian Aboriginal connections, 41% have interstates peoples connections, 4% have both Victoria and interstate where a concerning 18% have had State unknown. While we have very low de-identification rates, the timeframe to confirm Aboriginality does in these cases take considerably longer than the 6month window DFFH give us until the move to de-identify children.

In a recent paper by DFHH entitle "Inability of an ACCO or family finding service to confirm Aboriginality of child or family" it is clear that a possible solution to the over representation of Aboriginal children in the child protection system is to de-identify them and non-Aboriginal. This blatantly ignores the broader issues and the complexity of confirming Aboriginality. We hold a concern that DFFH are shifting the "legal" onus of responsibility and the obligation to confirm Aboriginality to ACCOs. This does not address the barriers to confirmation.

While only a proposed policy document open for consultation it should be noted that as proposed, the policy is not child focused and could further disconnect a child and family as an unintended consequence. The policy appears to relieve DFFH of its responsibilities if Aboriginality can't be confirmed. It also indicates that if children fall within the category of 'Aboriginality cannot be confirmed', the legislative requirements will no longer apply to DFFH. This then puts at risk the ATSICPP, the statement of recognition and binding principles, cultural plans, and permanent care requirements.

The proposed policy does not address the existing de-identification process that currently has oversight by the Aboriginal Commissioner at CCYP and DFFH. In another example of government walking away from Aboriginal people, the policy shifts the responsibility on the ACCO (an unfunded activity) and not a legal requirement unless an authorised ACCO under Section 18. This only furthers the Government's agenda to reduce overrepresentation through as they are aware that many Aboriginal Children and Aboriginal Care providers refuse to provide support services to children and families who can't provide evidence of connection to the Aboriginality (VACCA does provide service). This also contravenes the Governments own policy to recognise self-identification as Confirmation of Aboriginality.

Child Protection is currently required to follow the arbitrary timeframe of establishing connection and identity within 6months of a referral. VACCA each year receives around 300 referrals to confirm Aboriginality with limited funding and resourcing making the timeframe too often difficult to meet. While the policy suggests a unified approach to identifying and accepting Aboriginality across Victoria, ACCOs have varied views and levels of acceptance of Aboriginality:

- ACCO Boards can sign off on confirmation of Aboriginality but there are checks and balances that need to happen first and with TOG for that to happen. This is not linked to child and

family services and often the requesting persons/family have done the research and collected evidence, not the ACCO.

This proposed policy further perpetuates the “tick a box” culture that exists within Child Protection. ACCOs must be funded to continue to undertake this service, including flexible timeframes for identification and connection, and the policy and program requirements determined by the ACCOs.

**Recommendation 33: That the Yoorrook Justice Commission recommend that DFFH undertake research to investigate the historical removal patterns that have lead to the high number of Aboriginal children in Victoria’s child protection system coming from interstate. This should cover at a minimum that last 10years of data relating to Aboriginal Children in Care.**

## Over-representation of Aboriginal children in Child Protection in Victoria

At 30 June 2021, Aboriginal children in Victoria were 22 times more likely to be in out-of-home care than non-Aboriginal children.<sup>101</sup> This is the highest rate of overrepresentation in the country. It is clear that current efforts towards prevention and early help are not having impact at the scale required.

Year after year the number of Aboriginal children in out-of-home care in Victoria continues to grow, going from a rate of 89.9 per 1,000 Aboriginal children in 2019 to 103 per 1,000 in 2021 or 2572 Aboriginal children.<sup>102</sup> Victoria’s OOH rate for Aboriginal children of 103 per 1000 is almost twice the national rate for Aboriginal children of 57.6 per 1,000.

Of particular concern is the very high level of removal rate of Aboriginal babies in Victoria with one in nine Aboriginal babies under the age of two removed from their families by child protection each year through unborn reports. The removal rate for Aboriginal babies in Victoria is twice the national rate. And 57 per cent of all Aboriginal children at child protection in-take in Victoria are under the age of two; for non-Aboriginal children the proportion is 25 per cent.<sup>103</sup>

Target 12 in [the 2021 National Agreement on Closing the Gap](#) is to reduce the over representation of Aboriginal children in care by 45 per cent by 2031. There is no evidence that Victoria is on track to meet this target. On the contrary, on the current trajectory of increasing child removals the level of over representation will have increased, not decreased, by 2031.

<sup>101</sup> Productivity Commission. (2022). *Chapter 16: Child Protection, Table 16.A2*. Retrieved from: <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>

<sup>102</sup> Productivity Commission. (2022). *Closing the Gap Information Repository, Table CtG12A.1*. Retrieved from: <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>

<sup>103</sup> Australian Institute of Health and Welfare. (2021). *Child Protection Australia 2019-20* (cat.no. CWS 78.)

The SNAICC 2021 Family Matters Report notes that the number of Aboriginal children in out-of-home care at any point in time is a function of four interrelated processes – the number of children already in out-of-home care, the numbers of children each entering and exiting care, and the amount of time which children spend in out-of-home care.<sup>104</sup> In relation to legislation, policy, and practice, this means that efforts need to focus on two key areas: preventing children entering out-of-home care and reunifying those who are currently in out-of-home care with their families.

VACCA recognises that statutory intervention, including child removal and placement, is required in certain circumstances. Prevention of harm and supporting safety and wellbeing in the care of family is always preferable to protective intervention by the State. However, as we outline in this submission, evidence demonstrates that adequate policy attention and resourcing are not being directed towards preventing the need for protective intervention and the placement of Aboriginal children in out-of-home care. This is particularly the case in relation to the funding of ACCOs to design and deliver prevention, early help and early intervention programs.

### Impacts of Aboriginal population growth on service demand

Overlaying high rates of Aboriginal child removal in Victoria is Victoria's high level of Aboriginal population growth. Population growth drives growth in the OOHC population even if the OOHC removal rate remains steady.

In 2019 SVA consulting were commissioned to prepare advice on impacts of Aboriginal population growth on demand for social and community services, including OOHC<sup>105</sup>. Victoria's Aboriginal population was projected to grow by 48 per cent between 2018 and 2028. The modelling showed that based on the 2018 OOHC rate of 90.0 Aboriginal children per 1000 by 2028 there would be just over 3800 Aboriginal children in OOHC.

Three years on from the 2019 baseline in the SVA modelling the number of Victorian Aboriginal children in OOHC has grown by 30 per cent from 1975 children at June 2018 to 2572 children at June 2021. A conservative estimate is that over the next 6 years population growth will drive the number of Victorian Aboriginal children in care up by at least a further 30 per cent to more than 3430 Aboriginal children in care in 2028.

Noting that the OOHC removal rate has increased from 90 to 103.0 per 1000<sup>106</sup> there is strong evidence that the combination of population growth and the rising removal rate will push the number of Aboriginal children in care in Victoria to over 4,000 children by 2031.

<sup>104</sup> The Family Matters Campaign. (2021). *The Family Matters report*, p. 24. Retrieved from:

<https://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf>

<sup>105</sup> SVA Consulting. *Demand for services for Aboriginal and Torres Strait Islander people in Victoria: Report prepared for the Aboriginal Executive Council (AEC)*. August 2019. Note: The AEC report was prepared utilising an earlier report commissioned by the Victorian Aboriginal Child Care Agency (VACCA).

<sup>106</sup> Australian Institute of Health and Welfare. (2021). *Child Protection Australia 2020-21* Table S5.10: Children in out-of-home care, by Indigenous status and state or territory, 30 June 2021



State Budget planning for ACCO service system growth and workforce capacity is not currently aligned with Aboriginal population growth. This is despite a commitment provided to the Victorian Aboriginal Executive Council (AEC) through the Secretaries Leadership Group Forum that this would become a feature of the annual State Budget planning process.

Current service systems including early help, children's early learning and care, early intervention, family support and OOHC face ongoing escalating demand. ACCO capacity, across service domains, is not resourced to keep pace with demand. Consequently, not only will Victoria not reach the Closing the Gap OOHC Target, but we are likely to see the proportion of Aboriginal children in OOHC care who are placed with, and case managed by an ACCO continue to fall from 2021 levels.

As reported in the Family Matters Report 2022 Victoria has fallen behind agreed targets for the proportion of Aboriginal children in care to be transferred from the Department of Families, Fairness and Housing (DFFH) and case managed by an ACCO. The report shows that there has been a decrease from 50 per cent to 47 per cent of Aboriginal children in OOHC case managed by an ACCO from June to December 2021 reflecting stalled progress on targets.<sup>107</sup>

Unless ACCO service capacity is planned and resourced in alignment with Aboriginal population growth, the overall proportion of child and family services delivered by ACCOs will decline. Such an outcome would be at odds with Closing the Gap Priority Reform Area Two, which is to increase the proportion of services and programs available to First Peoples through ACCOs.

#### Family Support and Early Help for Aboriginal families

Intensive Family Support Services are funded to minimise time spent in OOHC and mitigate the risk of ongoing involvement with child protection. Aboriginal children in Victoria are 22 times *more* likely than non-Aboriginal children to be placed in OOHC, but once in care are two and a half times *less* likely to be provided with access to an Intensive Family Support Service (IFSS).

As reported in the Victorian Government Aboriginal Affairs Report (VGAAR) in 2020-21 Aboriginal children comprised 27.5 per cent of Victoria's OOHC population and yet they and their families were allocated only 10.6 per cent of family support service cases. In that year there were 2572 Aboriginal children in care in Victoria and only 1017 family support cases were allocated to those children. In contrast there were 6645 non-Aboriginal children in care who between them were allocated 11,276 family support cases<sup>108</sup>.

This data only confirms Aboriginal children and families who are identified with protective concerns not getting adequate early help and instead their case moves toward the tertiary end of

<sup>107</sup> SNAICC Family Matters Report 2022. (page 20). As available at <https://www.familymatters.org.au/>

<sup>108</sup> 2021 Victorian Government Aboriginal Affairs Report – Data Dashboard Measure 2.1.2 Number of families engaged with family support and intensive family services. Victorian Department of Premier and Cabinet; as accessed at <https://www.firstpeoplesrelations.vic.gov.au/victorian-aboriginal-affairs-framework-data-dashboard/children-family-and-home-data/goal-2#children-in-out-of-home-care-who-are-engaged-with-intensive-family-support-services>

the child protection system. VACCA is deeply concerned about the trajectory of Aboriginal children and young people towards permanent care, which we believe is a direct result of the permanency reforms, and the continuation of discriminatory practices within the child protection system. For as long as published data has been available Aboriginal families in Victoria have been provided with significantly lower levels of access than non-Aboriginal families to the main service offering from the State intended to prevent child removal or minimise time spent in OOHC. In VACCA's view this is a clear example of systemic racism and discrimination.

In relation to Early Help, services intended to prevent entry into the child protection system, unpublished data from the Department of Families, Fairness and Housing (DFFH) shows that of the \$91 million directed towards early help in 2020-21, only \$2 million was directed to ACCOs working with families. This is equivalent to only 2 per cent of the state's total expenditure on Early Help in 2020-21.

However, Aboriginal children account for 16% of children receiving a child protection service and 27.5 per cent of children in OOHC, meaning that funding to ACCOs to deliver Early Help is significantly out of step with the level of need experienced by Aboriginal families.<sup>109</sup> Currently, services categorised by the Department of Families, Fairness and Housing under Early Help include child and family services, the Orange Door, specialist health and human services, and universal and community services.<sup>110</sup> The Department also classifies the Orange Door as a form of support under the category, *Early Intervention to Keep Children at Home*. Data from the Department shows that 58 per cent of referrals to the Orange Door involving Aboriginal children are from the Police or Child Protection with a further 20 per cent from professionals, only 21 per cent are self-referrals. To classify referrals to the Orange Door as a form of early intervention is misleading and further masks the lack of genuine investment in early intervention to keep children at home.

Of concern to VACCA is that Koorie Supported Playgroups are the only service type ACCOs are funded to deliver in the Early Help category. In contrast mainstream community service organisations access early help funding to provide Supported Playgroups, Strengthening Parenting Support Programs, Regional Parenting Services and Parenting Advice and Education Services. Access to early help, family support and early intervention services for Aboriginal families is significantly, and disproportionately, lower than for non-Aboriginal families. Other States and Territories are investing at significantly higher levels in Aboriginal community based services to mitigate the risk of child protection involvement by supporting family wellbeing. The Queensland Government directed 21.8 per cent of its early help funding to ACCOs in 2019-20,

<sup>109</sup> Australian Institute of Health and Welfare. (2022). *Data Tables: Child Protection Australia 2020-21, Table S2.3*. Retrieved from: <https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/data>

<sup>110</sup> Victorian Government. (2021). *Program requirements for early parenting, family and placement prevention services in Victoria*. Retrieved from: <https://providers.dffh.vic.gov.au/program-requirements-family-and-early-parenting-services-victoria-word>

where 37 per cent in the child protection system were Aboriginal and/or Torres Strait Islander.<sup>111</sup> In most States and Territories jurisdictions Aboriginal families have equal or higher levels of access to family support services than non-Aboriginal families, in Victoria the reverse is true.

The Victorian Government needs to commit to working with the ACCO sector to develop and scale the range of early help, family support and early intervention programs available to Aboriginal families through ACCOs. VACCA's has provided feedback to RIMAG on the features, enablers, barriers and outcomes we would like to see in Aboriginal led early help approaches, including promising practice as part of their Early Help Working Group consultation. This is not a fully developed proposal, but identifies the outcomes necessary for successful Aboriginal-led early help approaches.

What is clear is that a comprehensive early help, family support and early intervention system needs to be developed. The minimum benchmark for investment in these supports for Aboriginal families should reflect the level of over representation of Aboriginal children in OOHC and the legacy of at least ten years of underfunding. Consistent with commitments under Closing the Gap scaling up service delivery should occur through investment in Aboriginal community controlled organisations that have a child, family and family violence service footprints.

#### Early Childhood Care and Development

To address the over representation of Aboriginal children in OOHC requires investments and reforms in the systems that contribute to the wellbeing of children and families, in particular when children are young (0-6 years of age).

The Victorian Government's policy commitment the *Roadmap for Reform: Strong Families, Safe Children* (the 'Roadmap to Reform') was released in 2016 with the goal to shift the focus of the child and family services system to enable it to deliver earlier support to vulnerable children and families.<sup>112</sup> The objectives of the *Roadmap for Reform* won't be achieved for Aboriginal children and families because Early Help is not funded within ACCOs.

VACCA demonstrates the important role of Aboriginal Community Controlled Organisations in providing access to early learning and care services for Aboriginal children and families. This includes child development programs, playgroups, cultural programs, childcare and pre-school education, family and parenting support and maternal and child health. Scaled up investment in these services with delivery through ACCOs will be required as part of a broader strategy to address the over representation of Aboriginal children in child protection and OOHC.

<sup>111</sup> The Family Matters Campaign. (2021). *The Family Matters report*, p. 100. Retrieved from: <https://www.familymatters.org.au/wp-content/uploads/2021/12/FamilyMattersReport2021.pdf>

<sup>112</sup> Victorian Government. (2021). *Roadmap for Reform: Strong Families, Safe Children*. Retrieved from: <https://www.dhhs.vic.gov.au/sites/default/files/documents/201905/Roadmap-for-reform-28-4-2016.pdf>

### Developmental vulnerability of Aboriginal children

The Victorian Government Aboriginal Affairs Report (VGAAR) is the Victorian Government's Annual Report to the Victorian Aboriginal Community and the Victorian Parliament on progress against commitments outlined in the Victorian Aboriginal Affairs Framework (VAAF) and the Closing the Gap Targets.

Investment in early childhood development is critical to ensuring Aboriginal children have the best start in life to lay a foundation for long-term child and family wellbeing. As reported in the 2021 VGAAR Victoria has a high rate of enrolment of Aboriginal children in kindergarten in the year before school, however this does not measure participation which can create a false narrative. In fact, the 2021 VGAAR reports that participation of Aboriginal children was 100% in 2020,<sup>113</sup> however we also know that 2020/2021 included many COVID lockdown periods and limited the ability for children to participate. Enrolment and participation are not the same.

A more useful measure is to consider the proportion of Aboriginal children who are on track against the developmental domains of the Australian Early Development Census (AEDC). Closing the Gap Target 4 aims that by 2031 at least 55 per cent of Aboriginal children are developmentally on-track on all five domains of the AEDC by the time they start school. Between 2015 and 2021 the proportion of Victorian Aboriginal children on track on all five domains has only increased from 35.1 to 35.6 per cent. Clearly a 0.5% improvement in this measure over five years indicates that on current policy, resource allocation and program settings there is no realistic prospect that the Closing the Gap Target will be achieved. The Productivity Commission Closing the Gap data dashboard recognises this improvement as "heading in the right direction" but not on track to meet the Closing the Gap target.

This is also likely due to the difficulty in gaining access to developmental assessments due to the long wait lists and the prohibitive cost to go privately. A recent VACCA client audit found that over 50% of all children aged under 7 years of age that are engaged in our services had a global or development delay or a disability. We also found that many of the parents engaged with our family support services also had a cognitive disability or acquired brain injury, especially along mothers accessing our services due to their experience of family violence.

**Recommendation 34. That the Yoorrook Justice Commission recommend that the Victorian Government amend the Child Youth and Family Act 2005 to ensure that all children who enter the child protection system receive a developmental disability assessment before the age of 7 years or immediately upon entering care if aged over 7 years.**

Goal 4 of the VAAF is that Aboriginal children thrive in their early years. The measure that the VGGAR reports on *is the proportion of Aboriginal children vulnerable on one or more domains of the AEDC*. The VGAAR reports that between 2009 and 2018 there has been no overall

<sup>113</sup> 2021 Victorian Aboriginal Affairs Report, Domain Two Learning and Skills Data Tables; [2021-VGAAR-Data-Tables-Domain-2-Learning-&Skills\\_0.xlsx \(live.com\)](#)

improvement in the proportion of Aboriginal children vulnerable on one or more AECD domains. The proportion vulnerable on one or more domains was 42.4 per cent in 2009, 39.6 per cent in 2012, 40.3 percent in 2015 and back to 42.4 per cent by 2018; this is twice the level of vulnerability experienced by non-Aboriginal children.

What this data tells us is that Victoria is not on track to meet Closing the Gap Target 4 and there has been no sustained improvement in developmental vulnerability of Aboriginal children in Victoria since 2009. Investment in early childhood development for Aboriginal children supports child and family wellbeing is an essential component of suite of policy measures that will be required in Victoria to address the over representation of Aboriginal children in OOHC. However the government must stop prioritising funding for developmental services to primary care providers. Children should be able to access the supports they need where they normally receive care, in this case ACCOs like VACCA.

#### Aboriginal Community Controlled Early Learning and Care Services

The provision of Aboriginal Community Controlled early learning and care services for Victoria has not been planned, supported or resourced in alignment with the needs of Aboriginal communities, families and children, or with Aboriginal population growth.

The platform of ACCO early years centres in Victoria has remained largely unchanged since the mid 1980's when Multi-Functional Aboriginal Children's Services (MACS) were established with funding from the Commonwealth.

SNAICC prepared a national report in 2000 on the operation of MACS across Australia highlighting their capacity and expertise in supporting child development and family wellbeing. The preparation of the Victorian section of the report was undertaken by VAEAI, which at the time was resourced to provide organisational development support to MACS.

The MACS report profiled in detail the history, operations, successes and challenges of the seven MACS services operating in Victoria. At that time the Victorian Aboriginal population was estimated by the ABS to be 22,500 and MACS services were located in Thornbury, Bairnsdale, Moe, Echuca, Mooroopna, Robinvale and Lakes Entrance.

The report highlighted the central importance of culture and trusted connections with local Aboriginal families in order to support families in the care and development, including cultural development, of their children. MACS services continue to serve as enablers of family capacity to care for and grow up Aboriginal children strong in culture and strong in all aspects of their development.

The MACS report developed a comprehensive set of recommendations seeking:

- Capital investment and broadened funding to enable MACS centres to be 'truly Multifunctional' and expand further into the areas of family support, parenting assistance, flexible models of care and provision of playgroups

- Expansion of the number of MACS services noting that governments had not funded new centres following the initial 1980's Commonwealth funding to establish 37 MACs (7 in Victoria)
- A collaboratively designed funding model that enabled MACS to tailor services and programs to the needs and circumstances of the local community and families
- Funding to take account of Aboriginal population growth and increasing demand
- Regulatory reform to develop in partnership with MACS service standards that reflect the central importance of Aboriginal children's cultural development and the multifunctional and flexible models of care and support provided for children and families
- A planned expansion of the number of MACS services commencing with funding of new services in areas of high Aboriginal population growth
- A long-term plan for the development of Aboriginal community based Early Learning and Care Centres including workforce development and the ongoing provision of organisational development support through umbrella agencies including VAEAI

As noted earlier high levels of Aboriginal population growth impacts demand for services and support. The 2021 ABS Census of Population and Housing shows that the Victorian Aboriginal population grew from 47,788 in 2016 to 65,646 in the 2021 Census. The number of Aboriginal children aged 0-4 in the Victorian population grew from 5,880 to 7,024 between 2016 and 2021, an increase of 19.5 per cent.

Since the release of the MACS report in 2000;

- the Victorian Aboriginal population has more than doubled from 25,079 (2001 ABS Census) to 65,646 in 2021 (2021 ABS Census)
- one of the Victorian MACS services has closed and an additional centre,(Bubup Wilam), has been established
- neither the Commonwealth nor the State have committed to the planned expansion of Aboriginal early learning and care services aligned with Aboriginal population growth, and
- accessibility for families to Aboriginal community based early learning and care services has significantly declined

#### Expanding the number and scope of Aboriginal Early Learning and Care Services

The State Government has committed under the National Agreement on Closing the Gap (CtG) to increase the proportion of services delivered by Aboriginal organisations across all CtG Outcomes and Targets including by:

- implementing funding prioritisation policies that preference service provision by ACCOs across all Closing the Gap Outcomes and Targets

- where new funding initiatives are established which are intended to service the broader population allocate a meaningful proportion of that funding for service delivery by Aboriginal organisations, particularly ACCOs (CtG National Agreement Clause 55)<sup>114</sup>

In June 2022 the State Government announced a \$9B investment in the *Best Start – Best Life Program* to expand access to early learning and care and give Victorian children the best start in life.<sup>115</sup> The \$9B will fund free kindergarten for all three and four year old children in Victoria; and the establishment of 50 new early learning and care services in areas of high need with capacity to support up to 100 children at each Centre.

The initiative, which VACCA commends, is within the scope of clause 55 of the National Agreement. A meaningful proportion of the total funding should be allocated to benefit Aboriginal children through service delivery by Aboriginal organisations.

VACCA notes that 10% of the \$5.3B *Big Housing Build*, announced in November 2020<sup>116</sup>, is directed to housing initiatives to benefit the Aboriginal community. Consistent with the National Agreement on Closing the Gap the best use of this funding is being planned in partnership with Aboriginal Housing Victoria and other stakeholders from the Aboriginal community.

The State Government must commit to allocate at least 10 per cent of the \$9B commitment to early childhood education to benefit and support Aboriginal children. This should include funding for the establishment of not less than five new Aboriginal Early Learning and Care Services to be owned and operated by ACCOs in areas of highest need. VACCA prepared a scoping paper for an Aboriginal led, culturally embedded child-care centre that include long day care and kindergarten in June 2021 and determined that these should be established in the projected Aboriginal population growth corridors of the West (Melton or Werribee) and Bayside Peninsula (Frankston). This proposal has not been funded.

As with the *Big Housing Build* a shared governance forum should be established with ACCOs to plan the establishment of new services and deployment of other resources under the *Best Start – Best Life Program* to benefit Aboriginal children and families.

#### Victorian Policy and Service System Context

An Aboriginal-led early help, family support and early intervention system would be best placed to support Aboriginal child and family wellbeing and address issues before they escalate and trigger statutory child protection interventions. Access to this system should be non-stigmatising and

<sup>114</sup> National Agreement on Closing the Gap. July 2020. As accessed at <https://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf>

<sup>115</sup> See <https://www.premier.vic.gov.au/best-start-best-life-early-childhood-education-works>

<sup>116</sup> See [https://www.vic.gov.au/sites/default/files/2020-11/hv\\_more\\_homes\\_for\\_more\\_Victorians\\_0.pdf](https://www.vic.gov.au/sites/default/files/2020-11/hv_more_homes_for_more_Victorians_0.pdf)

centred around self-referrals and provide practical support enabling families to meet their children's needs.

Current policy settings in Victoria are not delivering the forms of child development and family well-being support required to arrest the ongoing escalation of removal of children from their families by child protection.

The Victorian Government's overarching policy for the child and family services sector is the *Roadmap for Reform: Strong Families, Safe Children* (the '*Roadmap to Reform*') released in 2016. The goal of the Road Map to Reform is to shift the focus of the child and family services system to enable it to deliver earlier support to vulnerable children and families.<sup>117</sup>

In the five years since the release of the *Roadmap to Reform* little progress has been made towards shifting system focus and investment towards earlier help and family support. The proportion of Victorian Government expenditure on child protection services directed toward early support has remained relatively stable. In 2020-21 27 per cent of Victoria's child protection spend went towards intensive and non-intensive family support, (for Aboriginal and non-Aboriginal families), up from 25 per cent.

While VACCA notes that this 27 per cent is significantly higher than other jurisdictions, there has not been a major shift in Victoria towards early help, early intervention and family support for any children and families.<sup>118</sup> And as highlighted earlier Aboriginal children and families are grossly underrepresented in the early intervention and family support programs funded from that 27 per cent.

The vast majority of total Victorian child protection investment still goes towards statutory child protection interventions or to mainstream community service organisations for a variety of family support and OOHC functions. Of the total expenditure that is directed to early help, early intervention and family support very little is being made available to Aboriginal families through ACCOs.

In July 2021 the Department of Families, Fairness and Housing released *Roadmap for Reform: Pathways to Support for Children and Families priority setting plan 2021-2024*.

The priority setting plan serves as an update on the 2016 Roadmap and sets out what the Department describes as "a new system architecture" for the child and family services sector

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<sup>117</sup> Victorian Government. (2021). *Roadmap for Reform: Strong Families, Safe Children*. Retrieved from: <https://www.dffh.vic.gov.au/publications/roadmap-reform-strong-families-safe-children>

<sup>118</sup> Productivity Commission. (2022). *Chapter 16: Child Protection, Table 16.A8*. Retrieved from: <https://www.pc.gov.au/ongoing/report-on-government-services/2022/community-services/child-protection>



constructed around the three pathways to support; *Early Help, Targeted and Specialist*; and *Continuing Care*.<sup>119</sup>

These concepts and definitions are not new. Existing DFFH program guidelines refer to Early Help as early intervention and prevention supports, often delivered in partnership with universal services, that are targeted toward “children and families with a lower level of needs that are not being met by universal services.”

Victorian ACCOs have decades of experience in providing services across the three pathways to support, the challenges lie not in refining definitions but in funding services adequately to meet escalating demand.

VACCA currently operates programs that focus on supporting families early in the life of their children; these include Koorie Supported Playgroups, Koorie FACES Family Strengthening, Growing Up Aboriginal Babies at Home, and Koorie Families as First Educators. Alongside early help VACCA operates programs that fall under the category of *Targeted and Specialist Care*, including Statewide Aboriginal Child Specialist Advice and Support Services (ACSASS), intensive family support services, and family violence support services for the whole family.

VACCA has had a core focus on *Continuing Care* for over 45 years and delivers Out-of-Home Care placement support and case management services including Aboriginal Children in Aboriginal Care (ACAC), Better Futures (leaving care support), kinship finding / kinship care support, cultural support planning, case management, foster care and residential care.

Pathways to support notes that “Although innovative change is already happening, urgent and targeted action is required to move towards a system that can work earlier and more effectively to improve long-term social outcomes for children and families.”

VACCA would agree that urgent and targeted action is required but remains unconvinced that a focus on reform of system architecture holds much value.

The pathways to support reform agenda is primarily concerned with the functioning of the three referral pathways and connections between services across the spectrum of universal, secondary and tertiary services. The underlying assumption appears to be that the service options are there for children and families and the task is to create clearer integrated pathways to and between those services.

As noted earlier, the low level of access to intensive family support services for Aboriginal families continues, despite their higher level of need, highlighting that current reforms are not benefiting all vulnerable families equitably.

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<sup>119</sup> Victorian Government. (2021). *Roadmap for Reform: Pathways to Support for Children and Families priority setting plan 2021-2024*. as accessed at <https://www.dffh.vic.gov.au/publications/roadmap-reform-strong-families-safe-children>

The detail of the Pathways to Support 2021-22 Rolling Action Plan sets out four priorities for the Early Help service domain are summarised below:

1. Build capability in universal services to identify and respond to child wellbeing concerns
2. Improve participation in universal services for vulnerable families and children
3. Build capacity in the system to connect families to the right service (make appropriate referrals)
4. Strengthen communities to support vulnerable families (leverage informal supports)

Specific initiatives listed under these priorities are limited to:

1. work with 10 schools to support education of children in disadvantaged communities
2. embed family services workers in universal services (no information on how many sites),
3. support the Department of Education and Training to continue the Early Years Lookout initiative that supports participation of children in OOHC to participate in pre-school education,
4. support ACCOs to continue to provide playgroups and in-home coaching; and
5. scope opportunities to redesign the “front end” of the service system and promote self-help and referral pathways.

These initiatives all have merit, but in the context of escalating child protection interventions into the lives of Victorian Aboriginal children and families such that one in nine Aboriginal babies are removed from their families, they comprise a woefully inadequate response.

Pathways to Support also identifies leveraging informal support at the local community level as an important element of assisting families. VACCA agrees that informal support is an essential element of the support every family needs to raise their children well; particularly in supporting children's cultural identity and connections. We are conscious however that leveraging informal support must be seen in the context of Aboriginal family and kinship networks having diminished capacity through the prevailing impacts of colonisation; including the high levels of poverty, insecure housing and inter-generational trauma.

Unquestionably referral pathways and ease of access to the right service at the right time is required if children and families are to access the support they need when they need it. However, VACCA considers that the urgent issue to address is the quantum of Early Help services, particularly services available through Aboriginal Community Controlled Organisations (ACCOs). For longer than a decade the rates of child protection interventions into the lives of Aboriginal children and families, and placement into Out of Home Care have been escalating. Across all three “pathways to support” demand has been growing rapidly, fuelled in part by high levels of Aboriginal population growth - service capacity across the system is not being resourced to meet demand.

The most significant gap in the service continuum is in prevention and early intervention, the Early Help pathway.

Unless effective and trusted early help and family support is available, commensurate with population level of need, the early help pathway may further widen the child protection net and escalate Aboriginal families into the tertiary end of the system.

#### [Key issues with provision of early help to Aboriginal children and families](#)

An Aboriginal-led early help response, from VACCA's perspective, supports families experiencing vulnerability by providing a service that is culturally based, non-judgmental and voluntary. At the basis of this work is relational practice, it is about building relationships of trust, mutual respect, and support. The current configuration of the family support and early intervention system makes this challenging, particularly because it remains a crisis-driven response delivered in large part by mainstream agencies.

#### [Cultural safety](#)

VACCA staff continue to identify a lack of cultural safety with the mainstream community service sector as a barrier to accessing early help for families. VACCA clients reporting not feeling "seen or heard" when attempting to access support through mainstream institutions. In some cases, this means that families are delaying accessing important services, such as maternal and child health appointments or early childhood education and care, due to fear, mistrust, or because they will not receive a service that corresponds to their needs or goals.

Ensuring cultural safety is not simply about addressing racist or discriminatory behaviours, attitudes, or policies within mainstream institutions. It is about incorporating cultural understandings of family, kinship, support and child-rearing within models of care. In many cases, Aboriginal understandings and practices are different to western conceptualisations. A lack of understanding of the Aboriginal community and protocols, language, and cultural models of caring are persistent concerns from the families VACCA support. Not only is a lack of cultural safety a barrier to service access, but it also inhibits the effectiveness of these services for addressing the support needs of vulnerable families.

#### [Aboriginal families want access to Aboriginal-led early help](#)

As we highlight in the following section, VACCA has observed that some recent Road Map reform processes have had a detrimental impact on the availability of Aboriginal-led early help services, with a shift in focus and resources to more intensive forms of support. This has left a gap in early help and meant that many families are struggling to access services before they escalate to the stage of requiring statutory intervention. Some examples are below.

#### [Cradle to Kinder Program](#)

From 2012 to 2020, VACCA operated the Cradle to Kinder program in several locations across Victoria. The program provided intensive pre-birth, early parenting and family support for vulnerable young mothers and their children, usually commencing in pregnancy and continuing until the child reached four years of age. The program was aimed at expectant mothers, aged

under 25 years, who are Aboriginal or pregnant with an Aboriginal child, where an unborn report had been made to child protection or in cases where strong indicators of vulnerability for the unborn child were identified. Self-referrals from families to access Cradle to Kinder were not uncommon. One of the reasons the Cradle to Kinder Program worked so well was because it was not perceived as a child protection response by families and had the capacity to provide longer-term support. This meant that strong relationships between practitioner and family evolved over time and naturally, rather than being specifically focused on addressing the immediate concerns of child protection.

#### The Orange Door

The rollout of the Orange Door, in response to the key recommendations of the Royal Commission into Family Violence, was meant to support service integration and improve access to supports through a centralised intake point for both family violence and child and family services.

Anecdotally, VACCA staff report that the development of a centralised intake point led to a drop in the number of families self-referring and have observed that families appear to be coming to the attention of the service system later on, meaning that cases are more complex and there are often more immediate safety concerns for practitioners to respond to. This process, alongside reforms underway through the Roadmap for Reform, has led to significant changes in the delivery of family support services. Cradle to Kinder was brought under the umbrella of the new Aboriginal Family Preservation and Reunification Program, which sits alongside Intensive Family Support and Family Support programs.

#### The Aboriginal Family Preservation and Reunification Program

Whilst VACCA welcomes the introduction of these more intensive models of family support, we have observed that it has created a gap in supports for families who might require less intensive forms of support. The Aboriginal Family Preservation and Reunification Program, for instance, provides an initial intensive phase of up to 200 hours for each family, followed by up to 40 hours of step-down support. Referrals for the program are through child protection, Aboriginal Children in Aboriginal Care, or the Orange Door – which indicates that there is likely to already be significant safety concerns within the family, and engagement in tertiary services.

In most cases child protection continues to maintain statutory responsibilities for the child, including case planning which limits the capacities for ACCOs to work in the ways that we know work best for Aboriginal families, including through the development of case plans and goals in partnership with the family. VACCA has observed that this often leads to a band aid approach to practice where immediate concerns are attempted to be addressed without the time to build those relationships of trust and respect that are particularly important for Aboriginal families and one of the main reasons why Aboriginal families seek out support through ACCOs.

Funding models are not conducive to building an Aboriginal-led early help system  
The Victorian Government has long identified the prioritisation of funding to ACCOs as a key component of implementing the right to self-determination. As the government has itself

acknowledged, this is also an evidence-based approach because research continues to demonstrate that self-determination in the design, delivery and evaluation of policies and programs leads to better outcomes for Aboriginal people. Yet in practice, as demonstrated by the low levels of funding to ACCOs to deliver early help services, there has been limited progress toward realising this commitment.

The National Agreement on Closing the Gap, to which the Victorian Government is a signatory, identifies a “dedicated, reliable and consistent funding model designed to suit the types of services required by communities, responsive to the needs of those receiving the services, and is development in consultation with the relevant peak body” as a key element of strong community-controlled sectors. A key concern for VACCA is the complete reliance on small-scale, short-term, pilot project funding in the child and family services sector, including to test new approaches to early help. From our perspective, this is a key barrier to building a comprehensive, wrap-around Aboriginal-led early help system for families.

#### The Aboriginal Child Protection Diversion Program Trials

VACCA is currently delivering the Aboriginal Child Protection Diversion Program Trials (the ‘CP Diversion Project’) with a consortium of four ACCOs. The aim of the four trial models is to divert Aboriginal children and families away from escalating child protection involvement by offering ACCO-led supports to families who either come into contact, or are at risk of contact, with child protection.

The project includes a co-design phase, a 12-month trial delivery phase, and a comprehensive evaluation. Referrals for a number of the trial sites have exceeded program targets, indicating a strong desire amongst families to access early help supports through ACCOs, as well as the important role these programs can play in supporting the statutory child protection to divert families away from that pathway.

For example, the VACCA Northern Region Aboriginal-led Case Conferencing Trial (ALCC) refers families who would have otherwise been subject to a planned investigation to VACCA for an Aboriginal-led Case Conference (or series of conferences) to co-develop culturally safe support plans that address concerns and facilitate earlier family engagement with culturally appropriate services. Once the referrals are made into the trial Child Protection Intake closes, diverting Aboriginal families from Child Protection investigation. To date, VACCA has received 38 referrals into the trial from Child Protection Intake, exceeding the program target of 30 families. The high level of referrals indicate that the trial is well designed and is being utilised by Child Protection as a referral pathway that diverts families away from an investigation.

Anecdotally, the VACCA ALCC Convenor has reported that in most cases families in the trial have:

- appreciated the opportunity to have access to support away from the child protection system,
- been accepting of the need for supports to be put in place to address concerns,
- increased awareness of supports available and feel empowered to access them when needed.

In the future, one way to ensure that these programs are able to meet demand is by having more flexibility during the trial period, and the ability to scale up funding should referrals exceed original program targets. Whilst VACCA understands the importance of trialing and evaluating new models of care to ensure they are achieving their outcomes; we believe that a commitment to recurrent funding for successful trials should be built into these funding agreements. The CP Diversion Project has shown promising results and has established a sound base to justify the continuation of funding for existing sites and to plan for the extension to additional sites and ACCOs.

#### Ongoing barriers in accessing the right supports at the right time

The Roadmap to Reform acknowledges the need to connect across mental health, education, family violence and justice sectors to ensure that cross-sector collaborations support vulnerable children and families have access to the right supports at the right time. It also includes a promise that “children and families will experience a clear and coordinated pathway...that will link up and coordinate the right mix, sequence and intensity of services and support for the child and family.” This relies upon the assumption that families needing support can access the supports they need when they need them. However, in VACCA’s experience, there are significant barriers in accessing necessary services, such as housing, mental health, and drug and alcohol supports. Long wait times, exacerbated by the COVID-19 pandemic, impedes upon the ability of families to receive services that can help address protective concerns and keep children with their families.

#### Reliance on evidence-based, imported models of care

VACCA is concerned with a growing policy and funding emphasis in Victoria on manualised evidence-based programs, most notably through the Department of Treasury and Finance Early Intervention Investment Framework (EIIF). VACCA does not see imported, high cost, manualised evidence-based programs as holding the solutions to challenges we face in ensuring Aboriginal families can readily access support in caring for and raising their children.

Firstly, the Western evidence base that these programs are based off has not been demonstrated to be appropriate or effective for Aboriginal families and communities; nor does it reflect Aboriginal ways of knowing, being and doing, or the experiences and needs of Victorian Aboriginal families in their local contexts and communities. Second, these programs do not seek to understand the clients’ culture and how this relates to their own worldview and experiences of culture. Families’ different cultural backgrounds provide different cultural environments in which children become socialised. As part of that socialisation process, children develop a worldview and a culture and learn how to interact with an outside environment that makes them aware of their race and heritage, often through the lens of racism, systemic racism, and acculturation.

In relation to early-help programs for Aboriginal children and families, the emphasis should instead be on continuing to build the Aboriginal evidence base. We need to build on our understandings of what is needed in to address vulnerabilities within Aboriginal families and reduce the number of Aboriginal children entering out-of-home care. To support in this, all

funding models for Aboriginal-led early help supports must include budget allocation for evaluation.

**Recommendation 35:** That the Yoorrook Justice Commission support and advocate for the co-development between the ACCO sector and State Government of an intergenerational Aboriginal Child and Family Wellbeing Strategy to address the intergenerational over-representation of Aboriginal children in the statutory child protection system.

**Recommendation 36:** That the Yoorrook Justice Commission recommend that the development of the intergenerational Aboriginal child and family wellbeing strategy be co-developed between the Aboriginal Community Controlled Services Sector and the State Government within 12 months of the release of the Commission's findings on Victoria's child protection system.

**Recommendation 37:** That the Yoorrook Justice Commission recommend that the intergenerational Aboriginal child and family wellbeing strategy include a focus on resourcing the capacity of ACCOs to deliver interconnected mental health, child development, social and emotional wellbeing, justice, housing and family supports.

**Recommendation 38:** That the Yoorrook Justice Commission recommend that the State Government commit to aligning State Budget program funding allocations intended to benefit the Aboriginal community with population growth in the Aboriginal community.

**Recommendation 39:** That the Yoorrook Justice Commission recommend that the State Government take immediate steps to reduce the over-representation of Aboriginal children in child protection and OOHC including:

- providing additional investment to Aboriginal Community Controlled Services for Early Help services to ensure that the Aboriginal children and families enjoy access to these supports at a level not less than their non-Aboriginal peers and not less than their proportion of the OOHC population,
- increase funding for Intensive Family Support Services (IFSS) provided by ACCOs to ensure that Aboriginal families have parity of access to this service offering within two years (by the 2024-25 State Budget), and
- committing to and commencing work in partnership with the ACCO sector to co-design and develop an Aboriginal-led early help, family support and early intervention system with funding aligned to the level of need in the Aboriginal community and Aboriginal population growth.

**Recommendation 40:** That the Yoorrook Justice Commission support and advocate for the expansion in the number and scope of Aboriginal Early Learning and Care Services in Victoria through a minimum allocation of 10% of the \$9B funding in the State Government Best Start-Best Life program.

**Recommendation 41: That the Yoorrook Justice Commission recommend that no less than five of the fifty new early learning and care services promised under the Best Start- Best Life program be Aboriginal community controlled and operated services.**

**Recommendation 42: That the Yoorrook Justice Commission recommend that the State Government seek a matched funding contribution from the Commonwealth to expand the number of new early learning and care services to ten new Aboriginal community controlled and operated services.**

**Recommendation 43: That the Yoorrook Justice Commission recommend that the development of the intergenerational Aboriginal child and family wellbeing strategy consider promising practices and programs from other jurisdictions including the Queensland Aboriginal and Torres Strait Islander Family Wellbeing Services and the NSW Aboriginal Child and Family Centres.**

### Promising Practices in Australia

Victoria is not alone in facing the challenge of over representation of Aboriginal children in child protection and OOHC. In addition to building on successful initiatives underway in Victoria, there is an opportunity to draw upon good practices of early help, family support and early intervention being delivered by ACCOs across the nation.

In alignment with Aboriginal-led approaches to early help, the programs below are not strictly delivered as part of a child protection response. These programs draw heavily on the Prevention element of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP), which all jurisdictions have committed to fully implementing when working with Aboriginal and Torres Strait Islander children and families.

The Prevention element recognises that in order to support the safety and wellbeing of children and uphold their rights, Aboriginal children and families need access to “an integrated and holistic service system that provide families with the opportunity to readily engage with the fully range of supports that they require.” This includes a full range of culturally safe universal services, alongside more targeted and intensive supports to promote healing and strengthen the capacity of parents to care for their children.

#### Aboriginal and Torres Strait Islander Family Wellbeing Services

The Queensland Government and the Aboriginal Community Controlled child and family welfare sector through the SNAICC Family Matters Campaign developed an intergenerational strategy to address the over representation of First Nations children in child protection. Our Way: A Generational Strategy for Aboriginal and Torres Strait Islander children and families 2017-2037 acknowledges that the over representation of First Nations children in care is an inter-generational problem requiring an intergenerational solution. Our Way places investment in family wellbeing through community controlled readily accessible services as critical to addressing over-representation.



The Queensland Government committed to a \$150 million dollar investment over five years to establish community-controlled Family Well Being Services. There are 34 Aboriginal Community Controlled Family Wellbeing Services throughout the state, and they provide specialist support to vulnerable Aboriginal children and families. The program combines existing family support programs, including the Aboriginal and Torres Strait Islander Family Support Service; Tertiary Family Support services, Targeted Family Support services; and Secondary Family Support Services. The Family Wellbeing Services provide a range of early childhood, parenting programs, and specialised supports in partnership with a range of service providers in order to develop a tailored, holistic and coordinated response to the specific needs of each individual family. Since 2016, 20,510 Aboriginal and Torres Strait Islander families have received support through the Family Wellbeing Services.

Higher rates of access to family support services amongst Aboriginal and Torres Strait Islander families in Queensland further suggest that the availability of ACCO-led supports contribute to improve engagement. In 2020-21, 45.6% of children who commenced an intensive family support service were Aboriginal and/or Torres Strait Islander, noting that an additional 1129 children's Aboriginal and/or Torres Strait Islander status was unknown.

Whilst it is not possible to attribute high rates of access to family support directly to the Family Wellbeing Services, there has been a 31.9% increase in the number of Aboriginal and Torres Strait Islander children who commenced intensive family support since their establishment. An evaluation of the Family Wellbeing Services found that 93% of children and families who accessed the service had a case closed with all or majority of their needs met and required no further investigation by child protection within six months. This illustrates that the Family Wellbeing Services have been highly effective at engaging families and supporting them in ways that enable children to remain safely within their family and home, without further statutory intervention. More information is available here: <https://www.familywellbeingqld.org.au/>

#### Aboriginal Children and Family Centres

In NSW, there are 9 stated-funded Aboriginal Child and Family Centres (ACFCs) which provide a range of integrated, culturally-safe services and supports for Aboriginal children aged 0 – 8, including early childhood education and care, parent and family support, maternal and child health, and adult education opportunities. The NSW Government has committed ongoing funding of \$3.4 million annually for the ACFCs to provide services to Aboriginal children and their families. In 2014, an evaluation of the ACFCs was commissioned by the NSW Government, which found that the centres were highly successful in reaching “hard to reach” families, with approximately 78% of children attending child-care through an ACFC having not attended one prior. Additionally, the proportion of children who have had age-appropriate health checks and were fully immunised also increased significantly.

In 2018, SNAICC prepared a report documenting the work of the ACFCs, and the impacts they have on the lives of Aboriginal children and families. In addition to education and care programs, the

NSW ACFCs have allied health supports in-house, including maternal health, psychology, family services, and occupational and speech therapy.

Utilising case studies, the report highlights the important role that the ACFCs have in linking vulnerable families into a culturally safe network of care that can help address issues they might be facing. According to SNAICC, “all centres stressed the importance of offering integrated services under one roof and focusing on the socio-emotional wellbeing of clients as well as addressing physical and medical needs.” The ability to work on a long-term basis with children, from infancy through to school age was also identified as an important aspect of their approach.

## Part B – Systemic Injustice in the Criminal Justice System

An article in *The Guardian* recently echoed the question that Aboriginal families, communities and advocates have been asking for decades: “How much more CCTV footage of kids being tackled, teargassed, beaten and restrained do Australian governments need to see before anything substantial changes in how they treat children and young people?”<sup>120</sup>

One of the greatest injustices of the criminal justice system in Victoria and Australia more broadly, is the continued disregard for the overwhelming evidence that tells us that this system is not working; that it is doing further harm, increasing recidivism, and entrenching young Aboriginal people into a life of incarceration and trauma. By failing to take action on the many inquiries, reports and evidence published, governments are failing in their duty of care to not only young people criminalised from a young age, but to the broader Aboriginal community.

Evidence reveals systemic racism and discrimination disproportionately impact on Aboriginal children and young people at all stages of the justice system, including being more likely to come into contact with police, more likely to receive a harsher sentence for minor offences, less likely to be cautioned and more likely to be processed through the courts rather than through diversionary mechanisms<sup>121</sup>. Not only this, but systemic discrimination also creates greater risk of contact with other service systems including child protection, health, housing and education. Leading to added barriers to diversion and to accessing supports services pre and post release. How can we expect an adult, let alone a young person to successfully transition back into community when they have no home, income and weakened connections to community. Intersecting discrimination based on multiple marginalised identities including Aboriginality, disability, and LGBTQIA+,<sup>122</sup> all contribute to higher rates of incarceration. A system embedded with discrimination is not one committed to or capable of reducing over-representation.

The Yoorrook Justice Commission will hear many stories of the individual and collective injustices faced by Aboriginal children, young people, families and communities at the hands of the criminal justice system, both historically and continuing today. However, along with stories of injustices,

<sup>120</sup> Allam, L. (2022) What more do Australian Governments need to see to realise children need help, not handcuffs? *The Guardian*. <https://www.theguardian.com/commentisfree/2022/nov/16/what-more-do-australian-governments-need-to-see-to-realise-children-need-help-not-handcuffs>

<sup>121</sup> Ibid., KJU. (2019). Burra Lotjpa Dunguludja., ALRC. (2017). ‘Short sentences of imprisonment’ in *Incarceration rates of Aboriginal and Torres Strait Islander peoples*, Retrieved from < <https://www.alrc.gov.au/publication/incarceration-rates-of-aboriginal-and-torres-strait-islander-peoples-dp-84/4-sentencing-options/short-sentences-of-imprisonment/>>.

<sup>122</sup> Scott, A. (2018). *Culture is inclusion: A narrative of Aboriginal and Torres Strait Islander people with disability*, Sydney: Australia, First Peoples Disability Network.

VACCA contributes stories of promising practices, and the positive impact Aboriginal-led, culturally strong, trauma-informed approaches can have on young people and adults at risk of or involved with the criminal justice system. We want to highlight that the Aboriginal community has the solutions to support our Aboriginal children and young people and keep them out of the justice system, focused instead on healing and enjoying their childhood whilst connected to family, community, Country and culture.

## Systemic Issues in the Criminal Justice System

### Imprisonment rates

The defining feature of Victoria's criminal justice system is the over-representation of Aboriginal peoples. What we know;

- Aboriginal people are the most incarcerated population in the world<sup>123</sup>
- Aboriginal women are the fastest growing prison population<sup>124</sup>
- Aboriginal children in Victoria are 9 times more likely to be under youth justice supervision than non-Aboriginal children<sup>125</sup>
- Aboriginal children and young people are over-represented in all stages of the youth justice system<sup>126</sup>
- Approximately 1 in 3 Aboriginal children and young people sentenced to a custodial order have a history of child protection<sup>127</sup>
- Aboriginal children are likely to be younger at first sentence or diversion than non-Aboriginal children<sup>128</sup>
- Low age of criminal responsibility disproportionately affects Aboriginal children, accounting for 67% of these younger children in prison<sup>129</sup>

<sup>123</sup> Indigenous Justice Clearinghouse. (2019). *Indigenous people in Australia and New Zealand and the intergenerational effects of incarceration*. Retrieved from: <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/intergenerational-effects-of-incarceration-fa.pdf>

<sup>124</sup> Human Rights Law Centre & Change the Record. (2017). *Over-represented and overlooked: the crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment*. Retrieved from <<https://www.hrlc.org.au/news/2017/5/10/over-represented-overlooked-report>>.

<sup>125</sup> Australian Institute of Health and Welfare. (2022). *Table S7c: Young people aged 10-17 under on an average day by Indigenous status and age, states and territories, 2020-21 (rate)*. Retrieved from: <https://www.aihw.gov.au/reports-data/health-welfare-services/youth-justice/data>

<sup>126</sup> 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*, Commission for Children and Young People, Melbourne.

<sup>127</sup> Sentencing Advisory Council. (2019). *'Crossover Kids': Vulnerable children in the youth justice system*. Melbourne: Sentencing Advisory Council.

<sup>128</sup> CCYP. (2021). *OYOW final report*.

<sup>129</sup> Australian Institute of Health and Welfare. (2022). *Table S7b: Young people under supervision during the year by Indigenous status and age, states and territories, 2021-21*. Retrieved from: <https://www.aihw.gov.au/reports-data/health-welfare-services/youth-justice/data>

- An extremely high proportion coming into contact with the justice system have complex needs including mental health, substance abuse and trauma<sup>130</sup>
- There have been over 500 deaths in custody since the Royal Commission<sup>131</sup>, including three deaths in custody in Victoria this year<sup>132</sup>
- Aboriginal people are incarcerated at higher rates than at the time of the Royal Commission into Aboriginal Deaths in Custody.

In recent years, Victoria has seen a declining trajectory of Aboriginal children and young people under youth justice supervision. This year reporting a decrease of 15 per cent from 1 Jan 2022 to 30 Apr 2022, compared with the same period in 2021<sup>133</sup>. The 12 months prior also saw an additional 47 per cent decrease. Whilst promising to see the total number declining, the rate of over-representation of Aboriginal children and young people on remand and in prison, as well as across the entire justice system, continues to rise. We saw an 11 per cent increase in the number of Aboriginal children and young people in custody from Jan 2022 to Apr 2022, compared with the same period in 2021, driven by a 40 per cent increase in the number of Aboriginal children and young people on remand.<sup>134</sup>

Extensive research has looked at risk factors for young people entering the justice system including; poverty, experiences in out-of-home care, family violence, trauma, alcohol and drug (AOD) abuse, disrupted education, and unstable housing or homelessness<sup>135</sup>. These compounding experiences can lead to presenting with complex behaviours, which, along with intersecting marginalisation due to Aboriginality, sexuality or disability, expose Aboriginal children and young people to contact with the justice system, at an age even earlier than for non-Aboriginal children<sup>136</sup>.

In particular, the pathway from out-of-home care to the criminal justice system is one that is well established and widely reported. Please refer to [Part A of VACCAs submission on the Systemic Injustice in Child Protection](#)

<sup>130</sup> Ibid

<sup>131</sup> Allam, L. (2021, December 6). 'Beyond heartbreaking': 500 Indigenous deaths in custody since 1991 royal commission. *The Guardian: Australia Edition*. Retrieved from: <https://www.theguardian.com/australia-news/2021/dec/06/beyond-heartbreaking-500-indigenous-deaths-in-custody-since-1991-royal-commission#:~:text=Five%20hundred%20Aboriginal%20and%20Torres,deaths%20in%20the%20justice%20system>.

<sup>132</sup> Daly, N. (2022) Family waiting months for autopsy result on Aboriginal death in custody. ABC News. Retrieved from <https://www.abc.net.au/news/2022-10-10/clinton-austin-aboriginal-death-in-custody/101517596>

<sup>133</sup> Department of Justice and Community Safety. (2022). Youth justice data report to the Aboriginal Justice Forum, Victorian Government.

<sup>134</sup> Ibid.

<sup>135</sup> CCYP. (2021). *Our youth, our way final report*; VLA. (2016). *Care not custody: A new approach to keep kids in residential care out of the criminal justice system*. Melbourne, Victoria.

<sup>136</sup> Ibid

## Bail and remand

Accompanying service delivery solutions across education, health, welfare, housing and justice is the need for reform to address laws and policies that disproportionately impact Aboriginal peoples. As detailed in VACCA's Submission to the [Inquiry into Children Affected by Parental Incarceration](#)<sup>137</sup>, VACCA strongly believes that there needs to be stronger recognition of a child's best interests in judicial decision-making processes, and throughout all aspects of the criminal justice system.

In sentencing, all Australian jurisdictions allow magistrates to consider the potential hardship to an individual's family and dependents. However, in Victoria, the *Sentencing Act 1991* (Vic) does not explicitly acknowledge the effects that imprisonment has on children or other dependants, as is the case in the Australian Capital Territory and South Australia.<sup>138</sup> Instead, these impacts can theoretically be considered under section 5 of the Act which requires courts to consider mitigating factors or other relevant circumstances, but courts have deemed that these must be considered exceptional.<sup>139</sup>

We call on the Victorian Government to amend the *Sentencing Act 1991* (Vic) so that judicial decision-makers are required to consider the impacts that parental imprisonment has on children in all cases, not just in exceptional circumstances. We contend that legislative reform including to the Bail Act and sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage.

The Aboriginal Justice Caucus, the self-determining body that provides Aboriginal representation and leadership on justice matters and of which VACCA is a member, has noted its particular concern over the impact that bail laws have on Aboriginal women, with many of these women "...on remand for low level, non-violent offences that do not carry a custodial sentence."<sup>140</sup> The Aboriginal Justice Caucus has called upon the Victorian Government to reform the *Bail Act* in order to reduce the number of Aboriginal people on remand in Victoria.

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<sup>137</sup> Legislative Council, Legal and Social Issues Committee, Inquiry into Children Affected by Parental Incarceration, VACCA, submission 29.

<sup>138</sup> Lewis, N., et al. (2019). The family matters report 2019: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia. Eltham: Postscript Printing and Publishing.

<sup>139</sup> Walsh, T., & Douglas, H. (2016). Sentencing parents: The consideration of dependent children. *Adelaide Law Review*, 37, 135-161.

<sup>140</sup> Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, p. 10.

We know that unsentenced women make up over 60 per cent of Aboriginal women in prison, if bail reform was undertaken, this would have a significant positive impact on women and children given that 80 per cent of Aboriginal women in prison are mothers<sup>141</sup>. Any period of time held on remand has significant consequences on Aboriginal people, particularly where they have children and are attempting to acquire housing and employment, all before a conviction is even recorded. Given the inherent presumption of innocence, bail legislation should better support maintaining connections with family and community.

VACCA supports the call of the Aboriginal Justice Caucus, and contends that the *Bail Act 1977* (Vic) must be amended to repeal the reverse onus provisions, in particular the requirement for compelling reasons and exceptional circumstances (as detailed in ss4AA, 4A, 4C, d4 and Schedules 1 and 2 of the Act). Instead, a presumption in favour of bail for all offences should be inserted with provisions to ensure protections against further harm being caused to the individual or others.

Alongside bail reform, additional Aboriginal led support services must also be funded to offer bail support, including provision of suitable accommodation options for Aboriginal people, particularly women and children so they can meet conditions of bail. Where there are breaches of bail conditions, including technical breaches or low-level offending, VACCA contends consideration must be given to the circumstances in which these occurred with alternatives to a punitive response available<sup>142</sup>.

### **Deaths in custody (including reform of responses to public drunkenness) and other harm or abuse in custody**

The failure to fully implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody is an example of a missed opportunity by government to address the systemic disadvantage and violence experienced by Aboriginal peoples in Victoria. VACCA, along with other Aboriginal Community Controlled Organisations (ACCOs), have consistently called upon the government to take immediate action to adequately implement all recommendations from the final report. Indeed, the failure to do so has had deadly consequences, with the over-representation of Aboriginal peoples incarcerated, as well as the number of Aboriginal deaths in

<sup>141</sup> 2020-21 Corrections and Justice Services Data Report to the Aboriginal Justice Forum, November 2021; Senate Standing Committees on Legal and Constitutional Affairs, Parliament of Australia, Value of a Justice Reinvestment Approach to Criminal Justice in Australia (2013) 21.

<sup>142</sup> These recommendations are broadly reflective of the recommendations put forward by the Aboriginal Justice Caucus. (2021). *Aboriginal Justice Caucus submission on the Legislative Council Legal and Social Issues Committee Inquiry into Victoria's Justice System*, p. 10 and the NSW Aboriginal Legal Service, the NSW Coalition of Aboriginal Regional Alliances, and Deadly Connections Community Justice Services for the equivalent inquiry in NSW. These submissions can be accessed via the NSW Parliament's Committee on Children and Young People's Inquiry for the Support for Children of Imprisoned Parents in New South Wales:

<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2572#tab-submissions>

custody continuing to rise.<sup>143</sup> In the past 31 years, there have been 517 Aboriginal deaths in custody since the Royal Commission in 1991.<sup>144</sup>

As the Victorian Aboriginal Legal Services (VALS) notes, “recommendations from the RCIADIC included changes to prison conditions and procedures, reforms to how police worked, and changes in the law to keep Aboriginal people out of prison” but “governments have not done enough to implement these recommendations, and in many cases they have gone backwards.”<sup>145</sup> An example of this is the Victorian Government only began the process of decriminalising public drunkenness, a key recommendation of RCIADIC, in 2021. Public drunkenness laws were meant to be repealed in November 2022, however this was delayed, with Guardian Australia reporting that the alternative health-based model is now aimed to be established in mid-2023.<sup>146</sup> At the time of this announcement, VALS expressed its disappointment in the delay and has called upon the Victorian Government to use the additional time to shift toward a health response, indicating that the police should not have a prominent role in the new model.<sup>147</sup>

Aboriginal peoples are being incarcerated at higher rates than at the time of the Royal Commission into Aboriginal Deaths in Custody and are now 13 times more likely to be imprisoned than non-Indigenous people. We are seeing the significant and heartbreaking impact of these systemic issues in the over-representation of Aboriginal children and young people in the out-of-home care and justice systems. The Final Report made a total of 339 recommendations for reform across the entire justice system, including death investigations, diversion, prison safety, social change, and self-determination. Yet 31 years on and we are yet to see any drastic reform or commitment to implementing these recommendations, with many having been only partially or not at all implemented.

Recommendation 62 explicitly calls for governments and Aboriginal organisations to devise strategies to reduce the rate of which Aboriginal children and young people are involved in the welfare and criminal justice systems, and the rate in which children are removed from their families and communities. ACCOs hold the knowledge and expertise to inform these strategies, yet

<sup>143</sup> Anthony, T., Jordan, K., Walsh, T., Markham, F., & Williams, M. (2021). *30 years: Royal Commission on Aboriginal Deaths in Custody recommendations remain unimplemented*. Canberra, ACT: Centre for Aboriginal Economic Policy Research. Retrieved from:

[https://caepr.cass.anu.edu.au/sites/default/files/docs/2021/4/WP\\_140\\_Anthony\\_et\\_al\\_2021.pdf](https://caepr.cass.anu.edu.au/sites/default/files/docs/2021/4/WP_140_Anthony_et_al_2021.pdf)

<sup>144</sup> Australian Institute of Criminology, 'Deaths in Custody in Australia': <https://www.aic.gov.au/statistics/deaths-custody-australia>. Accessed on 22/11/22

<sup>145</sup> Ibid, p. 1

<sup>146</sup> Ore, A. (2022, April 23). Decriminalisation of public drunkenness delayed by Victorian government. *The Guardian*

<sup>147</sup> Victorian Aboriginal Legal Services. (2022, April 25). *Decriminalisation of public intoxication must be done right*. [Press release]. <https://www.vals.org.au/decriminalisation-of-public-intoxication-must-be-done-right/>



we are still seeing a disproportionate number of our children in out-of-home care and crossing over into the justice system.

***“It is evident change, and a policy overhaul is needed in our justice system, most importantly to stop deaths in custody but also to continue to work towards closing the gap and improving all outcomes for our peoples”-***

VACCA CEO Adjunct Professor Muriel Bamblett AO.

### **Over-policing and under-policing**

VACCA refers to and supports the extensive work and advocacy of the Victorian Aboriginal Legal Service (VALS).

### **Independent police oversight**

VACCA refers to and supports the extensive work and advocacy of the Victorian Aboriginal Legal Service (VALS).

### **Raising the age of criminal responsibility**

The Sentencing Council of Victoria (2019) reported that of children first sentenced aged between 10-14 years of age; 1 in 2 were the subject of a child protection report, 1 in 3 had been in out-of-home care and 1 in 4 experienced residential care.<sup>148</sup> Yet research has shown that between the ages of 10-14, children are experiencing substantial physical, mental and emotional development<sup>149</sup> and a child under the age of 14 is not sufficiently developed nor do they have the capacity to understand why their actions are wrong or the repercussions.<sup>150</sup> Not only are young people under the age of 14 incapable of understanding the extent of their actions, but evidence has shown the severity of punishment, including the length of incarceration, influences offending trajectories of young people.<sup>151</sup> Harsher punishments were found to be linked to higher levels of reoffending, whilst even shorter incarceration periods were found to significantly increase

<sup>148</sup> Sentencing Advisory Council. (2019). ‘Crossover Kids’: Vulnerable children in the youth justice system. Melbourne: Sentencing Advisory Council.

<sup>149</sup> Richards, K. (2011). What makes juvenile offenders different from adult offenders?, Trends & Issues in Crime and Criminal Justice.

<sup>150</sup> Human Rights Law Centre, “Explainer’ for raising the age: <https://www.hrlc.org.au/factsheets/2018/2/8/explainer-raising-the-age>

<sup>151</sup> Lynch, M., Buckman, J., & Krenske, L. (2003). Youth justice: Criminal trajectories. Trends & Issues in Crime and Criminal Justice. Canberra: Australian Institute of Criminology.

subsequent offending.<sup>152</sup> This means that by entering the justice system at a younger age, young people are more likely to end up in a lifetime cycle of reoffending.

ACCOs and NGOs across Victoria and around Australia have been repeatedly calling to raise the age of criminal responsibility from 10 to 14 years of age. Not only is this a key systemic change required to reduce the number of Aboriginal children and young people coming into contact with the justice system, but raising the age to 14 would also put Victoria in line with the United Nations Committee on the Rights of the Child.<sup>153</sup>

The Royal Commission into the Protection and Detention of Children in the Northern Territory also made a recommendation for the Northern Territory to raise the age of criminal responsibility<sup>154</sup> and a report prepared for the Council of Attorneys-General in 2020, clearly and conclusively recommended that no child under the age of 14 should be prosecuted for a criminal offence.<sup>155</sup>

### **Cautions, diversion, and other alternative responses**

The passing of the *Summary Offences Amendment (Decriminalisation of Public Drunkenness) Bill 2020* was a step in the right direction and a much overdue reform to protect against unnecessary incarceration, however many more changes are needed. As mentioned above, VACCA calls to raise the age of criminal responsibility, unnecessary incarceration increases the likelihood of offending and leads to significant harm, particularly for children and young people.<sup>156</sup>

One of the key policy principles underpinning the youth justice system in Victoria is ‘diversion of young people from entry into the youth justice system, or from progressing further into a life of crime’.<sup>157</sup> A young person who participates in a diversion program is significantly less likely to reoffend<sup>158</sup> as well as community-based supervision being incomparably more cost effective than

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<sup>152</sup> Ibid

<sup>153</sup> Committee on the Rights of the Child. (2007, 25 April). General Comment No. 10 Children’s rights in juvenile justice, 44th sess, UN Doc CRC/C/ GC/10, paras 32–33.

<sup>154</sup> Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory. (2017). Final Report, vol 2B, 420.

<sup>155</sup> Tobin, G. & Begley, P. (2022) The hidden report that spells out the dismal failures of youth detention policy in Australia. Four Corners, ABC. [https://www.abc.net.au/news/2022-11-15/buried-report-on-youth-detention-raising-the-age/101635706?utm\\_campaign=abc\\_news\\_web&utm\\_content=link&utm\\_medium=content\\_shared&utm\\_source=abc\\_news\\_web](https://www.abc.net.au/news/2022-11-15/buried-report-on-youth-detention-raising-the-age/101635706?utm_campaign=abc_news_web&utm_content=link&utm_medium=content_shared&utm_source=abc_news_web)

<sup>156</sup> Grover, C. (2017). ‘Youth justice in Victoria’, Parliamentary Library and Information Service, Parliament of Victoria. Research paper. No.2.

<sup>157</sup> Armytage & Ogloff (2017). Youth justice review and strategy meeting needs and reducing offending

<sup>158</sup> K. Richards & L. Renshaw. (2013). ‘Bail and remand for young people in Australia: A national research project’, Australian Institute of Criminology, Research and Public Policy Series No. 125.

incarceration. In 2019-20 the average cost per day for a young person under community-based supervision was \$223 in comparison to \$1,901 for detention-based supervision.<sup>159</sup>

Incarceration is costly, but this is not just in the confines of remand and sentencing. Causing significant harm on social and emotional wellbeing for the duration of a young person's life and potentially impeding their ability to gain stable and secure housing, obtaining education or employment and building and maintaining healthy connections. The implications of locking up our most vulnerable children and young people are life long, not only for the individual but for the state.

Despite these policy intentions, there is a lack of alternatives to incarceration that are community based and Aboriginal led, leading to missed opportunities for diversion and to reducing points of contact with the system. ACCOs already deliver a number of programs and services, which if effectively resourced to be available, would support Aboriginal children and young people involved in or at risk of involvement with the justice system. Delivering supports centred around strengthening connections to community and culture that are trauma informed and Aboriginal led, help to build protective factors, mitigate risk factors and in doing so lessen the likelihood of reoffending.

How consistently diversionary mechanisms and programs are enacted remains intermittent<sup>160</sup>, with Victoria the only jurisdiction that does not have a legislated court-based diversionary scheme for children and young people.<sup>161</sup> Discretionary powers of police to issue a caution, the lack of legislative basis for pre-charge cautions and the ability for police to veto on court-based diversion, detract away from a rehabilitative approach, leading to harmful contact with the courts system.<sup>162</sup> Insufficient implementation of court-based diversion is further amplified for Aboriginal children and young people who are less likely to be cautioned than non-Aboriginal young people<sup>163</sup> and who face the added barrier of a lack of culturally safe diversion programs, particularly in regional Victoria.

Burra Lotjpa Dunguludja (AJA4) includes a commitment to deliver community-based intensive diversion programs for Aboriginal children and young people.<sup>164</sup> VACCA contends this must be

<sup>159</sup> Productivity Commission. (2021). Report on Government services 2021. Part F, Section 17: Youth justice services. Australian Government, Canberra.

<sup>160</sup> VALS. (2019). Submission to the commission for children and young people inquiry: Our youth, our way, pg. 11.

<sup>161</sup> Grover, C. (2017). 'Youth justice in Victoria', Parliamentary Library and Information Service, Parliament of Victoria. Research paper. No.2.

<sup>162</sup> VALS. (2019). Ibid

<sup>163</sup> Crime Statistics Agency. (2017). The cautious approach: Police cautions and the impact on youth reoffending. Brief 9.

<sup>164</sup> Koori Justice Unit. (2019). Burra Lotjpa Dunguludja, Victorian Aboriginal Justice Agreement Phase 4. Victorian Government, Melbourne.

adequately resourced and implemented at the nearest possible time, along with greater investment in community-based alternatives to incarceration.

### Health and disability screening and services

#### Disability

The precise prevalence of disability in the justice system is uncertain, however there is a growing body of evidence showing over-representation of psychosocial and intellectual disabilities.<sup>165</sup> A 2013 Victorian Parliamentary Inquiry revealed individuals with an intellectual disability were anywhere between 40 and 300 percent more likely to be incarcerated than those without.<sup>166</sup> Over-representation of Aboriginal children and young people in this cohort skyrockets as they are already between 4 and 5 times more likely to have an intellectual disability<sup>167</sup> and more complex in terms of co-occurring disabilities.

Systemic discrimination and barriers, in conjunction with an absence of support is creating a pathway into prison, rather than into learning, education, health and family supports.<sup>168</sup> Cognitive impairments are often masked by AOD abuse or another form of disability such as a learning difficulty, mental illness, or a hearing impairment.<sup>169</sup> Even with a diagnosis on arrival, Aboriginal children and young people are unable to access culturally appropriate assessments and thus may receive an inaccurate diagnosis.

For disabled children, young people and adults, the failure of the justice and child protection systems to meet their needs is exacerbated by challenges accessing disability assessments or diagnosis and therefore unable to access NDIS supports. In particular, there is a lack of access to neuropsychological assessments pre and post sentence due a limited capacity and a lack of knowledge in court and custodial settings on acquired brain injuries (ABI), such as;

- Foetal Alcohol Syndrome Disorder (FASD)
- Traumatic Brain Injury (TBI) and the correlation to the prevalence of family violence and assault/accident rates

<sup>165</sup> AHRC. (2019). Information concerning Australia's compliance with Convention on the Rights of Persons with Disabilities (25 July 2019).

<sup>166</sup> Parliament of Victoria Law Reform Committee. (2013). Inquiry into access to and interaction with the justice system by people with an intellectual disability and their families and carers. Parliamentary Paper. No. 216, Victorian Government

<sup>167</sup> Calma, T. (2008). Preventing crime and promoting rights for Indigenous young people with cognitive disabilities and mental health issues. Australian Human Rights Commission, Sydney.

<sup>168</sup> First Peoples Disability Network, Final submission to the Royal Commission into the protection and detention of children in the Northern Territory (2018) Retrieved from .

<sup>169</sup> McCausland, R. (2017). Indigenous people, mental health, cognitive disability and the criminal justice system, Indigenous Justice Clearinghouse (Brief 22), Australian Institute of Criminology.

- Hypoxic Brain Injury (HBI) and the link to drug related overdose and juvenile chronic.

Alternatively, children are deemed low functioning or diagnosed with an intellectual disability and consequently neither the child or parent is able to access the supports necessary.

Furthermore, a diagnosis does not ensure culturally appropriate support while in custody or post release. This is particularly disturbing for those who are unable to advocate for themselves or deemed unfit to plead as the magistrate or judge often has the power to order the individual to be detained on the grounds that the person is a danger to themselves or others. This occurs irrelevant of the fact that majority of diversion programs in Australia require a periodic review of people who have been detained due to their unfitness to plead.<sup>170</sup>

Children and young people with a disability should under no circumstances be incarcerated as it is not a safe, effective or appropriate way to respond to their needs or behaviours.<sup>171</sup> Not only this but by detaining them, Australia is not upholding Article 14 of the UNCRPD 'Liberty and Security of the Person'.<sup>172</sup> This treatment demonstrates unfair and dismissive treatment of Aboriginal peoples with disabilities as well as contributing to a growing over-representation in the justice system.

### **Social and emotional wellbeing**

Over-representation in out-of-home care and the justice system, as well experiences of childhood trauma and family violence can have detrimental effects on development and a profound impact on social and emotional wellbeing. For Aboriginal peoples, who experience traumatic events at much higher rates than non-Aboriginal peoples<sup>173</sup>, this is often compounded with intergenerational trauma and transmission of grief and loss. The criminal justice system does not currently respond to the mental health needs of those in contact with the system nor does it recognise the intersection with mental health and offending behaviours.<sup>174</sup>

The 'Our Youth, Our Way Final Report on the Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system' revealed over half (53%) of Aboriginal children and young people in youth justice presented with a mental health condition

<sup>170</sup> Gooding, P., Arstein-Kerslake, A., Andrews., & McSherry, B. (2017). 'Unfitness to Stand Trial and the Indefinite Detention of Persons with Cognitive Disabilities in Australia: Human Rights Challenges and Proposals for Change', vol. 40(3), Melbourne University Law Review, pp.816-866.

<sup>171</sup> Change the Record Coalition Steering Committee. (2015). Blueprint for change. Retrieved from

<sup>172</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability. (2020). Research report, The United Nations Convention on the Rights of Persons with Disabilities: An assessment of Australia's level of compliance (October).

<sup>173</sup> Ombudsman Western Australia. (2021). A report on the monitoring of the infringement notices provisions of 'The Criminal Code', Volume 3: The impact on Aboriginal and Torres Strait Islander and other communities, Perth, Western Australia.

<sup>174</sup> Ibid

and 32 percent had self-harmed, engaged in suicidal ideation or attempted suicide.<sup>175</sup> Even with such high rates, the persistent message reiterated<sup>176</sup> is a lack of access to culturally safe mental health supports, prior to, after entering and post release.

Currently, Correct Care Australasia, a private mainstream organisation, provides health services in Victoria's prisons, and a lack of specialised youth mental health supports has been flagged as problematic,<sup>177</sup> particularly culturally safe supports for Aboriginal children and young people. VACCA staff have raised challenges in obtaining information around health provision including inconsistencies and a lack of transparency. Without culturally safe mental health and wellbeing supports, symptoms of poor mental health are exacerbated and can be misjudged as challenging behaviours.

***“We need a mental health system that works seamlessly with not only the health sector but all sectors and systems that support Aboriginal children and families. What are the mental health supports for children in out-of-home care, for children exposed to family violence, for children in the justice system. Social and emotional wellbeing is holistic and so the care they receive must consider this, their trauma, their experiences, their culture”-***

VACCA CEO Adjunct Professor Muriel Bamblett AO.

### **Substance abuse**

Substance abuse, particularly alcohol, is a major underlying problem for Aboriginal children and young people involved in youth justice. The 2019 Youth Justice survey revealed almost all (94%) Aboriginal children and young people under supervision had a history of AOD abuse and over three quarters (88%) had offended while under the influence.<sup>178</sup> Insufficient early intervention and prevention measures has meant a lack of action prior to contact with the justice system and seeking help or treatment is often inhibited by criminalised drug approaches, community stigmatisation or long wait times<sup>179</sup>, particularly in regional, smaller communities.

<sup>175</sup> CCYP. (2021). Our youth, our way final report.

<sup>176</sup> CCYP. (2021). Our youth, our way final report, Armytage, P., & Ogloff, J. (2017). Youth justice review and strategy meeting needs and reducing offending. Victorian Government, Department of Justice and Community Safety, Melbourne., State of Victoria. (2021). Royal Commission into Victoria's Mental Health System Final Report, Volume 3

<sup>177</sup> CCYP. (2021). Our youth, our way final report.

<sup>178</sup> CCYP. (2021). OYOW final report

<sup>179</sup> Halacas, C., Genat, B., & Barney, K. (2015). “Not everyone has that support”: an evaluation of a series of harm reduction and AOD awareness activities within Victorian Aboriginal communities, VACCHO, p 4

Not only is substance abuse a driver into the justice system but once in custody there is inadequate AOD supports to assist healing and recovery. Prior to Correct Care Australasia, Malmesbury had an AOD worker who provided follow up in custody however the understanding from VACCA staff is that this role no longer exists and AOD is not listed as a service provided by Correct Care Australasia either.<sup>180</sup> Currently, YSAS completes a one-off assessment for young people sentenced or remanded prior to release, however this is often insufficient and a missed opportunity for regular engagement about problematic substance use whilst in custody to or to facilitate rapport with an AOD worker pre-release.

Further, the interface between existing systems when leaving care and custodial settings is fragmented particularly with the mental health and AOD sector. Often involving delays or long wait times. Youth Justice case managers are required to provide a referral to a community AOD provider however there is often a lack of coordination between clinicians in custodial settings and AOD community providers<sup>181</sup>, leading to a missed opportunity for intervention.

[Connections between systemic injustice in the criminal justice system and systemic injustice relating to issues including child protection, homelessness, family violence, health, mental health and disability and substance misuse](#)

Many Aboriginal children and young people who become involved in the justice system are also products of a failed child and family welfare system. A lack of culturally appropriate and culturally safe early intervention services and supports is a significant factor that drives Aboriginal young people's involvement in the justice system. At the same time, many Aboriginal families do not access mainstream support services due to fear of these services, particularly in terms of not feeling culturally safe. Systemic failures in the child and family services system frequently contributes to a situation where a young person only receives supports once they are in a crisis. When family support systems fail, young Aboriginal people may resort to unacceptable conduct merely to call attention to their predicament.

The service system must take account of the impact of trauma on Aboriginal children and their families and must also take account of the extent to which basic needs for safety, security, accommodation and care are met. The child and family welfare system must also take the necessary action to collaboratively address these factors with Aboriginal organisations. Aboriginal self-determination, trauma-informed approaches, and connection to culture and community are now recognised as central to any approach to working with Aboriginal children, young people and

<sup>180</sup> <https://www.correctcre.com.au/about-us/>

<sup>181</sup> CCYP. (2021). OYOW final report, p.362

their families.<sup>182</sup> We know that providing Aboriginal services for the Aboriginal community is what works.

To adequately respond to each risk factor driving the over-representation of Aboriginal young people in the justice system, risk factors must not be considered in isolation but instead thought of as a complex combination of social, political, historical, family and psychosocial factors that require holistic, wrap around support to reduce the adverse impact on Aboriginal children, young people and their families.

A systemic approach is required to address the following;

### **The impact of colonial policies**

Please refer to [Historical Context and Background](#) section of this submission.

### **Criminalisation of young people in care**

Please refer to [Part A: Systemic Injustice in Child Protection](#)

### **Family violence as a key driver for children entering out-of-home care**

Please refer to [Part A: Systemic Injustice in Child Protection](#),.

### **Family violence as driver of incarceration of Aboriginal women**

[Please refer to Part A: Systemic Injustice in Child Protection](#),

### **Justice system responses to victims of crime who are also users of violence**

Aboriginal people, particularly women and children, are disproportionately impacted by crime, and in particular by family violence.<sup>183</sup> Therefore, most encountering the justice system are victims of crime themselves. This must be understood within the context of colonisation: dispossession from traditional land, forced removal of children from families, attempted destruction of culture, family, identity, and language, and the resulting ongoing experience of intergenerational trauma across communities and families, all which have led to higher levels of disadvantage within Aboriginal communities; a risk factor for violent behaviour.<sup>184</sup>

<sup>182</sup> Department of Health and Human Services. (2018). *Balit Murrup: Aboriginal social and emotional wellbeing framework 2017-2027*. Melbourne: Victorian Government

<sup>183</sup> Australian Institute of Health and Welfare. (2018). *Family, domestic and sexual violence in Australia 2018*, p. 83. Canberra, ACT, Retrieved from: <https://www.aihw.gov.au/getmedia/d1a8d479-a39a-48c1-bbe2-4b27c7a321e0/aihw-fdv-02.pdf.aspx?inline=true>

<sup>184</sup> SNAICC. (2017). *Strong Families Safe Kids*. Retrieved from [https://www.snaicc.org.au/wp-content/uploads/2017/09/Strong\\_Families\\_Safe\\_Kids-Sep\\_2017.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/09/Strong_Families_Safe_Kids-Sep_2017.pdf)



The binary of victim and perpetrator in service responses is not adequate, trauma informed, or sensitive to the complexities and the causal link between victimisation and offending. In our work supporting children, young people and adults affected by, or using violence in the home, we have moved away from the restrictive binary of the terms victim and perpetrator. This is critical given the link between victimisation and offending, with indications that ‘more than half of victims of crime become offenders, and vice versa’, and that for some cohorts the link is even more pronounced, as in the case of incarcerated women where a 2014 study noted high rates of childhood sexual abuse amongst these women.<sup>185</sup> In order to be able to effectively support people affected by crime and indeed to prevent crime, we need to address cause of why a person offends from a trauma informed perspective. A focus on healing opportunities to address the multiple and complex sources of trauma and preventing further harm is needed if we are to make impactful, sustainable change across all systems, including greater investment in restorative justice.<sup>186</sup>

### **Misidentification of aggressors by police when responding to family violence**

The exact rate of misidentification of women as the primary aggressor is unknown, however data from Victoria Police indicates that 12 percent of female respondents on family violence reports relating to intimate partner violence are misidentified,<sup>187</sup> and this number has been increasing substantially over the years.

Aboriginal women in particular are at greater risk of identification as a perpetrator and VACCA has seen a number of cases where police have responded to a client as the aggressor, rather than as an affected family member or victim. This indicates a level of misunderstanding about what family violence looks like for Aboriginal women and their children and we believe this directly attributes to the high number of Aboriginal women in prison and by extension the high number of children being removed from their families unnecessarily. Not only this, but the experience of misidentification causes significant harm and trauma, particularly to women and children.

### **Socio-economic disadvantage**

What the new Closing the Gap targets highlighted is that Aboriginal peoples continue to experience greater disadvantage and added barriers to accessing housing, education, health and employment. Evident in higher levels of unemployment and homelessness, lower educational attainment, poorer health. Socio economic disadvantage can play a detrimental role, and whilst poverty alone is not a risk factor, as discussed in [Part A: Systemic Injustice in Child Protection](#)

<sup>185</sup> Centre for Innovative Justice (2020). Strengthening Victoria’s Victim Support System: Victim Services Review. Retrieved from: <https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>

<sup>186</sup> Please refer to pg. 77 on restorative justice for further information.

<sup>187</sup> <https://www.fvrim.vic.gov.au/monitoring-victorias-family-violence-reforms-accurate-identification-predominant-aggressor-4>

circumstances associated with it such as limited opportunities for education, financial stress, debt, reliance on public housing, social exclusion and living in sub-standard accommodation can then acts as drivers contact with justice, child protection and housing systems.

This is a vicious cycle, as risk factors, such as unemployment, disability, trauma, family violence and substance abuse all contribute to rates of homelessness and contact with child protection and justice systems, which in turn increase barriers to accessing housing, education and employment. Whilst these are often identified as individual risk factors, they are in fact reflective of systematic attempts to create a cycle of disadvantage and poverty amongst Aboriginal peoples since invasion.

### **Multi-disciplinary systems transformation approach**

Sector reform is required across all service sectors to establish a multi-disciplinary, holistic system. The current system limits the support available for those with multiple, complex and diverse needs across sectors. We know that for women who struggle with AOD abuse and are also affected by family violence, they cannot access refuges. We are concerned that the levels of disability of children in out-of-home care is largely under-reported because there are barriers to accessing the NDIS, and Aboriginal young people leaving out-of-home care need to be allocated priority access to housing.

VACCA's experience has shown us that there is a lack of preparation including practical and social supports for young people exiting custodial settings. Leaving them with heightened risks of multiple vulnerabilities as well as to further contact with the justice system. We recently saw a young person released from a long period in remand and solitary confinement, without any active support prior or post-release to assist them to reintegrate into the community. Without support networks and peer networks, the young person was remanded again within weeks. Active, committed and culturally safe supports for young people prior to, during and after contact with the system is vital to circumvent initial or continued criminal justice involvement.

There is significant opportunity to drive a multi-disciplinary systems transformation through Korin Korin Balit Djat, Wungurwilwil Gaggapduir, Dhelk Dja and Murrung but it requires significant reform and the transfer of resources to ACCOs in order to succeed.

### **System responses to child exploitation and sex offending**

Demonstrated throughout this paper, trauma impacts on children and young people in varying ways and to varying extents, influencing their circumstances, how they make decisions, build relationships and are rehabilitated. This is important to highlight for Aboriginal young people who are disproportionately exposed to trauma, are over-represented in child protection and justice systems and as a result are at greater risk of exploitation and child abuse. Services, policies and

legislation must recognise the vast and different impacts of these experiences on offending behaviours and respond with healing, therapeutic responses, rather than punitive, criminalising ones.

Children and young people who have been sexually abused, those using sexually abusive behaviours and their families require integrated, multi-disciplinary supports from across all sectors, inclusive of family violence and sexual assault systems as well as ACCOs, health, housing and education systems, Child Protection, police and justice systems. Any response needs to also include cultural healing programs not only for the child or young person but also their family, particularly where there has been sibling abuse. We know that with cases of sibling abuse there is a distinct need for interventions that are age and developmentally appropriate. VACCA contends that a holistic, trauma-informed, culturally appropriate approach to rethinking the systemic response to and prevention of child sexual abuse is vital.

For additional information, please refer to VACCA's recommendations in our [Submission to the Legal and Social Issues Committees Inquiry into Management of Child Sex Offender Information](#) and our [Submission to the Victorian Law Reform Commission's Inquiry into Improving the Response of the Justice System to Sexual Offending](#).

### **Restorative justice**

Restorative justice has been used by Aboriginal people as a form of conflict resolution within our communities since time immemorial. Aboriginal Elders have traditionally been tasked with understanding the factors of the problem before considering what actions must be undertaken after a wrongdoing has occurred. In an Aboriginal led and informed context, this may include seeing a council of Elders of that Country where the crime has been committed on, who pass judgement in a culturally safe way and teach the young person to be respectful of their native homelands. Usually, the person is accompanied by a sponsored Elder from their community who can help them navigate this process. Whilst this process has been adapted into a contemporary setting through the Koori Court model, it needs to be replicated across as many sectors as possible, especially within the Family Violence service sector. Our Elders have a wealth of knowledge in cultural practices, protocols and lore, they are the connection between our ancestors that have come before us, to impart cultural knowledge to the next generation. It is through the strength and wisdom of our Elders that we will enable families and communities the healing needed to break the cycle of inter-generational trauma which affects so many victims and offenders in this space.

The implementation of victim-centred restorative justice programs must emphasise the role of the victim more proficiently. In the case of Aboriginal restorative justice models, there needs to be a stronger priority of cultural safety when considering harm done. Aboriginal cultural therapeutic methodologies holistically cover the nuances and complexities of Aboriginal ontologies and

epistemologies and would be best placed to be the foundation principle/s in the design and implementation of this program.

This is especially pertinent for Aboriginal women, the matriarchs of Aboriginal families and communities. The strong cultural connection to aunts and grandmothers plays a significant role in connecting those involved in or at risk of involvement with the justice system back to community and culture, especially when they have been isolated from their community, family and culture. As mentioned above, most Aboriginal peoples coming into contact with the justice system are victims of crime themselves and current responses are punitive rather than focused on healing. Therefore, greater investment in community-based services and restorative justice alternatives are needed across the continuum from prevention, early intervention, diversion, supervision, community reintegration as well as alternatives to incarceration. ACCOs are already delivering culturally therapeutic, trauma informed programs which when sufficiently funded can disrupt an intergenerational cycle of justice involvement and improve overall wellbeing.

In line with the Closing the Gap *Priority Reform Two: Building the Community-Controlled Sector*,<sup>188</sup> ACCOs must be resourced to expand and deliver programs focused on engaging disconnected children and families in programs that provide practical supports as well as opportunities for personal development capable of offering pathways back into education, training, employment and the community.

### **Rehabilitation**

One of the purposes of the Victorian *Sentencing Act's* is for the sentence to prevent crime and promote respect for the law by facilitating the rehabilitation of offenders. It is VACCA's contention that the court relies too heavily on the other aspects including deterrence, community education and safety, proportionality of the sentence to the harm caused by the crime. Punitive sentences and bail requirements have a detrimental effect on Aboriginal children, young people, families and adults involved and impacted by the criminal justice system. There is a critical need for pre, during and post release support that aims to connect young people with their family, community and culture, address behavioural concerns with trauma informed therapeutic interventions (violence, anger, AOD) support their education and learning, and ensure upon their release they have access to safe and secure housing so there is less chance of recidivism, rehabilitation and more broadly a safer society.

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<sup>188</sup> Victorian Government. (2021). Victorian Closing the Gap Implementation Plan 2021-2023, Melbourne, Victoria.

### ***Therapeutic Models of Care***

The Neither Seen nor Heard report<sup>189</sup> examined the legacy of trauma affecting Aboriginal children and young people. It identified that models are needed which attend to the intergenerational effects of colonisation, as well as the more immediate consequences of family violence, sexual abuse, and loss of culture and family. It is important to understand how this trauma impacts on a young person's circumstances, decision making and rehabilitation and for services to adopt culturally safe, therapeutic models of care that can be tailored to specific needs.

The Inquiry into Youth Justice Centres in Victoria define therapeutic models of youth justice as 'treatment approaches which frame young offenders as vulnerable and in need of support and rehabilitation. Therapeutic approaches focus on behavioural change and personal development of young people, as compared to an approach focused on fear or punishment'.<sup>190</sup> In recognising a young person's needs as a result of complex trauma, suitable services including AOD support, health or education should be incorporated to help support healing and improve justice outcomes.

Whilst therapeutic models vary and must be tailored depending on specific needs of young people involved, common features involved are;

- Teaching how to regulate emotions, particularly impulsiveness and anger
- Increasing social skills
- Addressing AOD abuse
- Engaging young people in education
- Teaching skills to support employment and offering support
- Teaching life skills necessary to live a healthy life, including cooking, finances.<sup>191</sup>

A therapeutic model of care has been widely advocated for not only to address over-representation in the criminal justice system, but to improve outcomes in all aspects of Aboriginal people's lives. Burra Lotjpa Dunguludja, Phase 4 of the Aboriginal Justice Agreement, support this model under Goal 2.4 Fewer Aboriginal people return to the criminal justice system'. The Agreement outlines strategies to 'address underlying causes of offending through healing and

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<sup>189</sup> Commission for Children and Young People, (2016). Neither seen nor heard – Inquiry into issues of family violence in child deaths. Melbourne: Victorian Government

<sup>190</sup> Legal and Social Issues Committee. (2017). Final report- Inquiry into youth justice centres in Victoria. Melbourne: Parliament of Victoria.

<sup>191</sup> The Youth Court of New Zealand, 10 Suggested Characteristics of a Good Youth Justice System, The Youth Court of New Zealand, Auckland, New Zealand, 2014.

trauma-informed approaches that explore the intergenerational experiences of people affected by violence, strengthen protective factors and increase coping strategies.<sup>192</sup>

The Ngaga-Dji Report (2019) written by the Koori Youth Council also highlights the demand for early intervention models, calling for support for children ‘who are victims of crime with access to justice and early, community-centred services to address trauma resulting from removal, family violence, homelessness and other abuses. The majority of children who have contact with the justice system are victims of crime themselves’.<sup>193</sup> Where children do not receive the support and opportunity to heal there is a likelihood of sustained risk-taking behaviours and increased likelihood of involvement with police and the justice system.

A promising component of therapeutic models of care is to build on protective factors such as connection to family and community and strengthening these networks to support young people. The family network dominates community and family life, governing social interactions. Aboriginal people are connected through kinship, possessing a shared sense of identity, care, responsibility and control. Milroy, Dudgeon and Walker (2014) identify the pathways to healing and recovery as an interrelated connection between self-determination and community governance, reconnection and community life and restoration and community resilience. This inter-connectedness is applied by adopting a whole family and community response to early intervention models as well as rehabilitation and diversion programs.<sup>194</sup>

### First Peoples’ lore, culture and early intervention

Research on the social and emotional wellbeing of Indigenous people across Australia and internationally, have long identified the benefits of maintaining connection to Country, culture and community.<sup>195</sup> Strengthening connections creates protective factors that help to overcome adverse life events and build resilience. When Aboriginal people are immersed in their family, culture and community, they feel supported and able to thrive in their identity.<sup>196</sup> A study conducted in Victorian Prisons in 2017 found Aboriginal people who are encouraged and supported to participate in cultural activities while in detention are less likely to reoffend upon

<sup>192</sup> State of Victoria. (2018). *Burra Lotjpa Dunguludja*. Melbourne: Department of Justice and Regulation, State of Victoria.

<sup>193</sup> Koorie Youth Council. (2018). *Ngaga-Dji, Young voices creating change for justice*. Koorie Youth Council.

<sup>194</sup> Milroy, H., Dudgeon, P., & Walker, R. (2014). Community Life and Development Programs – Pathways to Healing. In P. Dudgeon, H. Milroy, & R. Walker (Eds.), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (pp. 419- 435). Barton, ACT: Australian Government Department of the Prime Minister and Cabinet

<sup>195</sup> Stephen R. Zubrick et al. (2010). ‘Social determinants of social and emotional wellbeing’ in Nola Purdie, Pat Dudgeon and Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Well-Being Principles and Practices*. Barton, ACT: Commonwealth of Australia.

<sup>196</sup> SNAICC. (2012). *Healing in practice: Promising practices in healing programs for Aboriginal and Torres Strait Islander children and families*. Fitzroy, Victoria: SNAICC.

release.<sup>197</sup> This was explained as the result of having a strong cultural identity and being immersed in culture enhancing self-esteem, encouraging resilience, supporting positive social and emotional wellbeing, as well as enhancing pro-social coping styles. When these connections are weakened, young people become vulnerable, and traditions and norms of appropriate social and cultural behaviour can become unclear.

Being connected to culture is not only a protective factor but also a human right, set out in both the United Nations Convention on the Rights of the Child and the UN Declaration on the Right of Indigenous people. The United Nations 'enshrines and upholds the right of self-determination for different cultures, and identifies, as a survival and development right, the right of children to learn about and practice their own culture, language and religion'.

There are currently few Aboriginal specific programs available to address and reduce offending behaviour in Victoria, and also an absence of effective supervision for community corrections in regional communities. Consequently, Aboriginal young people have fewer opportunities for rehabilitation, contributing to higher recidivism rates.<sup>198</sup> Rehabilitation programs that were available were not specifically tailored to the needs of Aboriginal young people. Effective rehabilitative programs need to incorporate traditional principles of healing and culture and be adequately resourced to provide ongoing assistance to avoid future offending.

Early intervention programs aim to strengthen protective factors and reduce risk factors that may be contributing to the child or young person participating in offending behaviours. When protective factors are strengthened, they help to overcome adverse life events and build resilience. In literature and in practice, for Aboriginal children and young people this includes connection to culture, community, Country and kinship. Being connected to culture creates a sense of connection with the past and assists in creating a strong sense of identity. When connection to culture is broken, families and communities are weakened, and Aboriginal people are at threat of being lost not only to their culture but also to themselves.<sup>199</sup> Having the opportunity to be immersed in one's culture equips people with the confidence and knowledge to develop and function within their culture; drawing strength and contributing to the survival and development of their history and culture. For Aboriginal children separated from their family and

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<sup>197</sup> Shepherd, S. M., Delgado, R. H. Sherwood, J., Paradies, Y. (2017). The impact of Indigenous cultural identity and cultural engagement on violent offending. *BMC Public Health*. 18. doi:10.1186/s12889-017-4603-2

<sup>198</sup> Mahoney, D. 2005. *Inquiry into the Management of Offenders in Custody and in the Community*. Perth: Department of Premier and Cabinet.

<sup>199</sup> SNAICC. (2012). *Healing in practice: Promising practices in healing programs for Aboriginal and Torres Strait Islander children and families*. Fitzroy, Victoria: SNAICC.

culture, the opportunity to participate in local cultural events and learn of their culture by being immersed within it is a critical step in their lifelong cultural development.<sup>200</sup>

Family-centred approaches are also crucial to improving outcomes for Aboriginal young people and reducing the risk of involvement in the justice system. Our approach to family services and justice support services is trauma-informed, and we recognise that working with and strengthening vulnerable families as a whole directly benefits children and young people, by reducing family risk factors such as homelessness, family violence, AOD abuse and mental health issues. We centre connection to Culture and Community as crucial to healing from intergenerational trauma and building the strengths of families, with positive outcomes in terms of reducing risk of justice system involvement and recidivism within families.

Another approach to reducing over-representation is through youth programs. Youth programs provide the opportunity for Aboriginal young people to engage and participate in activities, helping to build positive relationships and renew ties to Aboriginal culture and community. These programs can act as protective factors in order to avoid future contact with the justice system.

Examples of some of VACCA's justice programs include:

#### ***Youth Through Care (YTC) Program***

VACCA's YTC program draws on strength and connection to culture and community, creating an opportunity to engage with children and young people in custody prior to and post release.. The YTC program is an intensive, client-centred, holistic, culturally appropriate, trauma-informed program, with a strong connection to Country and family that supports Aboriginal and young peoples exiting detention. The program provides an effective model for YTC provider organisations and aims to reduce the rates and severity of recidivism. The YTC program utilises a theory of change which illustrates the elements of an effective model of through-care. Trusted, well qualified YTC Case Workers provide appropriate and holistic therapeutic case management and deliver it in a culturally safe, client centred and trauma-informed manner.

VACCA's YTC program is client led and voluntary, with a strong intention that the young people they work with have to want to engage. The extended scope enables the option to work with young people for approximately two years, whether on a youth justice order or not. One of the key points of difference between YTC's approach and other justice support services is a commitment to remaining committed, non-judgmental and trauma-informed, often working for six months with a young person before seeing their engagement.

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<sup>200</sup> Ibid



Our program knows that each young person is at a different stage of their cultural journey, so they adjust their approach to recognise the differing needs and goals. The program includes the following core elements:

- Support pathways
  - Education/employment pathways
  - Safe and secure accommodation
  - Health and social and emotional wellbeing
  - Youth specific AOD services
- Case management
  - Pre-release case management
  - Administrative logistics
  - Coordinated post-release planning
  - Intensive case management
  - Client-centred and gender appropriate
- Family community and culture
  - Cultural strengthening
  - Family, kin, Elder support and advocacy
  - Supporting positive social networks

### YTC Case Example

[Redacted content]

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[Redacted text block]

***Beyond Survival Program***

VACCA delivers the Beyond Survival program across Victorian prisons including Tarrengower and Dame Phyllis Frost Centre. It is a 3-day group program that provides trauma informed facilitation

of narrative group work for prisoners including yarning circles to support healing and to strengthen each person's connectedness to family, community and culture. The program also provides a point of contact post release to support people to navigate and access Aboriginal and non-Aboriginal services and to help connect them to family, community and culture. In doing so, creating wrap around supports that will help sustain the positive changes made in prison, build their protective factors to maximise effective reintegration into the community and reduce the likelihood of reoffending.

VACCA's Beyond Survival program has received consistent positive feedback from participants and justice staff for many years. Programs are well attended, with participants often asking for longer programs. Participants have reported that the program has given them an opportunity to let go of past traumas and begin to heal, as well as given them a deeper understanding of their own and their families stories to find forgiveness and healing. They have also reported that they love the way the program is delivered, with trust and safety underpinning the program.

### **Beyond Survival Case Example**

[Redacted content]

### ***The Dardee Djeetgun Women's Diversion Program***

The Dardee Djeetgun Women's Diversion Program provides intensive case management, in a culturally and gender appropriate way for Aboriginal women and their families. Each year the program supports up to 16 women for up to 12 months depending on need (VACCA has previously assisted 26 women as we don't want to turn them away). The program adopts a holistic and trauma informed approach to addressing underlying factors contributing to the women's offending or reoffending. Support is provided to Aboriginal women in the Morwell area and Northern Melbourne who are on court orders, bail, community corrections and parole orders to:

- successfully complete their orders
- reduce the risk of reoffending
- be diverted from deepening contact with the criminal justice system and reduce risk of child protection involvement
- access referral pathways to programs and services

- navigate relevant service systems, including the justice system.

There is inconsistent brokerage available for this program, for instance Morwell has brokerage but there is limited access in the North.

VACCA staff shared that a high proportion of the women they support are mothers and do not have their children in their care. Currently of the eighteen in the program, only two have guardianship of their children. Staff also shared that most of the women are being held on remand, which forced some of their kids into out-of-home care. Of the eighteen women, 90 per cent have experienced family violence, many of whom were identified as the aggressor, and all present with complex mental health issues and trauma. VACCA staff raised concerns about the lack of consideration applied to these complex cases by the courts in determining sentencing and bail conditions, placing unreasonable expectations so as to placing them on remand.

For women leaving prison, majority in the program rely on their disability payment due to high levels of trauma and acquired ABI, as a result of family violence. Housing is also a significant issue as they are isolated from community because of the coercive nature of family violence, and housing options are inappropriate to facilitate reunions with their children.

In VACCA's submission for the [Inquiry into Children Affected by Parental Incarceration](#), we speak to the need to provide better support measures to ensure there is regular access between parents and their children when they are incarcerated.

#### **Dardee Djeetgun Women's Diversion Case Example**

[Redacted text block containing case details]

## Parental incarceration

The experiences of children of incarcerated parents must be understood within the context of the over-representation of Aboriginal peoples across criminal justice and child protection systems. Research suggests that approximately 5% of children will experience parental imprisonment, this figure rises to 20% for Aboriginal children.<sup>201</sup> Yet, there is no official data on the number of children with an incarcerated parent, nor is there any formalised support provided by the justice system to maintain and strengthen familial relationships.<sup>202</sup>

In VACCA's submission for the [Inquiry into Children Affected by Parental Incarceration](#), we address four key themes for the Victorian Government to focus on when looking at interventions for working with our children of incarcerated parents; Communities, Evidence, Coordination and Voice. Firstly, we need long-term investment in Aboriginal communities to support our children and families. Secondly, we need evidence. We need to build a greater Aboriginal evidence base to improve our understanding of the effectiveness of responses and to inform new strategies. Thirdly, coordination is critical. We need systems that talk to each other and work for community, not against it. A system of policy and law reform efforts to build authorising environments for change. And the fourth area is voice. We must create opportunities to hear the voices of children and young people, consider their experiences and understand their lives in order to support professional practice. It is important to note the significant lack of data on the prevalence of parental imprisonment, meaning that the number of children affected is currently unknown.

**‘It is clear that children are not taken into account by the adult justice system, from the time of their parent’s arrest, through to their parent’s release from prison and everything in between. We need processes and protocols that support children, that respond to their voice and that consider the best interests of the child’**

- VACCA CEO Adjunct Professor Muriel Bamblett AO.

Please refer to VACCA’s nine specific recommendations in relation to this inquiry as they are equally relevant for Yoorrook.

<sup>201</sup> Quilty, S. (2005). The magnitude of experience of parental incarceration in Australia. *Psychiatry, Psychology and Law*, 12(1), 256–257.

<sup>202</sup> VACRO. (2021). *Inquiry into Victoria’s Criminal Justice System: VACRO Submission*. Available at: <https://www.vacro.org.au/Handlers/Download.ashx?IDMF=aac57802-5f28-4a04-b68b-e646a91f0b51>

## Missing and murdered First Nations women and children

We will provide our full submission to the Inquiry into Missing and Murdered First Nations Women and Children after the 12<sup>th</sup> December when it is due.

### Criminal Justice Recommendations

53. **That the Yoorrook Justice Commission recommend review the files over the past twelve months of all Aboriginal incarcerated children (under 18yo) to seek information about what preventative and diversionary programs each child had access to, prior to, during and post release. Questions should be raised about reasons for being held on remand and bail conditions outlined by the court alongside what cultural support services they have access to including Return to Country and Family Finding.**
54. **That the Yoorrook Justice Commission call on the Victorian Government to immediately raise the age of criminal responsibility from 10 to at least 14 years of age.**
55. **That the Yoorrook Justice Commission call on the Victorian government to immediately cease solitary confinement and isolation of children and young people in youth justice detention.**
56. **That the Yoorrook Justice Commission seek an update on the process of review from the incoming government on the eight recommendations from Our Youth Our Way that were not fully committed to, alongside update on the progress of the Wirkara Kulpa the Aboriginal Youth Justice Strategy.**
57. **That the Yoorrook Justice Commission hold government and private child and family community organisations (mainstream) accountable for timely implementation of all actions and commitments as identified in Victoria's Implementation Plan for the National Agreement on Closing the Gap targets and Priority Reform Areas.**
58. **That the Yoorrook Justice Commission promote an Aboriginal led multi sector approach to providing support that focusses on early intervention, prevention and diversion, rather than incarceration for all Aboriginal children engaged with the youth/criminal justice system. This should build on the learnings of VACCA's Youth Through Care program, and we believe an equivalent model should be applied to adults.**
  - **Provision of specialised, culturally appropriate health care and therapeutic supports in custodial settings for Aboriginal children, young people and adults with mental health, disabilities and/or substance abuse issues**
  - **Create and transform workplace practices to be trauma informed and culturally safe for staff and clients**

- **Mandatory Aboriginal Family Violence training for Victoria Police, with a cultural lens to family violence identification and response**
59. **That the Yoorrook Justice Commission call on the Victorian Government Implement all recommendations of the Armytage and Ogloff ‘Youth Justice Review and Strategy’ (2017) as a matter of priority.**
60. **That the Yoorrook Justice Commission call on the Victorian Government as a matter of critical priority, to legislate an obligation for all justice system decision makers including the Courts, to give evidence as to how they provide recognition of a child’s best interests throughout all aspects of the criminal justice system (including the sentencing of parents with children):**
- **The Bail Act 1977 (Vic) must be amended to repeal the reverse onus provisions**
  - **Reform to the Bail Act and sentencing legislation, must require consideration of the impact of systemic racism, intergenerational trauma and disadvantage, as well as the impacts that parental imprisonment has on children in all cases.**
61. **That the Yoorrook Justice Commission call on Government to authorise an Aboriginal Children in Aboriginal Care (ACAC) equivalent model in the justice system for all Aboriginal children aged under 16years.**



## Appendix A

### Timeline of Invasion in Victoria

1837 Church Missionary Society sets up the Yarra Mission for Aboriginal children.

1838 Port Philip Protectorate established (early Victoria).

1838 Aborigines Protection Society formed in 1838 as reports of mistreatment and murder of Aboriginal people filters back to the 'home office' in England.

1839 Yarra Mission closes down.

1840 Narre Narre Warren Station opened (fails – closes in 1843)

1845 Merri Creek School opened near First Nations camp.

1851 Colonial population of Victoria around 95 000.

1858 Colonial population of Victoria over 500 000.

1858 Report of the Select Committee of the Victorian Legislative Council on Aborigines recommends that a system of reserves be established in remote areas of the colony to 'protect' Aboriginal people.

1860 A 'Central Board Appointed to Watch over the Interests of Aborigines' is established.

1863 Aboriginal population declines from an estimated number of 15000 to 60000 prior to colonisation to roughly 2000.

1864 *Neglected and Criminal Children's Act* introduced due to the aftermath of the gold rush; the Ballarat Orphanage, first of many children's institutions, established.

1869 First law passed specifically concerning the removal of Aboriginal children - *the Aborigines Protection Act* - by which the Governor could make regulations for the "care, custody and education of the Aborigines".

*Aborigines Protection Board* formally established by the Act.

1871 *Aborigines Protection Act* amended to include regulations by which the Governor “may order the removal of any child neglected by its parents or left unprotected to any of the places of residence or to an industrial or reformatory school”.

1886 *Aborigines Protection Act* extended the coverage of the 1869 legislation to “all other persons whatever of mixed aboriginal blood”.

1890 *Aborigines Act* introduced, consolidating the previous Acts. Additional scope of regulation is added, by which the Governor may regulate “the conditions on which half-castes” may “obtain and acquire Crown land”.

1899 *Aborigines Act* amended to ensure that the Governor may order the removal of any “aboriginal child left neglected by its parents, or left unprotected” to an “industrial or reformatory school”.

1910 *Aborigines Act 1910* gives the Aborigines Protection Board equal powers over “half-castes” for “all or any of the powers conferred on the Board with regard to aboriginals”. *Aborigines Act 1910 (Vic)*.

1915 *Aborigines Act 1915* regulates employment and residence for Aboriginal peoples.

1928 *Aborigines Act 1928* explicitly states one of the duties of the board is to “provide for the custody, maintenance and education of children of aborigines”.

1957 *Aborigines Act 1957* the Aboriginal Welfare Board formed, however child removal is not explicitly stated as a power.

1960 *Social Welfare Act* passed which deals generally with the welfare of children with no specific provisions for Aboriginal children.

1967 *Aboriginal Affairs Act 1967*. The Ministry for Aboriginal Affairs is established and the Protection Board abolished but there is no scope for this Ministry to authorise any child removal.

1970 Aboriginal children specifically referred to as being subject to the *Social Welfare Act* but there are no specific provisions relating to them.

1989 *Children's and Young Person's Act* introduces principles of case planning for Aboriginal children that require members of the Aboriginal community to which the child belongs to be involved in the decision making process.

2005 *Children Youth and Families Act* makes provisions which specifically relate to Aboriginal children, including the Aboriginal Child Placement Principles (ACPP) which aim to ensure that Aboriginal children are placed with and maintain contact with the Aboriginal community and culture

#### Missions/reserves where children were often kept apart from families in dormitories

Corranderk, Lake Condah, Ebenezer, Ramahyuck (Presbyterian), Lake Tyers (Anglican),

#### *Orphanages/Homes*

St Joseph's (Ballarat), Ballarat Orphanage, Bayswater Boys Home (The Basin), St Joseph's Foundling Hospital (Broadmeadows), Blackburn South Cottages (Mission of St James and St John), St Gabriel's Babies Home (Balwyn), Orana (Methodist – Burwood), Allambie (Methodist – Burwood), Box Hill Boys Home (Salvation Army), Catherine Booth Girls Home (East Kew), The Gables, St Josephs (Abbotsford), Berry St (East Melbourne), Brunswick Girls Home (Salvation Army), Church of England Homes for Children (Brighton), Tally Ho Boys Home (Methodist)

#### *Reformatories*

Turana/Royal Park Depot, Winlaton.